

Edinburgh Tram Inquiry Office Use Only

Witness Name: Tom Aitchison

Dated: 14/12/16

The Edinburgh Tram Inquiry
Witness Statement of Tom Aitchison

Statement taken by Drew Fox on 28 and 29 April 2016. In the presence of Randal MacPherson of Clyde and Co, Solicitors.

My full name is Thomas Nisbet Aitchison. My date of birth is [REDACTED]. I am retired. I was Chief Executive of the City of Edinburgh Council between May 1995 and December 2010. My main duties and responsibilities were leadership of the organisation and setting the strategic direction for the Council.

Statement:

Introduction

1. The City of Edinburgh Council is a large organisation. When I left it had about 20,000 employees and a revenue budget approaching £1 billion.
2. My duties were leadership of the organisation and setting the strategic direction for the Council. That involved a number of activities. Following each election to the Council I assisted with translating the manifesto of the ruling administration into a corporate plan for the forthcoming three or four year period. I also had overall responsibility for the Council's Single Outcome Agreement as required by the Scottish Government.
3. The job also involved taking the lead in improving specific aspects of the organisation's performance and addressing key, corporate issues. Examples from the last few years in the job (2008-10) include: chairing a group trying to improve child protection in the city in response to a number of external

inspection reports; chairing a group on a project called "Alternative Business Models" which, had it gone ahead, would have led to the transfer of a range of Council services to the private sector; chairing a group on equal pay issues facing the Council; and, chairing a group overseeing plans to expand the Edinburgh International Conference Centre.

4. In terms of the day to day part of the job, there was a key focus on managing the interface between the managerial system and the political system. In 2007 the electoral system changed from a first past the post vote to a single transferable vote system. The Administration formed in 2007 needed 29 elected members to form an Administration from a total council membership of 58. The Administration that was formed in in 2007 was established through a coalition between Liberal Democrats and the SNP. Within the ruling Administration, only one Councillor had previously been in power. The situation was quite a difficult one for elected members to get to grips with. It impacted on the managerial system for maybe a year to 18 months. This covered the period when the business case on the tram was submitted to the Council. Financial Close was in the early months of 2008, within twelve months of the 2007 election.
5. 'Stakeholder management' was another key aspect of the job, which involved liaising with the Scottish Government, COSLA, NHS Lothian, enterprise companies, the business community in the city etc. In addition, I was Chief Executive of the Lothian & Borders Police Board, Chief Executive of the Lothian & Borders Fire Board, Chief Executive of the Valuation Board (responsible for electoral registration and the rating system), Honorary Secretary to the Edinburgh International Festival, Returning Officer for the City of Edinburgh and the Lothians and Chair of the Scottish Electoral Management Board. There were periods during the tram project (eg in May 2010) when I was heavily involved in local and national election duties.
6. I have provided a copy of my CV to the Inquiry (**CVS00000022**). By way of a brief overview, my early career was spent in Lothian Regional Council. I started out with Lothian Regional Council from post-graduate school in 1975.

In the mid-80s I became an Assistant Director and, later, Depute Chief Executive around 1991/92. I became Chief Executive in 1994. I was appointed Chief Executive of CEC in 1995. I continued in that role until December 2010 when I retired on age grounds.

7. My duties and responsibilities as CEC's Chief Executive in respect of the tram project evolved and changed over time. During the period up until Royal Assent, which was around spring 2006, I had little direct involvement. I was kept informed on progress by senior colleagues involved with the passage of the Bill through Parliament. I recall taking comfort from the Audit Scotland report in the summer of 2007. That report led, eventually, to the granting of the £500m for the project from the Scottish Government. It endorsed the procurement strategy, the approach to risk and the way that TIE had gone about their business. Generally speaking, until the 2006/07 period my role in the tram project was limited. I made sure colleagues had sufficient staff resources devoted to the project. I had occasional contact with Ewan Brown (then Chair of TIE) but not in a day to day project management sense.
8. In 2007, after Parliamentary approval was given and as funding was coming through and the business case was coming closer to fruition, I established an Internal Planning Group (IPG). That group was established to provide a co-ordinated approach within CEC to TIE and other external bodies. It was established to make sure that CEC related to TIE in a corporate manner. During this period, there was regular contact with the Council Leader and the Council's political leadership.

Initial proposals (2000-2006)

The New Transport Initiative and the creation of TIE

9. I note that on 18 October 2001 Andrew Holmes (Director of City Development) submitted a report to CEC (**USB00000228**) seeking their approval to submit an application for approval in principle to the Scottish Executive for funding for

the Council's New Transport Initiative (NTI), of which a tram system and road charging formed part. I note that the report proposed the creation of a wholly owned Council company to deliver the projects forming part of the NTI. The draft application in principle, appended to the report to Council, noted that one of the issues leading to the creation of TIE was *"Public and stakeholder scepticism about the ability of the local authority to implement the initiative"* (section 11, pp 13/14 of the draft application). The application for approval in principle to develop the projects in the NTI was duly submitted to the Scottish Executive. Members were provided with an update by a report to Council on 2 May 2002 (USB00000232). The report appended a letter dated 28 February 2002 from Wendy Alexander, Minister for Enterprise, Transport and Lifelong Learning, which supported private sector involvement and the principle of an off-balance sheet company. TIE was created in 2002. At that time the Council had a very ambitious agenda for transport in the City. There was a view that a dedicated resource devoted to taking that transport agenda forward was required and that was the genesis of TIE as an organisation.

10. From memory, the fact that TIE was an off balance sheet company was not necessarily a major factor behind its creation. The key factor was to get a dedicated resource devoted to transport infrastructure in the city. The thinking was, in the early 2000s, that a suite of transport projects would be developed. It was intended that, in due course, TIE (or possibly TEL) might become a company that would be able to raise financial resources on the markets. That ultimately never happened. The fact that TIE was an off balance company was not the driving force behind its creation. It was set up to take forward transport projects.
11. TIE was an arms-length company. It was set up as an independent company with private sector leadership. CEC selected the Board members. Later, and following the (negative) result of the road congestion charging referendum, TIE's work was much reduced in scope and focused primarily on the tram project.

12. I am not sure whether there was scepticism about the ability of CEC to deliver the NTI. Throughout all my time in senior office in local government there were budget restrictions. The Council had lost a lot of its technical expertise and experience over the years and the Council's role was changing. Having private sector involvement within the public sector was encouraged by the Scottish Executive. CEC was quite receptive to the approach, given its past experience with local authority companies. Also, given that the Council's proposals on road congestion charging were controversial and that the investment required to deliver the NTI was very substantial that encouraged the view that it was better to have a different delivery vehicle for major transport projects as opposed to a traditional local authority model.
13. The Council's experience in delivering major capital projects at that time mainly related to the provision of new or refurbished buildings (e.g. libraries, leisure centres, residential homes for older people etc.) On the transport side, projects mainly related to local road building schemes and major maintenance activities.
14. The creation of TIE to prepare for congestion charging and to deliver the projects in the NTI was influenced by the views of the Scottish Executive, who were keen on having a combined public sector / private sector model put in place. Given the Council's experience with local authority companies, CEC were comfortable with that approach. I don't recall this being anything other than a fairly straightforward discussion as everybody agreed on the model in principle. While the details took some time to sort out, I don't recall there being any significant opposition to the use of a separate delivery organisation for the tram project.
15. The means by which it was considered that CEC would exercise control over TIE was through the articles of association of the company, appointments to the board, an annual business plan, elected members being on the board of the organisation, senior officer colleagues attending the board and the general fostering of a good working relationship between the organisation and the Council.

16. I note the report produced by TIE's Infrastructure Procurement Group on 8 April 2004 (CEC01853647). It records that, given its resources and experience, TIE was essentially a procuring body rather than a major project management organisation. I did not see that description of TIE in 2004 and am surprised by it. In Council reports over a period of years TIE is consistently referred to as a delivery vehicle. There was a fairly settled view from an early date that TIE would promote the tram project through the Parliamentary process leading to Royal Assent and would then become the delivery vehicle for the project. It was also understood that the skill set required in TIE to secure Royal Assent would need to change as the project moved towards delivery.

17. I don't personally recall any consideration given by TIE, or the Council, to instructing an external expert body (such as a firm of consulting engineers) to project manage the tram project or particular parts of it (eg the design, utilities and/or infrastructure works etc.)

Initial estimates for the tram project

18. I note that there were various estimates for a tram network produced between 2000 and 2004. In particular I note that (1) a July 2001 Feasibility Study (CEC01916700) reported that a North Edinburgh loop could be built for a capital cost of £191.1m; (2) a September 2002 TIE report, *"Integrated Transport Initiative for Edinburgh and South East Scotland, A Vision for Edinburgh"* (CEC01623145), considered that it was possible for the northern loop and the west lines to be built at a total capital cost of £355m (at 2002 prices) and a south east tram line to be built at a cost of £123m; (3) a January 2003 report by Arup Transport Planning, *"Edinburgh LRT Masterplan Feasibility Study"* (CEC01190799) estimated the total capital cost of all three lines (ie north, west and south east) at £527.83m or, if built together, £465.55m; (4) the 2003 Preliminary Financial Case (PFC) for line 1 (northern loop) (TRS00000054) estimated the capital cost of line 1 as £287.3m. The 2003 PFC for line 2 (the west line) (TRS00000016) estimated the capital cost of line 2 as £336.3m; and (5) the Sep 2004 update of the Preliminary Financial

Case for line 1 (the northern loop) (CEC01868590) estimated the capital cost of line 1 as £274m. The updated PFC for line 2 (the western line) (CEC00642799) estimated the capital cost of line 2 as £320.9m. I had no personal input into these reports or the various estimates for constructing a tram network. Colleagues in City Development and Finance would have been involved in the preparation of these reports. They would have supplied information on population growth in the city (as a whole), changing travel patterns, where the network might be located, what its form would be, how the project would come through the planning pipeline etc.

19. In the early years (2001 until Royal Assent) my involvement in the tram project was not extensive. The Director of City Development kept me informed of progress and I was aware of those reports which were submitted to the Council. I did not have a day to day or hands on role.
20. The Scottish Transport Appraisal Guidance (STAG) was the system used by the Scottish Government in assessing major transport projects. Councils could not secure the approval of financial resources from central government if the STAG requirements were not met. Projects had to receive a BCR (Benefits to Cost ratio) of at least 1.0 to secure Government support. I wasn't involved with the development of the STAG appraisal for the tram project. I was, however, familiar with what was being expected from my colleagues in City Development.
21. Optimism bias was a safeguard against the tendency of professionals to overstate benefits and understate costs. I was broadly aware, at the time of the initial stages of the tram project, of the importance attached to the methodologies used for the assessment and management of large scale projects and the need, for example, to assess risk, contingency provision required, optimism bias and the like. I was not immersed in the details of these assessments but I sought assurance from colleagues that they were following the prescribed methodologies.

22. I was aware of HM Treasury's "*Green Book*". Pre-2005, I had not personally led a project using the Green Book methodology. At the time, my understanding of the "*Green Book*" was one of general awareness rather than detailed day to day knowledge. The Council had experience of the "*Green Book*" in its City Development and Finance departments.
23. Officers in City Development and Finance gained their understanding of "*Green Book*" methodology through working on projects in the Council's capital programme. A number of Council staff were specifically trained in project management methodologies.
24. At the time, I wouldn't say that I had major concerns about the varying estimates or the reliability of estimates for the proposed tram network. The tram scheme was a large project. It was always understood that the estimates would evolve and change over time as issues were clarified and resolved and more information was generated. I took some reassurance from the fact that the plan was based on a prudent approach ie phasing the tram project rather than trying to go for an over-ambitious project at too early a stage. That seemed to me to be much in line with what I expected for a project at that stage of development.

The October 2004 ARUP Review

25. I note that in October 2004, Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, produced a review of the Business Case for line 1 (the northern loop) (**CEC01799560**). I note that, while Arup concluded that, in general, the approach described in the Preliminary Financial Case was reasonable and robust given the stage of development of the project, certain concerns were noted. In November 2004 TIE responded to Arup's report (**CEC01705043**). The concerns raised by Arup included: (1) the BCR of 1.21 did not appear to represent a particularly strong case in terms of economic value of the scheme and the economic case for the scheme was heavily dependent on the benefits from one area (ie Granton); (2) there was a significant shortfall in funding (perhaps in the order of £82-£190m); (3) the

total amount added for contingency on capital costs was 25% compared to the maximum level of 44% recommended in HM Treasury's Green Book), the project's averaging of mitigation factors was likely to have led to underestimating Optimism Bias uplifts and further justification of the likely cost of the mitigation strategies should be provided; and (4) the risk section in the Preliminary Financial Case did not specifically address the risks associated with the management of the interfaces between the providers of design, infrastructure works and systems integration and the tram vehicles. I wasn't aware of Arup's report at the time or TIE's subsequent response. Arup were commissioned by the Scottish Parliament to help with their deliberations on the application for Royal Assent. Looking at TIE's response now it seems to me to be professional, constructive, well balanced and reflective of the stage the project had reached at the time and consistent with "Green Book" project management methodology.

The 2005 road charging referendum

26. The NTI comprised a number of proposed transport projects, of which a tram system and road charging formed part. I note that the September 2002 TIE report (CEC01623145) noted that the financial strategy for the NTI required revenue funding from road user charging. In February 2005, following the referendum, the public voted against the introduction of road user charging. The income from road charging to the financing of CEC's proposals under the NTI at that time was seen as fundamental. It was key to taking forward the NTI on behalf of the Council. The result of the road charging referendum had a significant impact on the funding and affordability of the tram project and the Council had to reconsider its approach. It had to acknowledge and accept that not all the projects in the NTI could proceed. The Council prioritised the tram project as the way forward and reverted to a base transport strategy rather than a more ambitious transport strategy. The result of the referendum resulted in a curtailing of ambition and re-focussing of the main priorities for public transport in the city. The necessity then was to work with the Scottish Government to secure grant funding for the tram scheme. In terms of affordability it was recognised that this would depend upon the outcome of the

business case, the extent of Government funding support and the costs arising from the tendering process.

The May 2005 draft interim outline business case

27. In May 2005 TIE produced a Draft Interim Outline Business Case (CEC01875336). It notes (1) the estimated capital cost of line 1 (the northern loop) was £327.2m (including a contingency of £23.73m (10.8%) (p88) and optimism bias of £52.64m (24%) (p.91) cf. HM Treasury's Guidelines recommended a starting value of 44% for optimism bias) (p.15); (2) either line 1 or line 2 were affordable within the Executive funding of £375 million but a network of lines 1 and 2 was not affordable (with a shortfall in funding for capital expenditure for both lines 1 and 2 of £206 million) (p14); (3) the 30 month construction programme from July 2007 to meet the operational date for the tram by the end of 2009 was a "*challenging timescale*" (p.17); and (4) the theme of the overall strategy was to ensure that risks were "*aggressively managed*" and that TIE's stakeholders were not asked to commit to contractual or financial obligations until each stage had been thoroughly analysed and approved. I possibly saw the May 2005 TIE produced Draft Interim Outline Business Case but I can't confirm that. I am reasonably sure that I would have been briefed on the document by the Director of City Development. Whether he presented me with a summary (which is probably more likely), took me through it in a presentation or whether I was given the full case at that time, I can't recall. This document was part of the evolving process of working up the requirements before a decision was made by the Council on whether to proceed or not and was clearly a fundamental requirement of that. But it was also a work in progress. Looking at the document now it seems to me to be a professional piece of work. I recall that TIE had employed a number of reputable consultancies to assist with preparing the business case for scrutiny by the Scottish Executive, by elected members and others. The May 2005 Draft Interim Outline Business Case was an important step forward in the process of developing the tram project.

28. What was meant by the risks being “*aggressively managed*” is that TIE would need to work hard to convince the Council (and the Scottish Executive) that the procurement strategy was sound, that line 1 was financially realistic, that the contract strategy did transfer substantial risk to the private sector and that tight financial control would be exercised at all stages of the project.

2006 reports to Council and draft Final Business Case

29. I note that a report to Council on 26 January 2006 (**CEC02083547**) made certain recommendations for funding and phasing the tram network given that the total estimate for lines 1 and 2 was £634m and the total available funding was £535m (comprising £490m from the Scottish Executive and £45m from the Council). It was considered that the section of line from Edinburgh Airport to Leith Waterfront gave the greatest benefits and was the optimum first phase (the capital cost of this line was estimated at £429m excluding optimism bias, and £484m including optimism bias). As an option, this phase could be extended to include the section of line from Haymarket to Granton Square (the Roseburn link), at an estimated cost of £75m. The Council's contribution would comprise only such amounts as could reasonably be expected to be funded from future tram related development and receipts, rather than from general funds or from Council Tax. Why was the Airport to Waterfront route preferred? Edinburgh Airport is the largest airport in Scotland. Around that time it was carrying around 9 to 10 million passengers a year (that figure has now risen to around 12 million), generating significant public transport demand from passengers. Close to the airport is the RBS HQ, itself a major generator of demand, and where various sites were set aside for incoming international businesses of national importance. The Gyle has the fourth largest concentration of employment in Scotland after Glasgow, Edinburgh and Aberdeen city centres and also has a large retail facility. The city centre speaks for itself in terms of employment, tourism and so on. The route was then intended to go down into Leith. Leith Walk and surrounding streets is the most densely populated part of Edinburgh. That would have fed into the tram route had it gone as far as that. At that time Forth Ports had very ambitious development plans for both Leith and Granton. From recollection,

18,000 houses were proposed for Leith and 7,000 were proposed for Granton. All of this provided a strong justification on population, transport and people movement grounds for the proposed line from the Airport to Leith.

30. I thought restricting, or “phasing”, of the scope of the tram network was indicative of an on-going prudent approach. It was part of a determination to keep within budget. At the time, it looked to me that the Council was, potentially, under-committing rather than over-committing. I thought that was a sensible and prudent approach.
31. There was a fair degree of importance attached to the fact that the Council's contribution would comprise only such amounts as could reasonably be expected to be funded from future tram related development and receipts, rather than from general funds or from Council tax. Council budgets were under pressure. The Council wanted to reassure the public that funds would not be diverted from mainstream programmes into funding the tram. This was particularly so given the controversy over congestion charging and because the tram project was controversial. The Council's view was that the more they could ring fence the funding for the project the more acceptable it would be to the public of Edinburgh.
32. By letter dated 23 November 2006 (TRS00003119) I wrote to Malcolm Reed (Chief Executive Transport Scotland (TS)) in advance of a conference call the following day to set out a proposed way forward in relation to the funding requirements for the tram network. The purpose of the letter was to try and persuade TS to consider increasing the funding to allow the Granton loop to be constructed. Essentially, it was the Council trying to secure the maximum possible funding for the proposed tramline in Edinburgh. I can't recall the detail of what was discussed between me and Mr Reed in the subsequent conference call but it would have focused on the content of the letter. Apart from speaking to Mr Reed I had no contact with other civil servants in the Scottish Executive and/or Ministers to discuss the tram project.

33. By letter dated 13 December 2006 I wrote to David Mackay (Chairman of TEL) (TRS00003220). The purpose of the letter was to keep TEL informed of the Council's position, or emerging position, following my discussion with TS on whether line 1b was likely to be financially supported as well as line 1a. It was also to inform him that the draft Final Business Case was being targeted for presentation to the Council later in the month.
34. I note that by joint report to Council on 21 December 2006 (CEC02083466) Donald McGougan and Andrew Holmes sought members' approval of the draft Final Business Case for the Edinburgh Tram Network (CEC01821403). The documents note that the estimated capital cost of phase 1a (Edinburgh Airport to Leith Waterfront) had risen to £500m (and the estimated cost of phase 1b, the Roseburn link, was £92m). The BCR of phase 1a is noted as 1.1 (although the BCR for phase 1a increased to 1.58 if the EARL project did not proceed). The documents note that the most significant risks affecting the timely completion of the project within budget were identified as (1) the advance utility works, (2) changes to project scope or specification, and (3) obtaining consents and approvals. It is noted that, to maintain control over the capital cost of the project, the following actions were required, namely, (a) enabling works, including utility works, should be authorised to proceed on a timetable that would not disrupt the main infrastructure programme, and (b) negotiations with bidders should continue with a focus on achieving a high proportion of fixed costs in the final contracted capital cost. The documents anticipated that construction of phase 1a would commence in December 2007 and that tram operations would commence in December 2010. At the time I had no significant concerns in relation to the increase in the estimated capital cost of phase 1a and phase 1b. The projected capital cost for 1a was within the funding available and the estimates were firming up. It was recognised that the key comparison to be made in due course would be between firm or final estimates and the available funding. While I would have preferred the BCR to be greater than 1.1 it was, nevertheless, a positive figure and met the STAG requirements.

35. The most significant risks affecting the timeous completion of the project within budget are referred to in the report. The key risks were utility diversion works, scope changes and obtaining consents and approval. These three risks were almost always referred to in Council reports. The procurement strategy was based on completing the design and utilities before the main construction programme started. That was picked up in the risk management sections in the various Council reports. The primary responsibility for risk management lay with TIE. They had to see the procurement strategy through to completion and present to the Council a way forward for the project ie whether it was affordable or not. The Council had an input into this ensuring the scope of the project did not change in any major way. The Council had to make sure that it met its own responsibilities eg in relation to consents and approvals. However, the primary responsibility for risk management at that time was with TIE.
36. City Development had a small project team who were working full time on the tram project. There were also City Development staff seconded to TIE at various stages (eg on traffic management and traffic regulations). City Development would have been aware of what the evolving risks were and would have had a clear understanding of the primary responsibilities which TIE carried. They understood the responsibilities they had in relation to advising the Council on TIE's proposals (this was particularly so in the area of risk). City Development's role wasn't just overseeing TIE but also advising the Council on developments within TIE.

The procurement strategy

37. I note that it was initially proposed that the procurement strategy for the tram project follow a variation of a conventional design and build contract (whereby risks arising from design and construction were transferred to the successful bidder, albeit at a price). I note that in 2004/05, however, a procurement strategy was devised whereby (i) there would be separate contracts entered into for each of the works, (ii) the design and utility works would be carried out

in advance of the infrastructure works and (iii) the design contract would be novated (ie transferred) to the infrastructure contractor when the infrastructure contract was entered into. I note that the intention of the procurement strategy was to “*de-risk*” the infrastructure contract and produce a “*firm fixed price bid*”, with “*substantially all construction risk being transferred to the private sector*” (per updated Preliminary Financial Case, Sep 2004). I had no personal involvement in the formulation of the procurement strategy. Council officers would have been involved, certainly in assessing its appropriateness. The officers involved would primarily have been the Director of City Development, which at the time was Andrew Holmes, and the Director of Finance, Donald McGougan. They would have had an involvement alongside their supporting staff. My understanding of the purpose and aim of the procurement strategy was first of all that it was designed to take account of best practice and lessons learned from elsewhere. Within the documentation there are various references to a report from the National Audit Office. It reported on light rail schemes in the UK in and around the late 1990s early 2000s. Elected members, officers and others went on visits to France to see tram schemes there and they also went to Dublin to try and learn from their experience and to ascertain how they had gone about procuring their tram schemes. All of this was considered and taken into account and a procurement strategy was devised that suited the city of Edinburgh. My understanding was that the aim was to ensure that the design and statutory consents required would be completed, or substantially completed, before the Infracore infrastructure contract commenced. That was why the SDS contract was awarded in September 2005 to Parsons Brinkerhoff (PB) to enable the design work to proceed and be ready prior to the construction phase.

38. My understanding of the reasoning behind separating out the various contracts came from what was said in the National Audit Office report. They found that there had been some unacceptable outcomes in tram schemes and light rail schemes south of the border where the whole risk of design and build was transferred across to the contractor. They reported that price escalations had occurred because of the way contractors were pricing for risk. The idea in Edinburgh was to have the two contracts, on utilities and design, completed in

advance of the main build programme. Infraco would then have price certainty at the point of the novation of the contracts across to them. I had no particular personal views about the advantages and disadvantages of the chosen procurement strategy when comparing it to a conventional design and build contract and which model was more appropriate for the tram project but it did seem appropriate to take into account the findings in the National Audit Office report. I received and accepted professional advice from senior Council colleagues and colleagues in TIE who had examined the issue in detail. It was my understanding, in late 2006, that design would be completed or substantially completed before the Infraco contract commenced. Likewise for MUDFA. My understanding on the way forward was formed following reading reports, attending briefings and having meetings and discussions with colleagues.

Design

39. In September 2005 the SDS contract was entered into between TIE and PB. Delay in completing design, and in obtaining necessary statutory approvals and consents, was regularly reported to meetings of the IPG (as well as, for example, to the Tram Project Board (TPB)). It is a matter of record that there was significant delay in completing design and in obtaining statutory approvals and consents.

40. My understanding in relation to the cause or causes of the delay with designs was that there were concerns about the quality of some of the work submitted by PB. There were also concerns surrounding the scheduling of their work ie whether or not they were on time. This had a knock-on effect on the Council's responsibilities for consents and approvals. I was not aware at that time of any Council originated delays. The Council was trying hard to create a dedicated capacity which could turnaround the planning approvals, and/or technical approvals, once drawings came in from PB. Monitoring this was one of the roles of the IPG. The Council, from memory, were trying to encourage pre-dialogue on issues with the designers. By initiating pre-dialogue the Council

was trying to work collaboratively with design contractors to ensure as far as possible a smooth passage for planning and technical issues.

41. TIE did try to put pressure on PB. Willie Gallagher (Chief Executive of TIE) flew out to New York to put pressure on them to improve their overall performance. The approach was active, not passive, and effort was diverted towards further improvement. By the time of Financial Close, there was a recognition by TIE that they had a number of internal weaknesses within their own organisation in respect of design work. A number of things happened in response to this. There was co-location of staff at Haymarket, improved contract management arrangements focusing on the resolution of outstanding designs (in particular, prioritising those that were germane to the early phases of the Infraco contract) and more effort made on the Council's part in closing out third party agreements. There was a concerted effort, certainly in the spring of 2008, to try and bring a lot of energy and capacity to bear on improving the overall situation on design. PB's lack of progress on design was a concern to me. However, by the time of Financial Close I accepted the view from TIE and Council colleagues that the issue was manageable and identified within the risk management arrangements. Measures were put in place to improve performance. The advice from TIE at that time was that they expected the design work to be complete by the autumn of 2008 and largely before the main construction programme was due to commence. In summary, it seemed to me that the risk had been identified and a plan had been put in place to deal with it. This understanding would have been based on the views expressed by senior Council colleagues as a result of their discussions with TIE.

42. In terms of the Council's responsibilities for issuing statutory approvals and consents I was assured that there were no major blockages which were impacting adversely on the overall programme.

Utilities

43. In October 2006 TIE appointed Alfred McAlpine Infrastructure Services Ltd (AMIS) under the MUDFA contract to carry out the utility diversion works for the tram project. Delays were experienced with the utilities diversion works, becoming more pronounced as the programme progressed. A number of factors were identified, including contractor performance; site supervision by the contractor and TIE; public concerns over traffic management at certain locations; deficiencies in the accuracy of records held by the Council and public utilities; and an increase in the volume of work which had to be undertaken (from approximately 27,000m to 48,000m).
44. Various steps were taken to improve contractor on-site performance and site supervision by TIE, which led to some improvements. The key issue, however, was the very large and unanticipated increase in the volume of work to be carried out.
45. From 2008 until my retirement in 2010, the sheer scale of the work that required to be done became clearer. Some of the utilities diversion had to be undertaken by the utility companies themselves eg Scottish Water and Scottish Gas. That became a serious issue as we moved towards the Infraco contract starting in 2008. The original plan had been for the works to be either complete or substantially complete by that point. I remember steps were taken to try and synchronise the programmes so that the utility works were undertaken ahead of the forthcoming Infraco works. That wasn't anticipated back in 2006. The effect of the delay in undertaking the utility works on the infrastructure contract and the carrying out of the infrastructure works was a major concern and it led to increased cost, exceeding what had originally been allowed for in the risk allowance for the project.

The infrastructure contract

2007

46. It is suggested that from at least December 2006 TIE advised CEC that any infrastructure contractor would require some form of guarantee from CEC of TIE's obligations under the infrastructure contract. I can't put a precise date on when I first became aware that it was likely that the infrastructure contractor would require a guarantee from CEC of TIE's obligations under the infrastructure contract. Late 2006 / early 2007 seems right. Certainly by August 2007 there were references in Council reports to such a guarantee being required.
47. Following the formation of a minority SNP Government in May 2007, and a debate and vote in the Scottish Parliament in June 2007, the grant for the tram project from Transport Scotland was capped at £500 million. This is confirmed in the letter dated 2 August 2007 from Malcolm Reed (TS) to me (CEC01666269). I note the Highlight Report to the IPG on 30 August 2007 noted that that changed the risk profile for the Council and sought guidance on the procurement of resources necessary to provide a risk assessment and analysis of the Infraco contract for the Council within the available timescales (CEC01566861) (para 4.1). I (now) understand that, around that time, Councillor Gordon Mackenzie, Finance Convenor, sought information from the Directors of City Development and Finance on a number of matters, including what contingency plan needed to be in place in case of a cost overrun (CEC01556572). TS's decision meant that the focus became the delivery of line 1a within the £545m budget (ie affordability), the finalisation of the business case and the continued development and implementation of the procurement strategy, which was to achieve as much price certainty as possible for the Infraco contract. Risk management was a recognised priority. The revised position was reported to elected members. Council officers working on the project understood and were aware of the position with regards to the changed risk profile.

48. The official responsible for ensuring the affordability of the tram project was the Director of Finance. The lead official responsible for ensuring the deliverability of the project was the Director of City Development. The understanding was that the Director of City Development would be supported by others eg the Council Solicitor and Director of Finance. The Council was trying to work corporately with clarity on responsibilities and roles.
49. I don't recall any specific focus on contingency planning at that stage but there is a reference in the exchange of emails with Councillor Mackenzie that Directors would meet with him. The emphasis was on cost control and delivering the project within the £545m. It was anticipated that the approach to risk management and the likely financial headroom would be sufficient to avoid a cost overrun.
50. On 25 October 2007 the Council's approval was sought for the Final Business Case, version 1, in respect of phase 1a (Airport to Leith Waterfront). I note that a joint report was provided by Donald McGougan and Andrew Holmes (**CEC02083538**). The report advised that the estimated capital cost of phase 1a was £498m and that there was a 90% chance that the final cost of phase 1a would come in below the risk adjusted level. I note that a fixed price and contract details would be reported to the Council in December 2007 before contract close (the full FBCv1 is found at **CEC01649235**). The working assumption, all the way through, was that the contract would be either a fixed price contract or substantially a fixed price contract. The October 2007 Council report did point out the scope for costs to increase slightly before contract close. This was because the design was incomplete at that time. It is stated in many Council and TIE reports that the aim of the procurement strategy was to achieve fixed prices / rates and to transfer risk wherever possible to the private sector. My recollection was that these rates were checked and benchmarked against other tram schemes in other parts of the UK and Europe.
51. In October 2007 my understanding was that the Infraco contractor would probably have to deal with any incomplete design once the SDS contract had

been novated and contractual arrangements finalised between Infraco and SDS. It was also recognised in October 2007 that there were issues with the SDS contractor. I don't think it was anticipated that this would become such an issue over the contract close period (ie from the end of 2007 through to May 2008). The constant advice was that the risks associated with SDS were manageable and that the primary responsibility for processing consents and approvals lay with the Council. I was relying on information from colleagues in City Development and also indirectly from TIE.

52. It was my understanding that TIE would bear the risks arising from any utility diversion works not being complete before the Infraco works commenced. In other words, it was a public sector risk rather than a private sector risk which TIE would have to allow for in the contract.
53. There was a Council meeting on 25 October 2007 where members were given a presentation by Andrew Holmes, Willie Gallagher and Neil Renilson (CEC02083536). I was present at that meeting. My recollection from Willie Gallagher's presentation was that capital costs were anticipated to be, at that time, £498 / £500m. I note that in his slide he states a *"firm bid for Infrastructure for Phase 1a – subject to due diligence"*; *"In total, 99% of costs now firm – fixed or based on agreed rates"*; *"If programme and scope are adhered to by Council & TIE, very limited exposure to cost overrun"*; *Private sector responsibilities – design, manufacture, construction, commissioning & maintenance*; and *"Risk management & mitigation (already in place) – Robust contracts with unambiguous risk allocation"*. At the time Willie Gallagher presented an upbeat and confident view to the CEC elected members. He was saying that the contract would be close to a fixed final price with almost all the risk being transferred to the private sector. He was re-assuring members that there was a very limited chance of exposure should things go wrong in the contracts. His confident approach to the issues was partly a reflection of his style. Having said this, he was speaking on behalf of TIE as an organisation. All my council colleagues who were involved in the project, were of the view that TIE could bring in the project around the £498 / £500m mark. I had no evidence at that time to lead me to a different view. I was

reliant on the information presented to me by professional colleagues who were heavily involved in the project.

54. I note that in an email dated 3 December 2007 (CEC01397538) Alan Coyle sent a Briefing Note (CEC01397539) to Donald McGougan and Andrew Holmes detailing a number of issues which could impact the report to Council on 20 December and seeking guidance on how these issues should be treated in the report. The Briefing Note was discussed at a meeting of the IPG on 11 December 2007 (and formed Appendix 3 of the Highlight Report to the IPG (CEC01398245) (pages 7 and 90)). I further note the Action Note (CEC01391159) which discusses the Note. Clearly the Briefing Note did raise a number of important matters where urgent action and / or clarification was needed. It illustrated the huge effort being made by Council staff and others to get the project through to Contract Close and to inform the content of the forthcoming December report to Council. Deadlines were looming and staff were working hard to try and ensure that, where there were significant issues to be addressed, they were being properly identified and followed through.
55. The discussion of the matters in the Briefing Note at the meeting of the IPG on 11 December 2007 would likely have centred on the action required to clarify and resolve some or all of these issues in order to be ready to report to Council at the end of December. Given its importance, there would have been discussion on the design and consents issue. Some of that is referred to in the Action Note of the IPG meeting. I note that at paragraph 3.2 it states *“It is currently unclear to CEC as to the scope of the works, the timescale of the project, and the allowance for incomplete detailed design and implication for gaining approved designs (technical and prior approvals). All the above can have potential impacts of time and costs and under this form of contract potential major cost implications ...”* The purpose of Mr Coyle’s paper was to highlight and seek resolution of outstanding issues before the business case was presented to the Council and to prepare for the Financial Close negotiations. At that time I was becoming more aware of the design issue as it was being flagged up in various reports. This paragraph alerted me to the need for more diligence in asking questions about design. I note at paragraph

3.3 it states *"This form of contract was adopted 'fixed price' on the basis of completed approved designs however this is not where we are ..."*. This paragraph seems to suggest it might be difficult to put in place a fixed price contract given the way the design issues were evolving. In the Action Note of the meeting of the IPG, there is a reference to the *"transfer of risk, readiness of design and possible consequences for MUDFA and Infracore"* and under the *"Agreed Outcome"* there is a reference to colleagues being asked to *"draft clear timelines to identify how these issues can be resolved by Monday to allow report to go to Council"* and the *"aim is to meet all these deadlines and to press TIE to achieve a resolution of the issues of concern"*.

56. In paragraph 7.6 of Mr Coyle's report he states that one possible solution to the design issue would be to ask BBS to increase their costs by adding a "risk premium". While making the project delivery perhaps more expensive he says that it would at least assure elected members that the risk had been passed to BBS as originally intended. To a certain extent that's partly what happened when an extra £3.3m was included in the final contract price with BBS at contract close.
57. Subsequently, the two Director colleagues signed off the report to the December 2007 Council meeting. In hindsight, it might have been better to have made more explicit reference in the report to Council to, at least, some of the issues raised in the Briefing Note. It could have more explicitly referred to the issues that were still under active consideration between TIE, BBS and the Council. However, it was my colleagues' view that these were capable of being resolved.
58. This, I think, helps to explain the caveat they wrote into the December report, where it states the contract *"should not be awarded until all remaining due diligence matters are resolved to the Chief Executive's satisfaction"*. While TIE felt the issues that had not been dealt with at that point in time were capable of being dealt with, this reference by the two Directors alerted the Council to the fact that a range of detailed issues had still to be resolved.

59. I wasn't present at the presentation on risk given by TIE to CEC on 13 December 2007 (DLA00006313). This wasn't the sort of presentation I would normally have attended and I would not have known it was taking place. It is likely that Finance, City Development and Legal Services would have been involved, either at Director level and/or their key staff (eg Colin Mackenzie, Alan Coyle and Duncan Fraser).
60. I note that a meeting of the Legal Affairs Group took place on Monday 17 December 2007 (CEC01501051). I note that a paper was presented by Susan Clark setting out the "deliverables" that were required to enable me to be satisfied that it was appropriate for the contracts to be awarded (DLA00006313). I was not present at the meeting and did not see any of the papers prepared for it. In all probability I would not have known it was taking place and I was not briefed on what was discussed at the meeting.
61. I presume what the Legal Affairs group were doing at this meeting was starting to address the requirements of the due diligence process in anticipation of the Council approving the recommendations. "Deliverables" I understand to mean a list of all the key elements that needed to be completed before the contract could be signed.
62. I note within the minutes that Willie Gallagher reported that *"the Infraco Contract is now at 97% fixed price with BBS taking on design risk. Further negotiations to be undertaken between now and financial close. AF [Andrew Fitchie] noted that CEC/TIE will need to be clear on what elements of SDS on-going design novation will be included (or excluded) from novation agreement between BBS and SDS. Approval of design remains an item of concern for BBS as SDS are not tied to a timeframe from obtaining the required approvals whereas BBS are"* (para 2). I can't comment specifically on this section of the minutes as I wasn't at the meeting and I don't know what was said but it does highlight the focus on design issues at the time.
63. The Inquiry has informed me that between 17 and 20 December 2007 discussions took place at Wiesbaden, Germany, between representatives of

BBS and TIE and that on 20 December 2007 an agreement, on heads of terms, were reached (the Wiesbaden Agreement). I remember Willie Gallagher and David Mackay making a number of trips to Germany. Having seen some of the papers provided to me by the Inquiry, it is clear that they were trying to close out a number of the major items in the contract, including price. It was an important step leading towards the eventual Financial Close of the contracts. I am not sure when I became aware of the discussions held at Wiesbaden. Whether I knew before the Christmas break or after, I can't say but I suspect it may have been after. I certainly would have expected to have been briefed on the on-going negotiations, given their importance.

64. As I recall my understanding of the agreement was that the parties (TIE and BBS) had taken a number of important steps forward in relation to securing a positive outcome to the contractual negotiations, while there was still work to be done. There were no "*red flags*" flying saying there was likely to be a fundamental problem with the contract.
65. On 20 December 2007 Donald McGougan and Andrew Holmes presented a joint report to Council (**CEC02083448**) seeking members' approval on the Final Business Case, version 2. The report explained that members' approval was sought for the Final Business Case, version 2 and for staged approval of the award by TIE of the contracts, subject to (1) price and terms being consistent with the FBC and (2) the Chief Executive being satisfied that all remaining due diligence was resolved to his satisfaction. Not all the outstanding issues had been resolved at this point. Some of these potentially had a bearing on Final Costs (eg design work, utilities etc). The approach was to work through all the major risks to eliminate them, reduce them or, where necessary, make a financial provision for them. That's why some of the qualifications were put into the report by the two Directors. In broad terms, the remaining due diligence matters that required to be resolved were the contract conditions, contract price, risk assessment and risk allowances.
66. I established with the Directors of City Development and Finance and the Council Solicitor that I would not authorise the award of contract until I had

written assurance from them that all outstanding issues had been resolved to their satisfaction and in the best interests of the Council. I tasked them to undertake the detailed analysis required on outstanding issues and to report back. Only then, and with a positive recommendation to proceed, would I consider contract signature.

67. I note the email dated 14 December 2007 from Gill Lindsay to Alan Coyle (CEC01397758). She states, in relation to earlier drafts of the report to Council, *"the version of [the] Report I had been working on was much more explicit re risks current and those to be contained. Has all this text been removed and if so why please"*. I don't know whether there was an earlier draft but I assume there probably was. Most Council reports went through various iterations before they were finally signed off. I don't think I saw an earlier draft. The report was signed by these two Directors so they must have satisfied themselves that the wording in the report met their standards of reporting. I don't know who specifically said *"adjust the paragraph"* or *"take out a form of wording in relation to risk"*.
68. I note the Final Business Case, version 2, dated 7 December 2007 (CEC01395434), noted that the capital cost of phase 1a (Airport to Newhaven) was £498m and that there was a high level of confidence in the cost estimate (such that there was a 90% chance that the costs would come in below the risk-adjusted level). There is reference to Infracore being a *"fixed"* price or *"lump sum"* contract (paras 1.68, 1.71, 7.111, 7.127b, 10.53). The risks retained by the public sector are set out at para 1.85. It was noted that the public sector was *"exposed to significant, but diminishing and manageable, risks during the remaining period of scheme development"* (para 11.57). I was always clear that the aim was to have a fixed price contract with most of the risks transferring to the private sector, subject to the normal clauses in contracts relating to unforeseen circumstances. My understanding at this time was that the risks were anticipated to be relatively small and those arising would be included in the risk allowances provision.

69. My understanding, at that time, of whether agreement had been reached in relation to which party bore the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents was that final agreement had not been reached. The clear intention at the time was to ensure that the SDS contract was novated to the Consortium. The advice from TIE and council colleagues was that while all issues surrounding the design transfer were not bottomed out, the risks were manageable and financial provision had been made for them in the risk allowance. It was said at the time that design work was anticipated to be completed by the end of 2008 which would limit its potential impact on the construction contract.
70. My understanding, at that time, was that TIE bore the risks arising from utility diversion works not being completed before the Infraco works commenced. A lot of analysis went into preparing the risk allowance for MUDFA and a high proportion of the overall risk allowance reflected that. I think something like 20% of the total risk allowance for the project was devoted to MUDFA. There was a clear understanding at the time that this was a specific risk area which would not transfer to the private sector (ie to Infraco) and would be retained by the public sector.
71. The responsibility for dealing with consents within a prescribed timescale lay with the Council, providing the required quality standards were met by SDS. At the time, in December 2007, and before Financial Close in May 2008, the question of responsibility for design work and the novation of the SDS contract had not been fully resolved but the risk was thought, by TIE and Council colleagues, to be manageable. I accepted that advice from them.
72. The Council was gearing up, in terms of capacity and expertise, to have the resources in place to deal with the outstanding approvals and consents. I don't recall ever being advised that there was likely to be a major concern over the Council's ability to handle the approvals and the consents process. My understanding was that some of the then provisional prices and contract rates were being firmed up, with a positive impact on price "certainty". There was also a recognition that the risk allowance might change during the final

contractual negotiations. Subsequently, as the estimated final price increased from £498m to £512m there was a compensating reduction in the risk allowance.

73. At the time the view was that the MUDFA contract could be delivered on time and that the SDS work would be completed by the end of 2008. These two steps were considered to assist in managing outstanding risks and diminishing their impact.

January to May 2008

74. It is clear from the papers sent to me by the Inquiry that events were moving quickly over this period. There were many requests for clarification of figures and additional information. This was to be expected in view of the importance and scale of the task being undertaken. It was clear during that period that before the Council could give final approval a number of things had to happen. One was a written assurance from TIE, as the lead organisation, that they were satisfied that all matters relevant at Financial Close and contract award had been resolved to their satisfaction. Behind TIE were DLA Piper, who were advising TIE on contractual matters. I also wanted a written assurance from the three senior council colleagues in Finance, City Development and Legal Services that they were satisfied that all the points had been addressed both to their professional satisfaction and in the Council's best interests. I made up my mind quite early on that I was not going to use delegated powers to approve the contract. It was such an important issue for the Council that I felt elected members should take that decision rather than me. In granting me delegated powers in December 2007 I believe the Council anticipated that financial close would be achieved within a few weeks and well in advance of the next scheduled Council meeting, which was in late February 2008. Negotiations were still ongoing in January and this, coupled with the fact that the tram contract exceeded £500m, led me to the view that I should not use delegated authority.

75. I see that the report to the IPG on 18 January 2008 (**CEC01398148**) noted that TIE were to provide a list of exclusions from the Infracore contract with a value against each item and that CEC required a statement on the percentage of costs that were fixed, the percentage outstanding as provisional sums and a programme for moving these to fixed costs. It notes that confirmation was awaited from BBS of the emerging quality of the design. Full details were required from TIE of the status and degree of completion of design work, including prior and technical approvals. It notes that, if approvals risk was not being transferred to BBS, the Council needed to know the impact and likelihood of the risks and the strategy for managing the risks. I did recognise, and I think everybody recognised, that the period from January to May was a crucial one. During that period we were moving from the Final Business Case through to Financial Close. TIE had the lead role in moving towards Financial Close and the contract award. The positive Audit Scotland Report in June 2007 and the third OGC Gateway Review (OGC3) in October 2007 gave the Council confidence in TIE's competence to deal with these issues. I stressed to Council colleagues that they needed to work alongside TIE in carrying out the due diligence process. I wanted to be kept updated in particular about any major issues arising, what you might call "*showstoppers*". That said, I wasn't involved on a day to day basis on the detailed analysis being worked through. The principal means by which I was involved with the project was through the IPG and through regular contact with senior council colleagues. Those senior council colleagues were the Director of City Development, Director of Finance and the Council Solicitor.
76. Everyone was trying to make sure that we could close the contract as close to the terms of the Final Business Case as possible. The approach followed by staff in TIE and the Council was to minimise the works excluded from the Infracore contract, to move from provisional to final costs wherever possible and to make financial provision for the risk associated with items which could not be finalised at that stage. In terms of works excluded there were a number of major items such as Picardy Place and Bernard Street. I recall one of the reports said there were 19 items still to be resolved. Picardy Place had a value of £6.3m associated with it and Bernard Street had a figure of £3m.

77. My primary interface was through the IPG and senior colleagues briefing me. Andrew Holmes and Donald McGougan would have kept me informed. Sometimes they formally requested a meeting with me and other times contact was informal. There was at this time a flow of information back and forth between senior professional colleagues in the Council, and with senior staff in TIE.
78. My understanding of the percentage of costs that were fixed was that the aim was to have 90%, or as close to 90%, of the costs as fixed as possible. I don't recall, at any time during that process, being advised that this was not likely to be achieved. I don't recall being presented with a breakdown of the figures as to what was provisional, what was fixed or what was still under review. The aim was to work to the objective referred to in the Final Business Case. A small departure would probably have been acceptable but not a major one. All concerned were trying to ensure that we stuck as closely as possible to the terms the Council had set in approving the Final Business Case in December 2007.
79. At the time I didn't have any knowledge of the due diligence exercise being undertaken by BBS on design. In hindsight it seems a fairly obvious thing for them to have done. They were being charged with the novation of the SDS contract and any contractor was bound to ask *"what's been completed, what's in progress, what is still to be started and to what extent are the quality standards required by the Council being met?"* This was consistent with what was to be expected in final contract negotiations.
80. By email dated 23 January 2008 (CEC01402692) Gill Lindsay advised me that BBS were *"advising that they need a further period of time for their own due diligence, focussing on Employer's Requirements and the novation issue from SDS to BBS"*. I had no awareness of the specifics behind BBS's position. I assumed at the time that they were going through technical information to form an overview of the state of readiness for the contract to be novated across to them.

81. I note that the report to the IPG on 30 January 2008 (CEC01246994) contained a table (Appendix 1) that listed activities and deliverables that were expected to be achieved by 9 February 2008 to allow formal award of contracts by TIE on or around that date. Most of the activities and deliverables were coded as “red” (outstanding). TIE and council staff were trying to resolve these matters (some of which were very important). It seemed to me to be a tight timescale but my colleagues believed that the timescales could be met. The purpose of the table was to flag up those issues in red and enable management to consider the remedial action needed to ensure that issues were resolved and deadlines met. Colleagues were aware that I would not sign off an authority to proceed to contract close until the due diligence requirements were met. It is perhaps worth making the point that the approach being followed did result in issues being satisfactorily resolved. For example, there were a number of references to Network Rail in the reports, which was one of a number of important third party agreements (others were Edinburgh Airport; Forth Ports and the SRU). All of these were resolved.
82. On or about 7 February 2008 TIE and BBS entered into the “*Rutland Square Agreement*”. I note that the agreement can be found at (CEC00205642). I saw this agreement as being part of the on-going negotiating process between TIE and BBS. They were working through key issues and specifically recording what had formally been agreed and were narrowing down the range of matters still to be finally determined at Financial Close. The Agreement followed on the back of Wiesbaden. The Agreement was another important step towards identifying what BBS and TIE were agreed on and what was still to be agreed. It set out what needed to be further discussed. The agreement seemed to represent an important step forward between the contracting parties. While there was still a long way to go it did seem that, following some hard negotiating around the respective stances taken on both sides, the parties were capable of sitting in a room together, resolving issues and signing them off legally. I was briefed on what was being negotiated and what was hoped to be achieved at the negotiations. I was told that we were narrowing down the issues but certain issues still needed to be resolved (eg design).

83. I note that on 18 February 2008 BBS produced a Design Due Diligence Summary Report, based on design information received by BBS by 14 December 2007 (**DLA00006338**). I note that document raised various concerns about design, including that *“more than 40% of the detailed design information”* had not been issued to BBS. I did not see this document and I am not aware of being advised about it at the time. I was aware that design work was incomplete. When I asked how much had been completed I was told it was roughly two-thirds. Looking back at some of the Council reports, I think there is a reference to the fact that two-thirds of the design was complete for line 1a. (It was a lower figure when 1a and 1b were taken together.) I was aware that there were issues potentially over third party agreements. However, these were not presented to me as a major concern within the Council. There was a fairly high degree of confidence that they could be resolved within the necessary timescales. Again, I am referring to the Airport, Forth Ports and Picardy Place.
84. I did not see the BBS reports, which were highly technical in nature such as the one found at (**DLA00006338**), and they were not brought to my attention.
85. I note that the Highlight Report for the IPG on 29 February 2008 (**CEC01246993**) gave an update in relation to Planning Prior Approvals and Technical Approvals. The Highlight Report includes a draft Report on Terms of Financial Close dated 21 January 2008 (the “Close Report”) (Appendix 1). I note that the draft was to be updated to reflect current negotiations. Looking at these documents now, I understand the terms of the draft Close Report to mean that, firstly, SDS design issues were still under discussion between TIE and BBS. Secondly, it means that approved design packages were covered by the novation arrangements with BBS ie they would have recourse to SDS if there were issues on quality etc. In relation to design work which was incomplete or not started the same approach would apply in due course, once the packages were approved and consents obtained. However, the fact that some packages were incomplete or not started, gave rise to risks as to quality, submission dates, final consents and so on. TIE at that time were moving towards accepting this risk. The final closure report also introduced a

new risk of overlapping design and construction. It showed it as remaining in the public sector. The procurement strategy had assumed that this was to be a contractor responsibility. Now, for a period of time, this risk was being retained in the public sector. As always assumed, TIE and CEC would remain responsible for TTROs, planning consents etc. All of these were specific statutory responsibilities borne by CEC. That's my understanding of what was becoming an increasingly complex situation at that time.

86. I do note in the draft Close Report the statement that *"Infraco has a substantive responsibility in relation to consents and approvals but there is a critical interface with TIE/CEC which is being defined at this stage"* (p.5). This was not drawn to my attention as a high level issue at that time. I do note the statement *"Crucially the price includes for normal design development (through to the completion of the consents and approvals process – see below) meaning the evolution of design to construction stage and excluding changes if design principle shape form and outline specification as per the Employers Requirements"* (p31). At that time, I took comfort from the advice given by TIE, who were backed up by DLA, and other professionals in the Council. They were saying *"yes there is now an issue here and the responsibility changes"*. The advice to me could be summed up as *"we've spotted it, we know how to deal with it, we have priced it into a risk allowance, it's manageable and it's not of such importance it's going to cause the Council or TIE to think about not awarding the contract"*.
87. On 12 March 2008 Willie Gallagher sent me a letter confirming TIE's view that it was now appropriate to issue the Intention to Award letters (**CEC01399076**). His letter also noted that the TPB had met earlier that day and had concluded that the final negotiated INFRACO terms were consistent with the terms of the Final Business Case approved in December 2007. I placed reliance on the professionalism of TIE and their advisors, including DLA, and the parallel work undertaken by Council colleagues in considering whether there was any major inconsistency between the Final Business Case and the proposed Infraco price. The estimated cost had moved from £498m to £508m. Percentage wise that did not seem unreasonable, given that a possible movement in costs had

been flagged to the Council in the Final Business Case. I recognised that part of the reason for the increase had been design issues.

88. I did not have any specific concerns at the time about the information coming from TIE being overly optimistic. TIE's analysis and advice was considered and scrutinised by senior Council colleagues. I did have some concern over the fact that it was taking longer than originally anticipated to reach financial close. But at the same time I didn't encourage anyone to speed things up. I wanted to make sure that TIE and Council staff were working diligently through all the relevant issues rather than rush things. The advice to me can perhaps be summed up as *"we know there are issues to be addressed, we're working on them, we've worked them through, we've put a price against them in the risk allowance and we've assessed the impact and all that's manageable"*.
89. My senior Council colleagues were professionally focused on the project and I accepted their advice on key issues and key recommendations. All of us recognised the political importance attached to the tram project and were determined to undertake a thorough analysis of the issues before presenting advice to the Council.
90. I accepted advice from TIE in March 2008 that they were confident that it was appropriate to issue "Intention to Award Contracts" letters. I also received advice in writing from Andrew Holmes, Donald McGougan and Gill Lindsay that due diligence had been progressing well and that it was appropriate to accept TIE's recommendation to authorise them to lodge the Notice of Intention to Award the contract with BBS.
91. On 13 March 2008 I was given an update by Donald McGougan, Andrew Holmes and Gill Lindsay. I note the reference to the meeting in the document **(CEC01386276)**. I do not now recall the discussion at that meeting but they would have been updating me on what stage they were at in the negotiations, what contract price had been arrived at and the outcome of the due diligence processes undertaken to date. It is likely that the meeting was held to give me

an opportunity to seek clarification from them on specific issues or to request more information on them. It would have been preparatory in relation to the letter they were going to send to me, further to the letter from TIE, giving me their recommendation that it was now safe to proceed. I think they thought, understandably, that it was necessary to see me personally before their letter arrived on my desk.

92. A full meeting of the Council took place on 13 March 2008. I note that it appears from the agenda (**CEC02083387**) and the minutes (**CEC02083388**) that members were not given an update on the tram project. This is despite the Highlight Report to the IPG on 29 February 2008 envisaging that a report on the tram project would be provided to members at that meeting (**CEC01246993**) (para 3.1). Members weren't given an update at this meeting. The practice in the Council was that reports going to Council needed to be issued a week before. This would have meant that any report providing an update on the project would have had to have been submitted between 6 and 7 March. I had not received any advice from TIE or Council colleagues that it was safe to proceed by those dates. Therefore it was not possible to report to Council on the originally planned date. I was not prepared to report without these written assurances. Only after receiving them was I prepared to go back to the Council. The Council did not like, and I didn't like, papers going out to Council a day or so before meetings were taking place. It would not have been good practice to have presented something of this magnitude so close to a Council meeting. It was better to wait until the next cycle of meetings rather than try and rush something through. I took that decision on 6 or 7 March. The primary reason for not reporting was that I hadn't received any advice by the deadline for that March meeting.
93. I note that on Friday 14 March 2008 (at 3.39 pm) an email was sent to Alan Coyle (**CEC01386275**) attaching a Note that had been approved by Gill Lindsay (**CEC01386276**). The Note, to be signed by Donald McGougan, Andrew Holmes and Gill Lindsay confirmed that it was appropriate for me to authorise TIE to immediately issue a Notice of Intention to Award the INFRACO contract to BBS. My understanding, at that time, of whether

agreement had been reached in relation to which party bore the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents is set out in that Note which states, *“BBS will accept the design risk for delay by SDS to a high financial ceiling, whereas the Council and TIE must remain financially liable for delay by SDS in relation to the provision by them of information for a range of consents and approvals. Both TIE and the Council have worked diligently to examine and reduce this risk in practical terms and TIE advises that the new risk contingency contains suitable adjustment for this residual risk”* and *“the Chairman of TIE has advised that he has now received sufficient assurances in relation to the SDS matter”*. My understanding was that a significant risk had been identified due to the overlapping period between completing the design and the start of the construction contract, that a way of dealing with it had been found and financial provision had been allowed for that risk. This accords with the advice I had received from the most senior people in the Council and TIE.

94. I remember asking at the time *“what does ‘to a high financial ceiling’ mean?”* I can’t recall whether it was known then that £3.3m would be added to the contingency. I don’t think that necessarily had been finalised. That said, I knew that there was another financial element to be added into the risk allowance. I was advised again that two-thirds of the design was complete and capable of being novated across. I was told that this was considered to be a time limited issue that was expected to be completed by August 2008. I was told that TIE had put in place co-location performance management arrangements with SDS to improve the output of design. Taking all of that information together, I was reassured that colleagues had a handle on things and were prepared to put their weight behind a recommendation to me that it was safe to proceed.
95. I gave TIE the authority to issue a Notice of Intention to Award the Infracore contract to BBS. I accepted that it was safe to do so and appropriate to do so.
96. I note Gill Lindsay's email dated Monday 17 March 2008 sent to Jim Inch, which I was not copied into, found at (CEC01407951). Gill Lindsay advises

that, following a detailed meeting with all relevant officers on the morning of Friday 14 March, all issues then known to CEC were closed, in preparation for signing by CEC's officers. I note that around 3.30 pm on Friday 14 March TIE advised that there was a shift in BBS's position around liability and indemnity (ie in relation to BBS's refusal to accept liability for uninsured third party losses/claims). I am not exactly sure when I was made aware of the shift in BBS position. It was annoying and unsettling that we had got to that stage and then a last minute hitch had arisen. At the time it seemed that TIE and the Council were doing the right thing. They were setting out to investigate what lay behind the claim being made by BBS. Clearly, TIE and the Council had to come to a view on whether it was going to be acceptable in whole, in part, or not at all.

97. We had now reached the middle of March and the Infraco contract still hadn't been signed. In some ways that was a good thing insofar as it had allowed TIE and Council colleagues to drill down into these issues and make sure that there was a proper understanding and view on them before proceeding. But it was also concerning that securing final agreement with BBS was proving difficult.
98. I note that on 18 March 2008 (at 3.13 pm) (CEC01390847) Gill Lindsay sent an updated authorising letter to Donald McGougan and Andrew Holmes for their consideration and signature (CEC01390848). I note that a new paragraph had been added on the issue of indemnities but there were no other changes. I note that by email dated 19 March 2007 (CEC01408044) Gill Lindsay advised Jim Inch that agreement had been reached with BBS on liability for uninsured consequential loss arising from third party claims and that *"Andrew, Donald and I have now signed of [sic] for Tom who confirmed the Intention to Award may be released by TIE, following a discussion with the Leader and Councillor Buchanan"*. The letter was signed by CEC's three Senior Officers. The draft found at (CEC01390848) was the letter which was signed. I presume the original is in the Council's files.

99. I had no information or advice at the time to lead me to believe that Infraco's price and terms had departed in any significant way from the Final Business Case. The percentage movement in costs was around 2%. Design issues had featured prominently in the final contractual negotiations. The design until October 2007 was a work in progress. I was aware that there was scope for the final cost to move. I was fairly comfortable that there hadn't been a major departure between the terms of the December 2007 report and the proposed Final Contract Close terms. I accepted the advice I received in the Director's letter that said "*due diligence issues have been progressing well*".
100. I understood that the Infraco price had been "*fixed*" as a result of the discussions and negotiations. I understood that agreement had been reached on most of the key costs. That said, I also understood that the price with regards to design had not been fixed. I understood that the costs associated with outstanding design had been identified and been provided for in the risk allowance set by TIE. I understood that the costs would be capable of being managed within the financial envelope set for the project.
101. My understanding was that, for those designs which had not yet been made available to BBS, TIE would carry the risk and that provision had been made for that. TIE's view was that all this would be resolved by the autumn or later in 2008.
102. My understanding was that agreement had been reached that TIE bore the risks arising from utility diversion works not being completed before the Infraco works commenced (subject to normal caveats on satisfactory contractor performance).
103. My understanding of the main risks retained by the public sector, including, in particular, any risks and liabilities arising from incomplete and outstanding design, approvals and consents, were regularly referred to in Council reports. The point was repeatedly made that the risks retained by the public sector were utilities, incomplete design work, third party agreements and approvals and consents. These were the main areas of risk. That is stated all the way

through from the initial draft business case to final business case and in various Council reports beyond that.

104. I note that the IPG met on 19 March 2008. I note the Action Note in respect of the meeting which notes that I was not present at the meeting (CEC01391254). I cannot recall why I was not present at that meeting. It is likely that I was updated in relation to what had been discussed and agreed at the meeting. It would be normal for one of the colleagues who had attended to brief me on the outcome or any key points arising out of the meeting.
105. I note that by email dated 31 March 2008 (CEC01493317) David Leslie (Development Management Manager, Planning, CEC) sent a letter to Willie Gallagher (CEC01493318) expressing certain concerns in relation to prior approvals. I note that on 3 April 2008 Duncan Fraser sent a letter to Willie Gallagher setting out similar concerns by the Transport Department relating to Technical Approvals and Quality Control Issues (CEC01493639). I was not aware of these letters and the concerns noted in the letters. I had no awareness of the “difficulties” noted in Mr Leslie’s letter that could be created in the coming months “*where BBS have been forced to make assumptions in their bid which do not correlate with our own expectations*”. It is difficult to respond to correspondence that I was not involved in eight years ago. I did not specifically have any awareness, at the time, that BBS were potentially being forced to make assumptions in their bid which did not correlate with CEC’s expectations or TIE’s expectations.
106. Looking back at the Close Report of 12 May (CEC01338854), there’s a recognition that there were concerns over SDS. A set of management actions were set out to improve the position. These actions included process improvements, prioritising critical work and finalising third party agreements and the like. The Close Report stated that there was a risk arising from the overlapping period of design on construction. TIE included an additional £3.3m in the risk allowance to cover that particular contingency.

107. I note the email dated 11 April 2008 where Colin Mackenzie advised Gill Lindsay of a difficulty that had arisen with the "*Russell Road Bridge: Prior Approval*". He raised the question whether the sum allowed in the Quantified Risk Allowance for SDS delay (£3m) was sufficient (**CEC01401109**). I don't recall this issue being raised with me at the time. I am not clear from reading this email now whether Mr McKenzie was referring to the Tram Monitoring Officer (TMO) or the Council's Monitoring Officer. The Council's Monitoring Officer dealt with issues such as maladministration, inappropriate conduct and so on. I assume he means the Council's Monitoring Officer as opposed to the TMO. I infer from his email, in essence, that a member of TIE staff appeared to be acting in a way that could have potential future consequences for relationships between TIE and Council staff at a working level, with a possible potential impact on the Council.
108. It is a statutory requirement for the Council to have a nominated Monitoring Officer. I am not sure why Colin suggested approaching the Council's Monitoring Officer. I can understand him being disturbed about a potential emerging relationship but I wouldn't have thought that the first place to go would be the Council's Monitoring Officer. He could have raised the issue with Gill Lindsay, his line manager. He could also have raised it with Jim Inch in his capacity as Director of Corporate Services. Another route open to Mr McKenzie would have been to discuss his concerns with the TMO, who had a range of responsibilities set out in the Operating Agreements between the Council and TIE. In April prior to financial close the issue of risk allowance was still under review.
109. I note the email dated 14 April 2008 where Colin Mackenzie set out certain concerns (**CEC01256710**). I note the email was forwarded to me. Jim Inch suggested that it may be prudent to have a short meeting with Gill Lindsay to confirm the present direction of travel. I can't recall whether or not a meeting took place with myself, Jim Inch and Gill to discuss this issue but I think most of the points in Colin's email were followed up. For example, the report that went to the Council on 1 May allowed elected members to decide on contract approval rather than myself. Colin was concerned about delegated powers

being exercised by me as Chief Executive but that in fact didn't happen. Colin also picks up points about adjustments to the Operating Agreement. These were codified in the final report to the Council in May of that year. The overlapping design and the final cost estimates were **also** picked up.

110. I note the report provided to the IPG on 16 April 2008 (CEC01246992). It notes that the Planning and Roads Departments had written to TIE recording their concerns about the delay and quality of submissions for approvals and consents. It notes that there was concern that prior approvals may require to be revisited if there were substantial changes in design. It was noted "*There is potential for the approvals to cause a delay to the construction programme*". At this point in time there was a huge amount of activity, in the month before we reached Financial Close. Various concerns were being pointed out by Council officers relating to possible delays, knock-on effects and costs. TIE's consistent advice, supported by the most Senior Officers in the Council, was that these risks were manageable and that sufficient financial provision had been made for them. The projected project cost of £512m included a substantial risk allowance within the overall financial provision of £545m and this was considered to be sufficient to cater for unanticipated costs.
111. Colleagues were trying very hard to resolve the issues relating to prior approvals in the late spring of 2008. On 16 April, a final agreement had been reached as to how all that would be resolved in the final contract documentation. The Council sought assurances that revised procedures were being put in place to improve the management of the design and consents issue. There was financial provision in the contract to cover any future risk associated with that. Around £6m or £7m was added to the risk allowance for programme adjustment and slippage.
112. I was not involved in any of the detailed considerations relating to the design versions which had changed over time. I relied on colleagues to deal with that as part of the due diligence review. Experienced Council staff from planning, engineering, legal and finance were working on the project. This was mirrored to a large extent in TIE. I expected them to draw out for me any high level

concerns or any new risk emerging. By mid-April detailed negotiations between TIE and BBS had been on-going for several months. They were not proving straightforward. The central concern for both parties was the novation of the SDS contract to BBS. Some progress had been made on that but a final decision had not yet been reached. BBS had accepted design responsibility for designs completed by SDS with certain qualifications and TIE were accepting responsibility for incomplete or not yet started design. That added £3.3m to the risk allowance.

113. I note that the report noted above provided for the IPG on 16 April 2008 attached (as Appendix 1) an update of the table entitled *“Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve TIE to sign the contract with BBS”*. Paragraph 7.4 of the table states, *“What design version was the BBS contract priced against and what changes have subsequently taken place”*, to which there was a response *“Report by TIE on the Infraco Contract states in section ‘Design Expectations of the Infraco’ that V26 updated from V22 of the SDS design had been used for Price and Programme – Schedule 4 on pricing received from TIE”*. I wasn’t involved in any of the detailed consideration on which design versions were being used to formulate pricing assumptions or prices in the contract. This was a matter for Council staff in planning, engineering, finance etc. They went through all of that along with TIE. It wasn’t something that was reported to me and I don’t think, at any time, this was brought to my attention as a high level issue.
114. At the time, I thought colleagues were sighted on the design issues and the implications arising from them. Consideration was given as to how the design would transfer across to BBS, the details of the novation of the contract and who was responsible for what contractually.
115. I didn’t have a specific understanding of which version of design formed the basis for the Infraco price or how the pricing provisions in the Infraco contract addressed any change from that version of the design. I made the assumption that colleagues were on top of this.

116. My understanding, at that time, of whether agreement had been reached between TIE and BBS in relation to which party would bear the risks and liabilities arising from incomplete and outstanding design, approvals and consents and how that was, or would be reflected in the Infraco price and pricing schedule was that a central concern for both parties was the novation of the contract from SDS to BBS. I understood that some progress had been made but the final position had not yet been reached. Ultimately, with certain qualifications, BBS did accept responsibility for designs completed, with TIE accepting responsibility for incomplete or not started design. TIE added £3.3m to the risk allowance to reflect that additional risk.
117. I didn't see, or seek, the version of the Infraco Pricing Schedule (Schedule 4) in existence at that time.
118. I note the Action Note (CEC01228374) produced following the IPG on 16 April 2008. It noted, under Communications Plan, *"Key lines/press release to state that risk has been transferred/nailed down, new price is prudent, planned, one of the most audited public projects ever in Scotland"*. The Action Plan, under Infraco, noted *"Note pressures on planning processes – planning prior approvals. Note that these constitute something of a risk – may have to be revisited if there are any substantial changes in design. Also similar risks associated with technical approvals ..."*. I am not sure I can add much to what I said earlier about the work programme to reach Financial Close, the issues associated with SDS, statutory consents, risk allocation etc. Through the Final Contract negotiations with BBS, the novation of the contract had been accepted. The question of incomplete, or not yet started, design work was drawn out as a major issue at the time. TIE's advice was that it was manageable and that they had made financial provision for that. With regards to the note stating *"Key lines/press release to state that risk has been transferred/nailed down, new price is prudent, planned, one of the most audited public projects ever in Scotland"*. This reflects the views current at the time. Pre-existing risks and new risks had been identified, financial provision made where necessary and design issues identified as a key area for management action. However, the action note also refers to the need to

16 April 2008
should be 17
April 2008

“adopt some careful language” around the four month delay / contract clarification period. I don’t know whether the key lines proposed by Council communications staff were followed through into Council or TIE press releases.

119. I note that on 30 April 2008 (at 1441 hours) Colin Mackenzie sent an email to Gill Lindsay saying *“You may know this already, but BBS have increased the price by a significant amount. Urgent discussions underway at TIE this afternoon. Wonder how this leaves the report to Council tomorrow!!”* (CEC01241689). I can’t recall when, and how, I first became aware that BBS had proposed a price increase. I think what would have happened was that I would have been informed that such a proposal had been made by BBS. Colleagues would have said they were about to try and urgently get behind the issue and understand more fully what had actually caused the increase. The first price increase was described primarily as, I think, currency fluctuation ie euro/pound detriment movement. BBS were also claiming issues with suppliers and they raised concerns over demobilisation costs. [The second, later price increase proposed was from £508m to £512m. That boiled down to TIE accepting the introduction of incentivisation bonus arrangements (£4m) for the contractor if they performed well and met their targets. A £3.2m penalty clause were line1b *“not to proceed as originally anticipated”* was accepted. These cost increases did cause me concern, coming at the last minute. It smacked of brinkmanship on the part of the contractor. However, at the end of the day, having discussed it with colleagues I came to the view that the cost increase could be put forward to the Council for acceptance. It was annoying and concerning but I had to address what needed to be done and come to a view on whether or not to accept the increase. Colleagues reported back to me what lay behind the increase. The price increase against the business case estimate was now 2.4%. It was within the parameters that the Council were comfortable with in terms of price movement. The increase still left the projected costs for the project well within the risk allowance and the £545m ceiling set and could be contained financially.

120. The meeting of Council on 1 May 2008 was provided with a report dated 23 April 2008 by me (CEC00906940). The report sought refreshment of the delegated powers previously given to the Chief Executive to authorise TIE to enter the contracts with the Infraco and Tramco bidders. The report noted: (1) the cost of the project was now £508m (comprising a base cost of £476m and a revised QRA of £32m), which increase was largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the *“crystallisation of the risk transfer to the private sector as described in the FBC”* (para 3.5); (2) 95% of the combined Tramco and Infraco costs were fixed with the remainder being provisional sums which TIE had confirmed as adequate; (3) *“As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. TIE Ltd advise that the outcome is the best deal that is currently available to themselves and the Council. Both TIE Ltd and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms”* (para 3.10). I think it was probably Alan Coyle (Finance) and Duncan Fraser (City Development) who initially drafted this report. There was a sharing of drafting responsibilities between colleagues in the respective two departments and also Legal Services. Following this, they would have sent the draft for comment to the Directors of City Development, Finance, Corporate Services and the Council Solicitor. This was to ensure Senior Management oversight, involvement and corporate control.
121. Council colleagues on the TPB had access to the reports going to the TPB and had access to information held by TIE. They would have checked draft reports for factual accuracy, for content and interpretation etc. They would then come to a view on whether they had sufficient information to underpin the recommendations going to the Council.
122. I note pages 12 - 13 of the minutes of the meeting held on 1 May 2008 which notes a *“final price”* of £508m (CEC02083356). I don't think members would have been advised at the Council meeting of any proposed increase beyond £508m. If you follow the timeline, it was the preceding day when the information came through that the Consortium were seeking a further increase

beyond the £508m. I don't think that the proposed increase had been absolutely confirmed by the time of the meeting nor had it been accepted. The request for the increase was still being looked at. It would not have been appropriate to advise the Council of any proposed increase until it had been validated, checked out and substantiated (or rejected, as the case may be).

123. I refer back to the note that I received from my Director colleagues and the letter from TIE. That informed my understanding, at that stage, of the risk and liabilities that had been retained by the public sector in relation to design, approvals and consents. TIE had recommended that they considered this to be the best deal. I was advised that BBS had accepted a design risk with the Council carrying the risk for incomplete or not started design. That position was reflected in the risk allowance. TIE advised that this situation was manageable.
124. I accepted the professional advice given to me that the risk retained by the public sector in relation to design, approvals and consents was consistent with the statement that there had been a "*crystallisation of the risk transfer to the private sector as described in the FBC*". There did seem to be clarity about what colleagues considered to be the Infraco fixed price contract, ie what costs were provisional and what was being set aside for those responsibilities being retained within the public sector. By that stage the provisional prices had been firmed up. I remember seeing a table at the time, which I asked for, that showed the various risk profiles. I recall meeting Finance staff and being taken through the table with the risks being explained.
125. MUDFA was also a recognised risk area. The Council and others had taken preparatory steps, through boreholes etc., to try and determine what the scale of the work was but a degree of uncertainty remained and MUDFA was a risk provided for in the risk allowance.
126. My understanding of the Infraco costs that were provisional were that these related to certain areas. Picardy Place was the most prominent but there were others (as noted previously) where third party agreements were required.

These were all recognised as being costs that could potentially be outwith the terms of the Infraco contract. There were provisional sums related to risks and liabilities arising from design, approvals and consents. A lot of attention was given to this 'so called' new risk area and the fact that design work was incomplete. There was a focus on who was going to assume the responsibility for this area. The advice available at the time was that only 60% (or perhaps two-thirds) of the design was complete. There were also some concerns being expressed about the quality of the work.

127. SDS and BBS both had concerns over the novation process for different reasons. SDS were worried about their liabilities in a live contractual situation if designs were submitted late and what exposure they would have to BBS. BBS were concerned that late designs could have an adverse impact on the construction programme. All of this featured in the contract negotiations as a new risk area.
128. The steps taken by TIE to secure the novation of the SDS contract to BBS included putting in place arrangements to improve the management of the outputs arising from the design work, arrangements to secure and finalise the major third party agreements and a plan to prioritise outstanding design work to align it with the initial priorities of the construction programme. They also accepted the risks and costs arising from the design work not yet completed or started and made provision for that in the risk allowance.
129. I did not see or seek on 1 May 2008 the version of the Infraco Pricing Schedule (Schedule 4) in existence at that stage.
130. I note that on 7 May 2008 Rebecca Andrew sent Gill Lindsay an email (CEC01222074) attaching a draft report by the Chief Executive for the meeting of CEC's Policy and Strategy Committee on 13 May 2008 (CEC01222075). The report advised of the further increase in cost (from £508m to £512m) and sought approval for the Chief Executive to instruct TIE to enter into the relevant contracts. Gill Lindsay's response the same day notes *"Appropriate forum re Committee choice was discussed today with*

Council Secretary and Jim Inch. This will likely lead to discussion with Tom” (CEC01248981). I note that by email dated 8 May 2008 Stan Cunningham, Committee Services Manager, advised Ms Lindsay that the current plan for tabling the report meant that *“it may be the first time that many of the members are aware of this matter. This is not satisfactory ...”*

(CEC01248988). I can't specifically recall what discussion took place with Council officers about these matters. It was my decision to report to the Policy and Strategy Committee. There had been a significant change and it was important that elected members and not Council officials approved the contract and revised price. I took the first opportunity possible to put the change in circumstances in front of elected members. The Policy and Strategy Committee was composed of senior elected members on an all-party basis. On that committee were the Leader of the Council, the Leader of the opposition, the Leaders of the political groups and other senior elected members. Had the Committee been concerned about anything proposed at the meeting, they could have continued the matter to a special meeting of the Committee or referred the decision to the full Council for determination. Stan Cunningham was right in what he said and I seldom put reports to committee at short notice. But the most important requirement was to get the information in front of elected members for determination as soon as possible. In the report I used the term *“approve the increase”* as I wanted it to be quite clear that it was the councillors who were being invited to take the decision. Ideally, it would have been preferable to have reported to a meeting of the full Council rather than the Policy and Strategy Committee. But, as already noted, a decision was urgently needed from elected members. Achieving financial close had taken much longer than originally anticipated and costs were being incurred as each week passed. In addition, “behind the scenes” many meetings took place between officers of the Council and the political leadership, political groups and individual councillors to keep them informed of developments.

131. I note the email dated 9 May 2008 from Willie Gallagher noting that contract signature was agreed for 2.00 pm on Tuesday 13 May 2008 (CEC01231125).

I think, on balance, members of the Policy and Strategy Committee were given sufficient time at their meeting on 13 May 2008 to consider whether contract approval should be given. This is particularly so if you take into account that there would also have been separate informal briefings between Council officers and senior elected members. Presenting a report to the Policy and Strategy Committee also allowed elected members an opportunity to question officials. Only rarely did councillors directly question senior officials at Council meetings. In the final analysis, had elected members not approved the proposed price increase or deferred it for further consideration then contract signature would not have gone ahead (at that time).

142. I note that on 12 May 2008 (at 18:49 hours) Graeme Bissett circulated an email (which I was not copied into) (CEC01338846). The email attached a final set of TIE's internal approval documents. These included: (1) Financial Close Process and Record of Recent Events dated 12 May 2008 (clean copy (CEC01338847) and tracked changes (CEC01338848); (2) Assessment of Risk of Successful Procurement Challenge (CEC01338849) and (CEC01338850); (3) Report on Infraco Contract Suite (CEC01338851) and (CEC01338852); and (4) Report on Terms of Financial Close ("the Close Report") (CEC01338853) and (CEC01338854). At this time I had seen some, but not all, of this documentation as parts of it had been considered at the IPG prior to the middle of May. The final documents updated the position in the light of the last minute movement from £508m to £512m. I don't think I would have seen the final suite of documentation before the meeting of the Council's Policy and Strategy Committee on 13 May 2008. I wasn't copied into Graeme Bissett's email so I assume that I wouldn't have seen all these documents before that meeting.
143. The recommendations that went to the Policy and Strategy Committee were based on the considered, and consistent, advice from TIE and senior Council colleagues. In my view it was now appropriate to proceed to Contract Close. There was written confirmation from TIE stating that *"the final terms negotiated are materially consistent with the terms set out in the Final Business Case and confirm the value for money proposition demonstrated by*

the FBC and that it is now appropriate to conclude the contracts" (letter dated 13 May 2008 by Mr Gallagher). I further had written confirmation from council colleagues in support of that position. The documents attached to Graeme Bissett's email were not made available to members before or at the meeting. However, members would have been advised in private briefings on some of the content of these documents. Some of the content of the Financial Close documents was also commercially and legally sensitive and would not routinely have been publically reported.

144. I note that on 13 May 2008 (at 07:49 hours) Gill Lindsay sent Donald McGougan and David Anderson an email (CEC01222437) attaching a short draft report (CEC01222438) for all three to sign to provide comfort to me as I closed the deal following the meeting of the Policy and Strategy Committee. The report was signed that day (CEC01244245). As previously noted, following the Council meeting in December 2007 a period of contract due diligence was entered into and I tasked the Directors of City Development and Finance and the Council Solicitor to undertake this on my behalf. I advised them that I would not consider approving the contract for signing until I had a written assurance from them that it was appropriate to do so. The purpose of the note was to fulfil that requirement.
145. The note from senior colleagues was the culmination of a work programme extending over many weeks. I had discussed issues with them over this period, participated in briefings and been involved in discussion at the IPG. The note was discussed with colleagues but it also has to be viewed in this wider context.
146. By letter dated 13 May 2008 (CEC01284042) Willie Gallagher advised me that it was appropriate to conclude the contracts. The letter stated, "*The comprehensive Close Report and the accompanying letter to TIE and the Council from DLA summarise the final terms of the contract*". The purpose of this letter was to provide me with formal written assurance that, in TIE's professional view as an organisation, it was appropriate to proceed.

147. I don't specifically recall seeing, or seeking, the Close Report and the letters from DLA to TIE and CEC referred to in Mr Gallagher's letter. I sought assurance from Council colleagues that all was in order and that they were supportive of TIE's recommendation.
148. On 13 May 2008 the Council's Policy and Strategy Committee considered the report by me (**USB00000357**). My report advised that the estimated capital cost for phase 1a was now £512m and that, in return for the increase in price, TIE had secured a range of improvements to the contract terms and risk profile (para 2.11, 2.7 and 2.9). The committee subsequently authorised me to instruct TIE to enter into the contracts (**CEC01891564**). The individuals who would have drafted my report would have come from the City Development, Finance and Legal Services departments. They were the core members of staff who were regularly involved in drafting these reports. Drafts were submitted to senior Council colleagues and would have been shared with TIE to ensure accuracy of reporting. The basis of my advice to members is set out in the report, which was the culmination of all the work which had been undertaken in the previous four and a half months.
149. What steps, if any, were taken to confirm the accuracy of that information?
Two Council Directors were members of the TPB and saw all the documentation going there. They, in turn, were able to bring that documentation / information back and share it with colleagues at the Council. There was, therefore, a thorough awareness of the main documentation going from TIE to the TPB. Colleagues on the TPB had the opportunity to challenge their counterparts in TIE and seek clarification or further information where and when appropriate. Reports to Council were able to draw on all this analysis and information.
150. My understanding of the reason(s) for the increase in price was partly that it came about following the introduction of incentivised bonus arrangements and an additional penalty clause were line 1b not to proceed. TIE negotiated the increase down from a higher additional claim from BBS.

151. My understanding of which party bore the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents, and how that was reflected in the Infraco price and contract, was that the responsibility for the approved design lay with BBS. They had recourse against SDS, if necessary, where there were issues with the production of the approved design. I understood that, once designs had been submitted and the outstanding packages were approved by the Council (ie the consents were given), the responsibility for progressing the design in the programme lay with BBS. I was aware that a number of risks arose precisely by virtue of the fact that some design packages were still either to be submitted or were outstanding at contract close. This arose because some packages did not meet the quality standards, some had been submitted late, some were subject to delay or the construction drawings were not forthcoming. Neither BBS nor SDS were willing to take the risk associated with those outstanding packages so TIE allowed an additional £3.3m in the risk allowance for that. That was my understanding at the time.
152. In October of the preceding year, I was still under the broad impression that most of the design risks would be novated across to the Consortium. That position emerged as not being acceptable to the Consortium. This resulted in the renegotiation that led to the £3.3m increase. Alongside that increase were the process improvements put in place by TIE. They were put in place to try and speed-up the production of the designs. They were also put in place in order to have a better control over the quality of the designs coming in. A lot of effort was devoted to understanding and clarifying the position on design between the contracting parties. The changes which were eventually agreed were not presented to me as potentially undermining the contractual and financial arrangements. Rather, colleagues and TIE were essentially saying *“yes, there’s a new risk there, we know what it is, we think we can deal with it and have made provision for it”*.
153. I was always clear that it was TIE, with the Council sitting behind them, who were the party who bore the risks and liabilities arising from utility diversion

works not being complete before the Infraco works commenced. Provision was made for this in the risk allowance.

154. I can't recall any specific discussion about the transfer of risk at the meeting of the Committee on 13 May 2008. There was a very lengthy spell of questioning of myself, Dave Anderson, Gill Lindsay and Donald McGougan as elected members scrutinised the proposals in the report.
155. I don't know how long the meeting of the Policy and Strategy Committee on 13 May 2008 lasted. The length of meeting was not recorded by the Committee Clerks. The meeting would have started at 10 am. There would have been other business on the agenda. I do remember that the meeting was dominated by questioning on the tram report. My best guess would be that the meeting lasted between one and a half and two hours.
156. By letter dated 12 May 2008 (**CEC00590620**) I authorised TIE to enter into the Edinburgh Tram contracts. I can say, unequivocally, that I would have sent my letter to TIE after and not before the meeting of the Policy and Strategy Committee. One thing I am absolutely certain about is that I would not have signed a letter like that without the authorisation to do so by elected members.
157. My understanding as to the risks and liabilities in relation to design, consents and approvals that had been transferred to the private sector and the risks and liabilities in relation to these matters that had been retained by TIE/CEC was as set out earlier in this statement. My understanding of the sum allowed for these risks in the Quantified Risk Allowance was that £6.6m was placed in the risk allowance for general programme delay. £3.3m related to the risk associated with the overlapping of the design and construction programme.
158. I note that the provisions of the Pricing Schedule of the Infraco contract (Schedule 4) (**USB00000032**), provided for the consequences likely to arise from the fact that the Base Date Design Information was fixed with reference to the design drawings issued as at 25 November 2007. I don't recall being

involved in any discussions about the fixing of design drawings at 25 November 2007. This was a detailed consideration which I would have relied on others to deal with and it was not brought to my attention as a major issue. There is a reference in the final Contract Close Report that following contract signature it was expected that BBS would seek a notified departure to the programme due to the SDS delay in design production. It then goes on to say *“the exposure had been assessed in detail by TIE and confirmed to be within the risk contingency”*. I know this now from having re-read the contract Close Report. Whether I was aware that there was going to be an immediate notified departure at the time I can't recall.

159. I didn't see or seek to see any of these detailed schedules. I was not involved in any consideration of drawings or how they related to the contract. That was a matter for colleagues to consider and come to a view on.

May 2008 onwards

160. In an email to me dated 2 June 2008 (CEC01236963) David Anderson noted the possibility of Bilfinger Berger funding the completion of the tram network. Looking at this email now I find it quite puzzling. I don't have any specific recollection of it and it was a suggestion that never got off the ground.
161. I note the Highlight Report to the IPG on 11 June 2008 (CEC01246990) noted that the Council still awaited certain information from TIE in relation to the *“deliverables”* for award of the contract. I note the matter was raised again in the report to the IPG on 9 July 2008 (CEC01236707). I note that by email dated 9 July 2008, Stewart McGarrity queried the significance of these requests (CEC01354778). I can't recall the detail of whether all *“deliverables”* for contract award had been obtained and whether any *“deliverables”* were outstanding. The Action Note from the IPG on 9 July records a decision that the Director of Finance would write to TIE to resolve this. However, I note that in a further exchange of emails between Alan Coyle and Stewart McGarrity, Alan Coyle says this issue had been closed out and no letter (from the

Director of Finance) was required as matters were soon to be resolved. I assume that the issue was given to the Director of Finance to follow-up and, upon further investigation, it was closed out.

162. In an email to me dated 29 October 2008 (CEC01196712) Willie Gallagher noted that *“the price with BBS is not agreed”*. I don’t recall what this comment specifically related to. My assumption is that it refers to issues under discussion between TIE and BBS about tram works on Princes Street and is not a general comment about the contract and price conditions. I note that the first email from Willie Gallagher states *“could you ask Dave Anderson to be careful with his communication with the press re the Princes Street plans”*. Princes Street was clearly featuring as part of the discussions at the time.

29 October
2008 should be
28 October
2008

2009

163. A dispute arose between TIE and BBS prior to the planned commencement of works on Princes Street in February 2009. I note that by email dated 26 February 2009 (CEC00858138) Alan Coyle attached a short note (CEC00858139) of some points to *“set the scene”* for a discussion on the Council’s requirements from TIE relating to the contractual dispute. He considered that there was currently a *“vacuum of knowledge”* from the Council’s perspective. Claims for additional costs were being raised by BBS. Alan Coyle’s note indicates that Council staff did not have a complete understanding of what was driving this. In hindsight, the dispute hinged on definitions of (normal) design and related matters. That wasn’t clear, or wasn’t known, in February 2009. The dispute was being played out in the press and there was a great deal of media coverage of the tram project. This put added pressure on the Council as we sought to understand why the contractor was refusing to start work and what was needed to get work on Princes Street started.
164. Around February 2009, there were concerns within TIE that were made known to my colleagues in the Council about BBS’s attitude towards the contract. The validity of the previous understanding that it was a largely fixed price

contract was beginning to be called into question. As far as I recall, the advice from TIE and Council colleagues, at the time, was that the contract was for a fixed price and that BBS were trying to test it wherever possible. This sort of thing was not unknown in the contracting business. There was talk around this time that the approach being adopted by BBS was aggressive rather than constructive.

165. Around this time, TIE drew attention to alleged analogies between work that Bilfinger Berger had undertaken in Oslo and Vancouver and the Edinburgh tram project. In Oslo and Vancouver Bilfinger Berger had (apparently) set a fixed price for the contract then, shortly thereafter, proceeded to try to inflate the price of the contract. The view was that we had to be prepared to resist such an approach, protect the public pound and try to contain and restrict the contractors to what we understood to be the terms of the contract (eg on normal design development).
166. During this time the Council and TIE were trying to work on the basis that there was a fixed price contract and trying to enforce their interpretation of the contract. The view was that a large international contractor was trying to put pressure on a public sector organisation to increase the price of the contract. This was partly why, going right back, the Council wanted people in TIE with "hardnosed" commercial experience. Those senior, private sector individuals were intended to be better placed to respond to that pressure than perhaps Council officials would have been. David Mackay was very experienced as a former Chief Executive of the John Menzies Group. Brian Cox was a former Executive Director of Stagecoach. I think Graeme Bisset was formerly Kwik-Fit's Director of Finance and is now the Chairman of the Macfarlane Packaging Group. These were all people of substance, specifically brought into the project to provide high level commercial expertise. They were the ones negotiating across the table with their German counterparts.
167. By letter dated 5 March 2009 (**CEC00870592**) I set out a number of measures required to keep the Council updated about the dispute. A reply dated 9 March 2009 by David Mackay (**CEC00934221**) referred to a verbal statement

by BBS of cost increases of £50m-£80m. The background to the letter was the Princes Street dispute. My letter was intended to improve the flow of information between TIE and the Council as Council staff had raised concerns over this. I had no detailed understanding of the cost of the increased figures being attributed to the Consortium at that time. As noted previously, there was a great deal of media scrutiny of the project and figures were appearing in the press on a regular basis from unattributed sources. There was a lot of speculation in the air at the time. Whether the £50m-£80m was part of that I don't know.

168. TIE's priority at the time was to get work started in Princes Street as it was becoming a really serious delay. I don't know whether TIE had any discussion with BBS about the £50m-£80m possible increase. I think it's unlikely at that point in time that they would have done that. David Mackay said in his letter to me that such a claim had not been supported in any way by BBS.
169. By email dated 11 March 2009 (CEC00869667) Colin Mackenzie advised me that Council officers did not know whether the Infraco contract was sound, that it was possible the contract was not robust enough and affordability became an issue and that the Council were lacking the requisite information, certainty and confidence at that time. It is probably fair to say that his concerns were indicative of concerns that he and other colleagues in City Development and Finance were beginning to have over issues arising between TIE and the Council. These, in turn, were potentially beginning to impact on project delivery. As some of these issues were beginning to surface at the IPG there was a degree of formality attached to them. I recall speaking about the exchange of letters between myself and David Mackay at the IPG and saying, on behalf of the Council, certain things had to improve in terms of information flow, access to background papers etc. David McKay, in his response to me, gave a positive reply to all the points that I had raised on behalf of colleagues, which was encouraging. That said, by March 2009, we were approaching a year on from when the contract had been signed. Princes Street was still a huge issue and the pressure was rising. All of this was taking place against a

background in TIE in which Mr. Gallagher had resigned as Chief Executive some months before and the new Chief Executive had not yet taken up post.

170. David Mackay wasn't, in any way, resistant to what I was saying to him on behalf of the Council. He did try to respond to my comments positively. He was always firmly of the view that TIE and the Council should try and work closely together. Although Council staff had different roles and accountability lines from staff in TIE, we had to engender a spirit of joint working and a degree of trust in each other. That was the approach David and I were trying to promote within the two respective organisations.
171. I don't recall, at that time, anyone advising me that we needed an independent view on the contract. TIE was supported by DLA (one of the largest legal firms in the UK) and that was considered to be sufficient. If there were any discussions on obtaining independent legal advice they were not put to me.
172. By report to Council on 12 March 2009 (CEC01891494) I gave members an update on the dispute. The report states that a "*fixed price*" contract had been entered into for the delivery of the tram project and that prior to financial close TIE had agreed an additional sum with BBS which had "*cemented the risk allocation position*" agreed by the parties. What I was trying to get across in this Council report was that this was the position, as argued for and stated by TIE, when the contract was closed in May 2008.
173. It was well understood within the Council that information in reports to the Council and its Committees had to be accurate. When information originated from TIE it would, if necessary, be queried by Council colleagues to ensure its authenticity. Council staff knew that their reports would be in the public domain and thereby subject to questioning and scrutiny by elected members; they had to be able to justify and defend their professional advice.
174. By letter dated 18 March 2009 (CEC01002539) David Mackay advised me of the number of TIE staff and their competencies and capabilities to manage a £500m capital project. This was prompted by an SNP councillor who asked,

on behalf of a constituent, “*what professional qualifications do the staff in TIE have*”. In response to this request, my office took this up with David Mackay (CEC01002490), who replied listing all the qualifications.

175. At this stage, I didn't have any major concerns about the competency and capability of TIE to manage the Edinburgh tram project, although frustration over the lack of progress on Princes Street was growing. TIE was costing the Council £6m / £7m a year. In size it was a substantial organisation, with individuals skilled in project management, engineering, finance and so on. Almost all of them had significant private sector and commercial experience.
176. My personal interface with TIE in the early stages was not extensive and was mainly through Willie Gallagher. I had more of an interface once David Mackay was appointed Chairman and as things started to go wrong on Princes Street. I personally was not interfacing with the staff in TIE on a day-to-day basis. That was a role for other Council colleagues. I had a good working relationship with Mr. McKay. He had extensive, senior level commercial experience. He carried significant responsibility for the delivery of the tram project, especially in the period between the resignation of Mr. Gallagher as Chief Executive and his replacement by Mr. Jeffrey.
177. I note that a report to the IPG on 25 March 2009 (CEC00892626) discussed the contractual dispute between TIE and BBS and considered various options. The main focus of this at the time was trying to find a way forward in the stalemate over Princes Street. The IPG was seeking information from TIE to enable the Council to understand the dispute and the issues behind it in more detail. They wanted to understand the state of the design work for Princes Street and the different interpretations of the contract. They wanted to know what was or was not covered by the contract. At this time I think the dispute resolution procedure had been invoked. There was also, at this time, the secondary issue of trying to achieve synchronisation between the MUDFA programme and the construction programme. This was my understanding of the main risks at that time.

178. I note that in an email dated 7 April 2009 Colin Mackenzie made certain observations on the dispute between TIE and BBS (CEC00900419). I note that I am not the recipient of this email. Looking at it now, I think Colin's email is indicative of the effort being made by the Council officers to fully understand the position. There was a growing concern about where the project had got to at that point in time. Work was beginning to get underway on the Strategic Options Review. Despite all the negatives that were in the air in the spring of 2009, it was important to try and find a way forward with BBS through the existing contractual arrangements. The contract was what we had. We had to try and work better to get the project moving and get the tramline built. The main problem stemmed from the fact design was not complete at Financial Close. That's a matter of factual record. It had been understood at Financial Close that steps had been taken to deal with the incomplete design but this remained a matter in dispute.
179. The advice from TIE (based on their legal advisers) was that they were convinced that their legal interpretation of the contract was the correct one and that any attempt to deviate from that had to be resisted.
180. I note from an email dated 9 April 2009 (CEC00900404) that Colin Mackenzie and Nick Smith prepared a report on the dispute between BBS and TIE (CEC00900405). The report noted that there were presently 350 Notified Departures in process. The disputes could be grouped into a number of different categories, including who had responsibility for design management and evolution. BBS were taking the view that all changes to design were TIE's responsibility. The report noted, "*The main problem here stems from the fact that design was not complete at Financial Close*". I don't think I saw this report. I have looked at it following it being presented to me by the Inquiry. Looking back at the position now, in the spring of 2009 the tram project was causing concern to the Council and there was increasing pressure from the media and the public. The position adopted by BBS appeared to TIE and the Council to be aggressive and claims orientated. The Council was generally supportive of TIE in resisting BBS's position but was also very conscious of the need to get the project moving. A key factor in the dispute clearly centred

around the different interpretations of who was responsible for normal design work. What was thought to have been the agreed position on design work at Financial Close was coming under considerable pressure.

181. On 30 April 2009 the Council were given an update on the tram project by way of a report by the Directors of City Development and Finance (CEC02083772). The report notes that an agreement had been entered into in respect of the Princes Street dispute, to allow the works to be carried out on demonstrable cost. The report notes that this represented no further risk transfer to the public sector. It also noted that a strategic options appraisal indicated that the base case scenario confirmed that the full scope of the project could be delivered within the previously agreed funding levels of £545m (para 4.1). I note that the Princes Street Agreement can be found at (CEC00302099). I note a later email (dated 16 May 2011) from Steven Bell noting that David Mackay had discussed and received verbal authorisation from me in relation to the Princes Street Agreement (TIE00690752). I had regular contact with David Mackay in the lead up to the agreement being put in place. That contact was mainly by telephone. I wanted to understand what was going on and whether there was any prospect of actually getting the work started on Princes Street. The purpose of the telephone calls was to keep me informed about what was happening. I don't think I would ever have used the word "authorise" with regards to the Princes Street Agreement. It was a matter for TIE. I would have told them that, on behalf of myself and the Council Leader, we were pleased that a way forward had been found to deal with the contract. The Agreement seemed to me to be indicative of a willingness to get the project moving and a pragmatic solution to the difficulties. The Agreement wasn't reported to Council for decision but was referred to in the 30 April report to the Council. It was stated by my two colleagues that agreement had been reached on a way forward for Princes Street. The Princes Street Agreement was within the authority of TIE to deal with alone without reference to CEC. TIE kept CEC informed as to what was going on rather than seeking its authorisation.

182. The purpose of the Agreement was to get work moving on Princes Street. Work finished on Princes Street around the last weekend of November 2009. An undertaking was given to retailers that by the commencement of the Christmas shopping period the work would be finished and it was. Although there were subsequent issues with the quality of some of the work on Princes Street (with regards to the binding between the rails and the roadway) the successful outcome seemed to indicate that when Bilfinger Berger put their mind to it they could achieve a deadline. Likewise, there was an indication that TIE were prepared to be flexible in getting the tram project moving.
183. “Demonstrable cost” was the cost to complete the Princes Street works, based on agreed quantities and rates. It was recognised that this might represent an additional cost to the project which had not been anticipated at contract close. A key factor was identified as the possible state of the ground conditions under Princes Street, which subsequently proved to be the case when a large cavity was found under the Mound. Provision for unforeseen ground conditions was included in the Infraco contract and so I assume that is what the two Directors were referring to when they stated in the report that this did not represent a further transfer of risk to the public sector. Also relevant is the fact that the agreement was specific to Princes Street only.
184. In any big project, when things are not going well, it is necessary to stand back and ask “*what’s the state of the project, is the course of action being followed the correct one, what are the alternatives?*” The conclusion of the Strategic Options Review did seem to indicate that none of the options were straightforward or easy to deliver and all had significant consequences attached to them. The review resulted in the conclusion that “*the best way forward appeared to be to try and make the contract work*”. It seemed to me, at the time, that a possibly important factor would be the view taken by TIE on whether improvements might arise from the management personnel changes taking place in the Consortium. Although the project had slipped, it was being said that both design work and utilities would be largely complete by the autumn of 2009. A new Chief Executive of TIE had just taken up post and

there were some grounds for thinking that perhaps there was a way of getting the contract onto an improved footing.

185. I would not use the word "*confident*" to describe my feelings about whether the full scope of phase 1a could be delivered within the available funding of £545m. I was accepting the advice given to me that it was still possible but, clearly, the project was coming under substantial pressure.
186. I note that by email dated 23 June 2009 (CEC00859951) David Anderson expressed frustration at TIE not producing a revised programme and budget, which had been promised since November. I note that by email dated 23 July 2009 (CEC00666481) Mr Anderson noted that TIE's best case estimate had moved from £534m to £560m without adequate explanation (which figure was greater than the available budget) and that he was now "*very anxious about the reliability of the information we are getting from TIE*". I note that in another email dated 23 July 2009 Mr Anderson noted the need to "*let Council have some realistic projections sooner rather than later*". I did share Mr Anderson's concerns about the reliability of the information being provided by TIE. There were two issues in play. The timing of the availability of the information and the accuracy of the information. There were also questions about what was commercially sensitive and what could be reported publically. TIE and the Council could not reveal figures which would have potentially damaged their negotiating position with BBS. This also impacted adversely on the extent to which Council officers were able to provide the Council with realistic options. Unfortunately, in the summer and autumn of 2009 there were too many variables and uncertainties to allow accurate reporting of strategic options.
187. I recognised and strongly supported the desirability of providing the Council with some realistic projections sooner rather than later. However, the question was "*how do we get there?*" It was critically important, before any other information went to the Council formally and into the public domain, that the projections should be realistic. This issue became a real bone of contention over the next 12-18 months. What was wanted was to be able to report definitively to the Council on the cost of the various options but this point was

never reached. Much analysis was undertaken but none of it was watertight. I think that's why the Directors of City Development and Finance started saying "*I think it unlikely that we can deliver within £545m.*" The position later became "*we can't deliver within £545m.*"

188. Commercial confidentiality was a real concern with regards to the information (eg on strategic options) that TIE could put out in the public domain.
189. I note that a Highlight Report to the IPG on 27 July 2009 (**CEC00688908**) included a table (**CEC00659130**) discussing what members should be advised at the meeting of the Council on 20 August 2009. The table asked whether cost and delay should be reported and, if so, to what extent (p3). The table also notes TIE as admitting that 40-80% of changes and delay were down to them. At the end of the day a pragmatic compromise was reached by the Directors of City Development and Finance in their report to the Council in August 2009. They said that it would be very difficult to contain costs for the full scope of the project within £545m. They went on to explain why it wasn't possible to forecast accurately a budget outturn. Their conclusion was that line 1a probably wouldn't be delivered within the £545m and that it wasn't possible to quantify, or estimate, accurately what the final cost would be or to spell out accurately the pros and cons of other options and their financial implications. That all led to the advice in the report they submitted that the best strategic option, at that stage, was to see the contractual position through to a conclusion.
190. I note that by email dated 31 July 2009 (**CEC00667242**) Richard Jeffrey advised that "*the temperature is rising*" and that BBS were preparing to launch their own formal processes. An email dated 31 July 2009 by David Anderson (**CEC00667243**) noted that "*it looks like this is now playing out to a full confrontation that will only be resolved one way or the other through DRP*". In an email dated 13 August 2009 (**CEC00788086**) Richard Jeffrey advised members of the TPB that the Consortium was not prepared to start work in Shandwick Place (due to start at the end of August) unless all remaining on-street works were changed to a cost-plus arrangement. I don't think I saw

these particular emails at the time. There is no question about it; a very worrying stage had been reached in the dispute between TIE and the Consortium. It looked like we might be in for a re-run of the type of arguments we had over Princes Street ie with BBS claiming additional costs for the Shandwick Place work. TIE were arguing that the work was covered by the existing contractual terms. The bottom line was that all of this appeared to be leading to further cost increases and project completion delays. It was clear by July 2009 that TIE and BBS had very different legal interpretations of the contract (especially in the area of design work). TIE had previously advised BBS that the Princes Street Agreement was a 'one off' which wouldn't be repeated elsewhere given the potential significant costs that might be involved.

191. I was not aware of any suggestion / proposal at this point in time, that additional independent legal advice should be obtained. If such a suggestion had been made it would most likely have come to me from the Council Solicitor.
192. On 20 August 2009 the Council were provided with an update by means of a report by the Directors of City Development and Finance (CEC00823532). It was considered that it would now be very difficult to deliver the full scope of phase 1a within the available budget of £545m. The report stated that TIE had taken extensive advice and was "*confident*" on its position on the key matters in dispute; however, it was unreasonable to expect that all adjudication outcomes would be awarded in TIE's favour. I don't recall having any input into drafting that report but I think it's likely I would have seen a draft.
193. It would have been in the summer/autumn of 2009 that I formed the view that it was unlikely that the full scope of phase 1a would be delivered within the budget of £545m.
194. I wasn't in a position at that stage to come to a view on TIE's prospects of succeeding on the key matters in dispute. It seemed that TIE were following an appropriate course of action, in that they were seeking legal opinion,

including a QC's opinion. To that extent I thought TIE were doing the right thing. I wasn't confident that unequivocally the decisions would all fall on the side of TIE. After eighteen months of not having had a real breakthrough on how the contract was being managed I preferred to err on the side of caution.

195. At the meeting on 20 August 2009, the members were advised that it was unlikely the project could be delivered within the £545m and that the completion date had slipped out to the spring of 2012. The Council was also told that an accurate outturn figure couldn't be produced at that time. In private, elected members were briefed extensively on the matters in dispute, the increase in cost and the difficulty in projecting costs accurately but it was recognised by Council officers that this was not the same as full, public reporting.
196. I note that by email dated 25 September 2009 (**CEC00680446**) Alan Coyle noted that the quality of TIE's submission (**CEC00680447**) on curtailment of the scope of the tram project left a lot to be desired and was no more detailed than a report received in March. I think it's fair to say that the quality and reliability of the information being provided by TIE, about costs and the options open to CEC, was becoming a matter of increasing concern. This was both in terms of the timeliness of the information, the detail behind it and its accuracy and, as a result, not being able to respond fully to the public and elected members at the time, especially on the financial implications of the strategic options which had been identified. TIE were working up the financial implications of options but figures were not agreed with BBS. This meant that specific recommendations for consideration by Council could not be finalised.
197. I note that by email dated 7 October 2009 (**CEC00674649**) David Anderson attached a draft report to rule in/out the option of line truncation (**CEC00674650**). It was around this time (September/October 2009) that I first became aware that truncation of the line would need to be considered and I have a specific recollection of the Director of Finance being the first person to raise the issue with me.

2010

198. I note that by email dated 14 January 2010 (**CEC00450935**) Richard Jeffrey noted that in December the Board wholeheartedly endorsed a strategy of becoming more commercially aggressive in relation to the dispute with the Consortium. I note that Mr Jeffrey's email of 11 February 2010 (**CEC00560882**) was on the same theme. The strategy was formulated against the background of rising costs and extended completion dates. TIE had participated in what was called a Project Management Panel (PMP). That was a week of informal mediation with the Consortium during which they tried to resolve issues. TIE felt that that hadn't led to any significant change in behaviour from the Consortium. Having examined and reviewed the strategic options available to them, TIE concluded that the preferred, perhaps only, course of action was to see the contractual position through to a conclusion. This was why the TIE Board made the decision to become more commercially aggressive. I did broadly agree with the strategy as there did not seem to be any viable alternative. That was my view and also the Council's view. The Council had said in August 2009 that they were *"united in expressing its ongoing determination and full support for TIE's efforts to continue to protect the public purse from the effects of undue programme delay and any unwarranted financial claims"*. It did seem that, in the light of all the circumstances, increasing the commercial pressure was the only way to go.
199. No one, either in TIE or the Council or anywhere else, put forward an alternative approach to the one that was being promoted by TIE at the time. It therefore did seem to be the case that their approach would need to be followed ie to use all the appropriate provisions in the contract to try and get the project moving. I was briefed on the main areas of the dispute by senior Council colleagues ie Dave Anderson, Marshall Poulton, Donald McGougan and Alastair Maclean. I did recognise around this time that much would depend upon the adjudication decisions. TIE had taken legal advice (including from QC) and concluded from this that their contractual interpretation was sound. I hoped this would prove to be the case but, given the record of events

over the previous year or so, it was not certain that the outcome would be positive for TIE.

200. At political level within the Council the “commercially aggressive” strategy was supported at this time. It is possible that this was influenced by the views of those elected members who served on the TIE Board.
201. I note that by email dated 22 January 2010 (**CEC00473835**) Alan Coyle noted that Donald McGougan and David Anderson had endorsed the intention to seek an independent legal view of the “*contractual outs*” within the contract and noted a need for CEC to be more proactive, “*where the Council are doing their own thinking rather than rather than waiting for a briefing from TIE*”. The decision that CEC should seek an independent legal view of the Infraco contract at that stage came against the background of intensifying pressure from delays, cost increases, contractual impasse and huge media / political / public attention on the project. Alastair Maclean joined the Council as Head of Legal Services in late 2009 and he brought a fresh perspective. He influenced the thinking by advising that the Council should now seek a separate legal view. I supported this initiative and also recognised that TIE’s ability to move the project forward was increasingly being called into question. My recollection is that Alastair Maclean led the legal advice in relation to the tram project after he joined the Council. I do not recall Gill Lindsay having that role after that point. Gill reported direct to Jim Inch as head of Corporate Services.
202. I note that on 9 and 10 February 2010 a meeting took place between Steven Bell and Stewart McGarrity of TIE and representatives of BBS to discuss the dispute. I note that a note of the meeting was circulated within TIE (**TIE00089656**). I note that the email from Mr McGarrity is dated 25 January 2010 but it encloses a note of a meeting that had taken place a year before in February 2009, when BBS had raised with TIE a possible project cost increase of £50-80m. It is difficult to comment now on what view Council officers might have taken on this suggestion from BBS.

209. A meeting of the IPG on 17 February 2010 was provided with an update of TIE's views on the options, and estimated costs, of resolving the Infracore dispute ("Project Pitchfork") (TIE00896564). I note that by email dated 4 March 2010 (CEC00474750) Alan Coyle sent Donald McGougan and David Anderson a Directors' Briefing Note (CEC00474751) setting out the estimated cost of the three options that formed part of "Operation Pitchfork". I note from these documents that the estimated cost of completing the works appears to have been between £644m and £673m. There were no positive options identified in the "Pitchfork" report. The option of terminating the project with the Consortium gave me real concerns. Nobody could quantify what the legal risks and challenges to the Council would be should that option be followed through. Nor was it known whether there was the political will to embark upon a re-procurement exercise should such an option have been chosen. How long that option would take was not known or what the costs of re-procurement would be. There was the risk that, if the project was not re-procured, the Council would end up with no asset for the expenditure that had been outlaid to date. These were the factors that gave me real concern about the option of terminating the contract at that point in time. I also had reservations about the so-called 'divorce' option. I didn't see how we could persuade Bilfinger Berger to extract themselves from the Consortium, leave Siemens in place and then re-procure another partner for the construction. I wanted to try to find an option that was going to get the project built. Behind that was the key question: *"if we get the project built at what cost will it be built?"*.

210. I note that by letter dated 8 March 2010 (CEC00548728) Richard Walker of BB wrote to CEC officials providing the Consortium's perspective on the dispute, expressing concerns as to TIE's interpretation of the contract and handling of the dispute and advising that it was likely that additional costs were in excess of £100m. Richard Walker's letter was clearly indicative of the extent of the strained relationship between TIE and the Consortium and demonstrated how far apart the respective understandings of the contract were. I had been aware for many months of TIE's frustration with the Consortium. I equally recognised there could be a huge amount of frustration

on the part of the Consortium with TIE. It seemed to me that, in part, the letter was designed to prompt the Council into taking some kind of action (ie to persuade TIE to accede to the line of argument being promoted by the Consortium). Had we done so at that time it would have led to a very major increase in cost. This was the first time I had seen the figure of £100m in print. The figure began to take on a currency of its own at this point in time. The Consortium appeared from the letter to be confident about their position and their interpretation of the legal issues. The letter indicated their willingness to defend their position robustly and they were confident and assertive about their own position. They were clearly hoping that that letter would bring about a re-think and change of approach within the Council.

211. I raised the issues highlighted in the letter with TIE, which I think was copied to both David Mackay and Richard Jeffrey. They believed the letter was designed to influence the Council and “discredit” TIE by “upping the stakes”. TIE were also concerned that the key line of communication should remain between them, acting on the Council’s behalf, and the Infraco consortium.
212. By email dated 11 March 2010 (**CEC00461504**) I advised that Donald Anderson, former Council Leader, had texted me (on behalf of BBS) to advise that he had read the three adjudication decisions for himself and that “*TIE have unequivocally lost each one*”. He suggested that he meet up with Donald McGougan to see if some of the issues could be resolved. The adjudication decisions available at that time were (1) Decisions dated 16 November 2009 by Mr Hunter in respect of the Gogarburn Bridge (**CEC00479432**) and Carrick Knowe Bridge (**CEC00479431**) adjudications; and (2) Decision dated 4 January 2010 Mr Wilson in respect of the Russell Road Retaining Wall Two adjudication (**CEC00034842**). I did not see, or seek, the adjudication decisions but I was briefed on the outcome by senior Council colleagues. There was possibly also some discussion with David Mackay. My understanding was that the initial decisions made seemed to favour the Consortium rather than TIE. I think, from memory, there was a clear legal understanding on both sides that they were not bound by any one single decision. I didn’t think that the decisions necessarily indicated a complete

vindication of one side's position over the other but BBS's interpretation of the contractual issues did appear to be strengthened.

213. I didn't discuss the project in detail with Mr Anderson. We had a catch up lunch around that time. I do remember he mentioned the figure of £100m required to complete the project. His PR Company was working on behalf of the Consortium. I therefore didn't think it appropriate to discuss any details of the dispute with him nor did I know whether he had authority from the Consortium to begin to approach the Council with a view to discussions. I did transmit his text on to Donald McGougan. He thought it was inappropriate to have any such meeting with Donald Anderson and no meeting took place.
214. On 21 April 2010 a meeting took place in Carlisle between TIE and BBS at which parties agreed to investigate a way forward whereby a line would be built to St Andrew Square for a guaranteed maximum price and a new completion date. I didn't have any direct involvement in these discussions. I was aware that discussions were taking place to try and find a way forward between TIE and the Consortium. The "Carlisle" talks seemed like a potentially positive initiative in an attempt to find a way forward on the project acceptable to both parties.
215. Further Adjudication decisions were issued (1) on 18 May 2010 (by Mr Hunter, re Tower Bridge) (CEC00373726) and (CEC00325885); (2) on 24 May 2010 (by TG Coutts QC, re Section 7A-Track Drainage) (TIE00231893); and (3) on 4 June and 16 July 2010 (by R Howie QC, re Delays Resulting from Incomplete MUDFA Works) (CEC00375600) and (CEC00310163). I did not see, or seek, these adjudication decisions. What was reported to me essentially was that both TIE and BBS could each take something from the adjudications. BBS's interpretation of the contract position, seemed to be being supported or strengthened but in the June 2010 report to Council, there was a reference to the fact that TIE claimed a £11m saving from the DRP process. I think that works out as a reduction of around 60% of the claims submitted by the Consortium. On public pound protection grounds, TIE's challenges did seem worthwhile and had some success. They were striving to

drive down the proposed costs coming forward from the Consortium through the DRP. However, the overall outcome did not appear to be strengthening TIE's interpretation of the legal position.

216. On 24 June 2010 the Council were given an update on the tram project by means of a report by the Directors of City Development and Finance (CEC02083184). I did not have any input into drafting that report as I had been on leave for the preceding weeks.
217. I note paragraph 2.6 of the report which states "*the advice received has reinforced TIE's interpretation of the contractual position on the key matters under dispute*". In this Council Report it refers at paragraphs 2.6, 3.4 and 3.5 to savings against the cost of the claims made by the Consortium. The DRP thus helped protect the public purse. In hindsight, and looking at the report now, I do recognise an ambiguity in the wording. I think what the Directors were trying to get across in these paragraphs were TIE's views and conclusions. This is backed up partly by the wording in paragraph 2.5 ie that TIE had undertaken a detailed legal investigation of the matters under dispute and had obtained senior Council's opinion on critical issues. But, looking back at this report now, I can see that it could be read as the Council supporting TIE and their conclusions which I am not sure was the intention.
218. I note that the report suggested that a contingency of 10% above the approved funding of £545m be allowed. I thought, at that time, that it was impossible to be definitive about the likely outturn costs of the project. It was reasonable for the two Directors to advise the Council that contingency planning was underway. My own "gut feeling" at the time was that 10% might not be enough. While 10% increased the projected financial provision from £545m to approximately £600m, that was still short of some of the options identified in the earlier work on the Strategic Options Review. I note the email dated 4 August 2010 and found at (CEC00242787), where Richard Jeffrey says he thought it was still possible to complete the Airport to Newhaven for £600m, so there was a rationale for the 10% figure.

219. Council was not specifically advised of the possible consequences should TIE's interpretation of the main contract provision prove incorrect. In the June 2010 report, Council were formally advised that the point had been reached where there was a reasonable expectation that the price and scope of the project had changed. Council was also advised that a detailed legal investigation of the matters under dispute had been undertaken, including obtaining QC's advice.
220. As part of Project Carlisle, BBS submitted figures to TIE which they considered to be unacceptably high. The respective parties' figures are summarised in para 12.2 of TIE's mediation statement prepared for the mediation at Mar Hall in March 2011 (BFB00053300). BBS appear to have offered, on 29 July 2010, to complete a line from the Airport to East Princes Street (plus Newhaven Enabling Works) for the price of £443.3m plus 5.8m euros. By email dated 4 August 2010 (CEC00242787) Richard Jeffrey set out a proposed strategy going forwards. I did not see Richard Jeffrey's email at the time. As I have said previously, it was proving exceptionally difficult to settle on a set of reliable and accurate figures. Project Carlisle was a negotiation, albeit a genuine attempt to explore a possible way forward. Unfortunately, the Carlisle talks did not result in a clearly costed option, supported by the two contracting parties, which could be put forward to the Council for consideration.
221. Mr Jeffrey's proposed strategy was supported by the Director of City Development, the Council's lead Director for the project. While that was all well and good, I felt in the autumn of 2010 that the Council was no further forward in trying to find a way in which the tram could actually be built. In some respects, not a lot had changed for over a year or so. BBS clearly believed that their interpretation of the contract was right and that the financial provision set aside by the Council through TIE was substantially inadequate. TIE considered the contract was solid and were backed up by DLA and advice from QC. While TIE didn't get the decisions they would have liked from the DRP, they were achieving financial savings through the process.

222. Time was passing. Time was costing money. The passage of time was causing huge pressure on the Council, and Scottish Government Ministers were increasingly concerned. All involved in the Council were trying to find an option to take the project forward as allowing the parties to “grind it out” was clearly not succeeding either.
223. In a memorandum to me dated 11 August 2010 (**CEC00013622**), David Anderson set out his view that following a recent adjudication decision in which TIE had lost the argument in relation to their interpretation of clause 80.13 of the Infraco contract (ie that they were entitled to instruct BSC to carry out work without a price having been agreed in advance) he was now “deeply concerned” about the project. He wasn’t alone in being deeply concerned about the project as this was the universal view across the Council. Lord Dervaird’s decision brought clarity to what had been a legally contested issue but it was obviously a major setback for TIE as they had pinned a lot of hopes on securing a supportive decision. The conclusion I came to, following David Anderson’s memorandum and other discussions at the time, was that we had to try and find, over the coming weeks and months, a way in which we could definitively give the Council some clear policy advice on how to handle the tram project.
224. I note that by email dated 18 August 2010 (**CEC00013665**) Alan Coyle noted that he had met with Dennis Murray regarding TIE’s counter proposal for Project Carlisle. The “headline numbers” were £567m for the Airport to York Place and £644m from the Airport to Newhaven. On 20 August 2010 CEC officials met with TIE representatives to consider TIE’s Project Carlisle Counter Offer. A record of the meeting (**CEC00032056**) noted a range of costs of between £539m-£588m for the Airport to St Andrew Square and a range of between £75m-£100m from St Andrew Square to Newhaven, giving a total range of costs, from the Airport to Newhaven, of £614m-£693m. It was noted that this was essentially a re-pricing exercise for the completed design (which was thought to be approximately 90% complete) with the intention of giving TIE certainty and that all of the pricing assumptions in Schedule 4 of the Infraco contract would no longer exist. It was further noted that BBS were

likely to be feeling very exposed as a result of “the SDS/BB ‘collusion’ agreement”. I did not see this reference to “collusion” until the Enquiry brought it to my attention and am unable to comment on it. At a very general level it’s fair to say that the counter-offer was consistent with the Council’s view that TIE should try and arrive at an acceptable resolution with the Consortium in order to get the tramline built. Project Carlisle needs to be seen in that context and as a genuine attempt to explore whether a way forward could be found. There was a recognition that the Council would require time, and supporting information, to enable it to come to a view on the counter-proposal. The balance was shifting from the Council relying substantially on TIE for information and analysis to wanting to get to a position where it had more direct control in respect of presenting information to elected members. TIE were carrying out Council policy and were trying to find a resolution. They were trying to generate hard information in support of the various options but this was not straightforward.

225. By the autumn of 2010, Council senior staff were becoming increasingly concerned. There was still a recognition that it was important to work alongside TIE where relevant and possible and TIE were still the primary source of much of the information. However, wherever possible this information from TIE was “stress tested” by Council colleagues.

226. I note that an email dated 8 September 2010 from Richard Jeffrey (forwarded to me) (CEC00020825) noted “*We have now got Bilfinger to within striking distance of a deal, but Siemens have still not engaged with the negotiation at all*”. I think his email was sent prior to a meeting that he and I were having with the Council Leader the following day. There may have been other elected members present at that meeting. In his email, he was outlining a set of briefing points to be considered. While he referred to a deal (perhaps) being within striking distance I thought this had to be treated with caution, given previous experience and the lack of involvement from Siemens.

227. In October 2010 TIE and CEC explored terminating the Infraco contract. A special planning forum ("War Room") was established. I note that on 13 October 2010 Alistair Maclean sent an email to Donald McGougan (**CEC00012760**) stating that the special planning forum was for CEC and not TIE. He stated *"TIE should come along to help us where we need them but not take control!"* Alastair Maclean was correct to say that there were occasions when Council staff had to work through issues on their own, without TIE present and I supported his view on this. He had previously initiated the commissioning of external legal advice and his approach was consistent with the view that I had taken that we had to work towards achieving clear policy advice for submission to the Council. Contact and meetings with TIE continued to take place but Council staff needed the time and space to consider issues on their own when necessary. And, when appropriate (eg in sharing QC's advice) the Council continued to share information with TIE to facilitate joint working.
228. By letter dated 13 October 2010 (**TIE00301406**) BBS wrote directly to councillors giving their views on the dispute. The letter didn't contain any new material. At this point, the issues were fairly well understood within the Council and at TIE. My interpretation was that BBS were trying to convince councillors that their view of the legal issues was the correct one. Taken at face value, the letter appeared to depict BBS as trying to be constructive in finding a way forward on the project. That said, the main conclusion that can be drawn from the letter was that there was now a huge gulf between TIE's position and that of the Consortium. I took advice from the Council Solicitor and we informed elected members that it would be inappropriate for them to respond individually to the letter. Later on, I endorsed a meeting taking place between Donald McGougan, Alistair Maclean and representatives of the Consortium. The BBS letter represented the start of the Council beginning to be prepared to consider having more direct involvement with the Consortium.
229. I note that by joint report to Council on 14 October 2010 (**CEC02083124**) Donald McGougan and David Anderson provided a refreshed Business Case for the tram project, focussing on a line from Edinburgh Airport to St Andrew

Square, with a high degree of certainty of cost and programme certainty. The contingency planning work undertaken by the Council and TIE had identified funding options which could address project costs of up to £600m; *“Due to the current uncertainty of contractual negotiations, it is not possible to provide an update at this time on the ultimate capital costs of the project”* (para 3.1). It was noted that *“The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties”* (para 2.50). I did not have any input into the drafting of this report. As with most of these reports, I would probably have been sent a draft and given an opportunity to comment. Generally speaking, I would probably have seen a later rather than an earlier draft. I don't recall discussing or querying the statement that *“The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties”*. When I look back at the report now, I think the statement could certainly have been worded differently and better. It could have said something like *“BSC has strengthened their interpretation of the contract with the DRP process but the process also demonstrated TIE were right to challenge given the financial sums involved”*. I think that's a more accurate reflection of the position.

230. With regards to whether members of the Council, in October 2010, were advised of the potential costs, or range of costs, for completing the tram project, it wasn't possible to give the Council reliable cost estimates on any revised contractual way forward. Council officers, were concerned that, going back to Contract Close, various estimates had come and gone and none could be deemed to be watertight. In reporting to the Council the two Directors were concerned about putting figures into the public domain that were not solid and defensible.
231. The Highlight Report to the meeting of the IPG on 27 October 2010 (CEC00012896) noted certain matters under Lessons Learned (para 6). There is similarly a “lessons learnt” section in para 6 of the report to the IPG on 1 December 2010 (CEC00013539). It was pretty much generally assumed by all Senior Officers and supporting staff in the Council that there would be some form of independent review or inquiry into the project at the appropriate time.

My view was that, internally, the Council didn't have the capacity at that time to undertake a thorough review. It probably wasn't appropriate for the Council to initiate that in any course. That said, there was nothing wrong with one or two colleagues sketching out what they considered to be some of the potential lessons learned for future reference but as staff were working hard on trying to finalise the next report to the Council I did not want them to be diverted from this.

232. The Action Note (CEC00010631) in relation to the IPG meeting on 9 November 2010 notes that Alistair Maclean would seek external advice on the merits of the Council engaging directly with BBS. The Action Note also notes that Alan Coyle was to pass a copy of the redacted Business Case to me and was to ensure that the document was "badged as a joint effort". I subsequently sent a letter dated 15 November 2010 to Richard Walker of BBS (CEC00054284). Events were moving towards a key Council decision. The Council would have to decide whether to proceed with the project. It did seem to me, at the time, that an exploratory meeting with BBS could potentially have some value. It would allow those Council officers attending an opportunity to hear direct from BBS. The Council officers would be able to hear what options, if any, BBS had and what their view was on their working relationship with TIE. A meeting would basically allow the Council to begin to explore whether there was any common ground. From my point of view, it was a pragmatic and appropriate response to the situation in which the Council found itself in late in 2010.
233. TIE were aware that a meeting was going to take place between the Council and the Consortium. I recall that Richard Jeffrey sent some background material that he felt would be helpful to Donald McGougan and Alistair Maclean, who were the officers representing the Council at the meeting. The reason Council officers had not met with the Consortium earlier was because we did not want to confuse the lines of responsibility and accountability between TIE and BSC. In my letter to Richard Walker I say *"the Council's position is, and always has been, that TIE is the counter-party to the Infraco contract and all negotiations in relation to the contract must be carried out*

between TIE and Infraco". However, following Project Carlisle and the obtaining of our own external legal advice, I took the view that an exploratory meeting with BBS could potentially be useful.

234. Looking back I am unsure why the document was to be "badged as a joint effort". The business case which was submitted to the Council in December 2007 (and the drafts which preceded it) were prepared by the Tram Project Board. They, in turn, depended upon input from the Council on such issues as future population growth and economic activity and from Lothian Buses on public transport passenger figures.
235. I think the memorandum speaks for itself. David Anderson had the lead responsibility for the tram project within the Council. The Director of Finance was heavily involved also and was having to deal with a range of other pressing issues (eg annual budget preparation) as well as tram work. Everyone was under pressure and the Director of Finance asked me to remind the Director of City Development of his critical and lead role in the project at a crucial period. As far as I am aware the issue did not arise again in the following six weeks while I was still with the Council.
236. I met with Councillor Dawe, Council Leader, and John Swinney, Cabinet Secretary, on 16 November 2010. John Swinney had asked for a meeting with the Council. He was accompanied by a member of staff from his Private Office and a representative from TS was present as well. Donald McGougan was also at the meeting. In the discussion, John Swinney expressed concern about what he saw as a lack of progress on the project. He wanted to hear from the Council where we were and what possible way forward was being considered. The political pressure that the Council was under was spilling over into Parliament and onto the Minister's desk. He said that he had met regularly with TIE over the preceding months but that he was increasingly losing faith in the quality of advice he was getting from them and wanted to hear direct from the Council. We updated him on the then current position. We specifically advised him that we were thinking of activating the mediation clauses in the contract. I had raised the idea of activating the mediation

clauses with Councillor Dawe a week or so before we met with John Swinney. She said to me that she had been thinking along similar lines and had come to that view following a discussion with Councillor Mackenzie. It seemed to me that we had all arrived at a broadly similar conclusion. The Minister did not express a view on any particular course of action but did not seem opposed to the proposal for mediation. It was a productive meeting and the Minister offered the assistance of Transport Scotland if required.

237. Given that other options had not been successful I concluded that mediation was worth pursuing. I had considerable reservations about any attempt to cancel the contractual arrangements with BBS as this could have landed the Council in years of litigation, substantial costs and an incomplete tramline.
238. I note that on 16 November 2010 Richard Jeffrey advised Alastair Maclean of certain serious concerns he had in relation to events at the time the Infraco contract was entered into. I note that on 17 November 2010 Mr Maclean produced a Note setting out Mr Jeffrey's concerns (**CEC00013342**). I didn't see Alistair Maclean's Note at the time and I have no knowledge of the matters referred to in the Note. Prima facia, the concerns raised in the note were very serious, requiring follow-up investigation. However, as I had no awareness at the time of the issues raised I am unable to comment further. The Council's Monitoring Officer at the time was Jim Inch, Director of Corporate Services.
239. The report to the meeting of the IPG on 17 November 2010 (**CEC00010632**) noted that a range of cost estimates for the different scenarios were being produced. The draft estimate for Project Carlisle varied between TIE's estimate of £662.6m and BSC's estimate of £821.1m. These estimates were for the full scheme. The report noted that the cost estimates, as they stood, indicated that delivery of the project to St Andrew Square could be delivered for £545m-£600m. Most of the source figures would have come from TIE but the Council would have been involved in checking the figures and expressing a view on options. The IPG report indicates that the Council had commissioned independent legal advice on a number of issues. In relation to

Finance there is a reference to weekly meetings to ensure the cost estimates are as robust as possible. There is a quote (at page 5) which says *“Prior to eventual sign-off of the numbers a robust challenge session will be set up to ensure the commercial and engineering professionals have full ownership of the cost estimates. This challenge session will have included CEC engineering input”*. This illustrates that information supplied by TIE was subject to substantial checking and challenge from Council staff.

240. I note that in emails dated 22 and 30 November 2010 Alastair Maclean expressed certain concerns about TIE and the legal advice received by TIE (CEC00013411) and (CEC00014282). I note that an email dated 24 November 2010 by Richard Jeffrey to Alastair (CEC00013441) stated, *“If the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation”*. Alastair’s emails are evidence of the growing tension between staff in TIE and the Council. Everyone was under huge pressure and the strain was showing. David Mackay had resigned unexpectedly early in November. A number of key staff in TIE were considering their future and were looking to move on to new opportunities. TIE was an organisation under huge strain. Steps were being taken by the Council to obtain independent legal advice to inform their own understanding of issues involved and the pros and cons of the options being considered.
241. With regards to CEC losing confidence in TIE, I think it is fair to say that TIE’s credibility was increasingly coming under question. Richard Jeffrey was trying very hard to discharge the responsibilities he had as TIE’s Chief Executive. I thought the work that Alistair Maclean had undertaken, including seeking a QC’s opinion, was beginning to bring more clarity to the legal position. I felt that that work added weight to the Council’s understanding of the options under review. I was not persuaded, for example, that there was a sufficiently convincing case which could be made to the Council in December to terminate the Infracore contract.
242. A meeting took place on or about 3 December 2010 between representatives of CEC and BBS (TIE00304665). The Council’s representatives at that

meeting were Donald McGougan and Alistair Maclean. The feedback they gave me afterwards was that the meeting had largely been exploratory. The meeting allowed BSC an opportunity, for the first time, to meet face to face with Council representatives. It allowed them to outline directly what their concerns were, what they saw as the major issues and how they saw the relationships etc.

243. I note the email dated 10 December 2010 by Richard Jeffrey (TIE00305064). Councillor Dawe met with BBS around that time and I attended the meeting with her. I felt it was important that I should support her as Council Leader. Mr. Walker from BBS was present but other representatives from the consortium were prevented from attending because of travel disruption due to heavy snow. Councillor Dawe explained that the meeting should not be seen as an attempt to negotiate. Rather, it was an opportunity to exchange views on the state of the project and discuss what was holding back progress. We advised BBS that the mediation option had been put to Council and they indicated that they were prepared to engage in this.
244. I note the email dated 17 December 2010 (TIE00891350) by Richard Jeffrey asking about the current status of CEC approvals and consents (and noted *“to get a fixed price we need a fixed design and this includes approvals”*). I did not see this email at the time. My recollection was that design was about 90% complete at this time. I don't remember being informed at any time that there was a problem within the Council in terms of the processing of consents and approvals.
245. On 16 December 2010 I provided the Council with an update on the refreshed Business Case (CEC01891570). The report noted that a line from the Airport to St Andrew Square was capable of being delivered within the current funding commitment of £545m. I note the Minutes (CEC02083128), in particular, at page 22. At the meeting an amendment was passed to request a review of the business case by a specialist public transport consultancy that had no previous involvement with the Edinburgh tram project. The refresh of the Business Case would have been conducted by colleagues under the

auspices of the TPB involving TIE, Council staff and, where appropriate, Lothian Buses.

246. The procedure undertaken by the Council for the refresh again would have been to examine the sources of the information, seek clarification where necessary and check figures for accuracy. David Anderson and Donald McGougan would have overseen the report's preparation on behalf of the Council. Council colleagues would have reviewed the information that fed into the refreshed Business Case. They would have challenged the information and sought to understand the basis for the figures and how they had been arrived at. Some figures were updated to 2010 and others were from earlier years. The reliability of the projections (eg on population numbers) would have been checked as part of an iterative process between the Council and TIE.
247. The basis of the calculations for the figures that showed the line from the Airport to St Andrew Square was capable of being delivered within the current funding commitment can be traced back, at least in part, to the work done on the Strategic Options Review. £545m was at the lower end of the range. Other estimates around the £600m mark had previously been identified. The refreshed business case says that "it is believed that a line from the Airport to St Andrews Square was capable of being delivered within the current funding commitment of £545m". This conclusion was arrived at by those charged with preparing the refreshed business case. It was not a specific recommendation as no agreement on revised costs had been secured with BBS.
248. I was cautious about whether a line from the Airport to St Andrew Square could be delivered within the funding commitment of £545m. On a number of occasions over the preceding 12-18 months I had thought we were close to agreeing revised cost estimates, only for this not to be the case. Previous experience had also revealed the difficulty in coming to a conclusion when there were so many variables and uncertainties to take into account.

249. I didn't have a settled view on any additional borrowing at that time. I had once or twice discussed additional borrowing with Donald McGougan. When TIE started to do some preparatory work on contingency planning, there is a reference in reports as to how an increase from £545m to £600m could be handled. Options included drawing down funds from the Capital Cities Fund and increased Council borrowing. All of that would have been a matter for further review by the Council if and when it was presented with a request for additional funding.
250. No elected members raised with me, prior to the motion, that they might seek an independent review of the refreshed business case by a specialist consultancy with no previous involvement with the tram project. I can only assume that, the original business case having been deficient in a number of aspects, they wanted an independent commentary and validation of the refreshed business case.
251. On 18 December 2010 the Council approved an emergency motion proposed by Councillor Dawe to instruct the Chief Executive of the Council to continue to make preparations with TIE and BBS for mediation or other dispute resolution processes. I should point out that the motion was actually approved at the November 2010 meeting. I referred earlier to the meeting which had taken place with the Cabinet Secretary, John Swinney, when the possibility of using mediation had been referred to. Following that meeting I advised Councillor Dawe that I was going to submit a report to Council, recommending mediation be pursued. She asked me to consider instead approaching this via a notice of motion which she would submit to Council. I drafted this for her and, after she had made a number of amendments to the draft, she submitted it to the November 2010 Council meeting. The motion was approved, giving Council officers the authorisation to initiate the mediation option.
252. A meeting took place on 20 December 2010 between Richard Jeffrey (with the assistance of Nigel Robson) and Richard Walker, Michael Flynn and Richard Garner of BSC. I note Mr Jeffrey's email dated 21 December in that regard (TIE00105840). The meeting was arranged to begin to implement the

Council's decision on mediation. It would have explored the mechanics of the mediation process ie how would a mediator be selected, what would the terms of reference be, what were the timescales and so on.

253. My leaving date was 31 December 2010, although my last working day was 24 December 2010. I had been in post for fifteen years and was about to reach the retirement age of 60.

254. I met with Sue Bruce a number of times before I retired, once in Aberdeen and a few times in Edinburgh. I also arranged for her to meet each Director of the Council individually before she took up post. In addition to her discussions with me she was able to explore the status of the tram project with the Directors of City Development and Finance. I also gave her a high level briefing pack on the key issues facing the Council, including the tram project.

255. I note that, following mediation discussions at Mar Hall in March 2011, agreement was reached for a tram line from the Airport to York Place to be completed at a total cost of approximately £776m, which necessitated an additional contribution by the Council of £231m. I was pleased that agreement had been secured to complete the tram line from the Airport to York Place but dismayed at the costs involved. Why did costs increase so much from the Business Case approved by Council in December 2007? I think a number of factors can be identified, including: a contract that was not as tightly drawn as TIE and the Council thought at the time; the development of an antagonistic relationship between TIE and BBS; incomplete design work at contract close and lack of clarity over what was meant by "normal design development"; larger work programme on utilities than originally expected, taking longer to complete. All of this led to friction, lack of trust, long delays and a serious cost overrun, with a damaging effect on Edinburgh's reputation.

TIE

General

256. As noted earlier in this statement, the means by which it was considered that CEC would exercise control over TIE was through the articles of association of the company; appointments to the Board; elected members serving on the Board; an annual business plan; senior Council officials attending the Board and an Operating Agreement.
257. The Director of City Development was the designated lead officer for the tram project within the Council. He was supported by the Head of Transport, who carried specific responsibilities as Tram Monitoring Officer. The Director of Finance also played a key role in exercising oversight of TIE, as did the Council Solicitor. The Directors of City Development and Finance were members of the Tram Project Board, as were certain elected members. Operational Agreements setting out the relationship between CEC and TIE were prepared and TIE were required to submit an annual business plan to the Council.
258. At a political level reports were submitted regularly to the Council and its committees outlining TIE's approach to key issues, giving elected members an opportunity to scrutinise proposals. The Tram Sub-committee also played a role in scrutinising TIE; however, its role was more limited than was anticipated at the time it was set up.
259. Financial control came from the Council's Finance Department. They administered the terms of the release of payments from TS to CEC. Finance, in turn, released payments on to TIE.
260. Following the Audit Scotland report and the OGC reports in 2007 I had confidence at the time in the way TIE was preparing for and managing the tram project. However, concerns over TIE began around the middle of 2009

and increased throughout 2010. Concerns arose out of contractual disputes, programme slippage, cost increases and delays in achieving reporting deadlines.

261. In the early years of TIE, leading up to the time of Royal Assent, I had some limited contact with the then Chair of TIE, Ewan Brown. I had more contact with his successor, Willie Gallagher, but he resigned his position in November 2008 for family reasons. I thought at the time that the appointment of a new Chief Executive in TIE might represent an opportunity to establish an improved relationship with BBS. Pending the appointment of a new Chief Executive, Mr. Gallagher's duties were taken on by Mr. McKay, with whom I had regular contact until he left in November 2010. I also had regular contact with Richard Jeffrey, following his appointment in April 2009 and occasional contact with senior members of staff in TIE such as Steven Bell and Stewart McGarrity. On an individual level I did not have any specific concerns about TIE Board members or employees but collectively, as an organisation, concerns grew from the middle of 2009.
262. Council officers received information from TIE in a number of ways. These included participation in TPB meetings, joint working on certain key issues (eg business plan preparation) and regular contact between Council staff and their counterparts in TIE. In terms of TIE's reporting to the Council, concerns grew from 2009 onwards that TIE were missing reporting deadlines (eg on the strategic options review). Council staff recognised that the issues TIE were addressing were complicated but important deadlines were not always met. When the contractual difficulties between TIE and BBS became more acute, TIE found it difficult to prepare reliable, revised cost estimates. Information coming from TIE to the Council was queried and checked by Council staff and, where appropriate, by external advisers (eg on legal issues in the second half of 2010). It was a cause for concern for Council officers that accurate information on revised (and agreed) cost estimates and strategic options was not available for reporting to Council. In terms of public reporting this was compounded by issues relating to commercial confidentiality. The Council's political leadership was briefed privately on an ongoing basis.

263. I note the report to Council on 29 April 2004 seeking approval of TIE's Business Plan for 2004/05 (CEC02083576). The report notes that TIE were developing, or implementing, seven major transport projects (Congestion Charging; the West Edinburgh Busway Scheme; Tram Lines 1, 2 and 3; Ingliston Park and Ride; and the Edinburgh Airport Rail Link; TIE were also responsible for the SESTRAN "one-ticket" travel ticket scheme, providing a travel ticket throughout the SESTRAN area). TIE also worked with TS and Clackmannanshire Council to project manage the delivery of the Stirling-Alloa-Kincardine Railway and worked with Fife Council, and others, to develop proposals for a Cross-Forth passenger ferry. The other projects being undertaken by TIE did not adversely impact on the time and resources TIE had available for the tram project. By late 2007, going into 2008, TIE was focussed almost entirely on the tram project. The Council's aspirations for transport infrastructure development prior to the road congestion referendum had been much more extensive. The result of the referendum led to a major refocusing and reprioritisation of resources on the tram project.
264. I don't recall any consideration being given by the Council in 2007 to winding up TIE and delivering the project itself, perhaps with the assistance of an external consultant (eg a firm of consulting engineers) as project managers. Given the role TIE played in securing Royal Assent, the positive comments from Audit Scotland and the comments from the OGC Review, the Council were confident that TIE was well equipped to take the project forward. The Council, on its own, did not have the capacity, experience or expertise required to take the project forward. It was always envisioned by the Council that responsibility for the tram project had to be assigned to an arms-length external organisation. In theory, it would have been possible to have shut down TIE in 2007 and perhaps appointed consulting engineers or some other organisation. However, there didn't seem any reason to do that in 2007.
265. The Council also recognised that, when necessary, TIE would seek additional consultancy support and they did so on a reasonably regular basis.

266. I don't have any recollection of concerns being expressed over TIE's role with regards to the Stirling-Alloa-Kincardine ("SAK") Railway and I don't think anybody ever raised this with me as an issue.
267. I note that TIE produced and updated a primary risk register which was shared with the Council. I did not see the TIE risk register as such. I relied on colleagues to monitor it and follow up on any points needing further consideration. Council Directors and their staff were regularly involved in discussing and scrutinising TIE's risk register. This would have been a factor in formulating their advice to the Council. Council Directors would draw my attention to any key risks or high level issues as the project progressed. I placed reliance, in 2007 and early 2008, on the Audit Scotland view that TIE had procedures in place to actively manage risks associated with the project. Audit Scotland commended TIE for their approach to risk management and it seemed to be an aspect of the project that was under control and well managed. This, in turn, created confidence in the Council (in 2007/08) that TIE were well placed to manage risk. As the project developed and started to encounter difficulties more detail surrounding risk was made available. I saw some of that detail through the IPG; we discussed the risks, what the likelihood of them happening was, what their potential impact was, what contingencies could be put in place to mitigate the risks and what financial consequence they might have? From what I saw coming through the IPG, there seemed to be a well-structured process for handling risk. TIE reported on risk through the TPB and where necessary information was cascaded to the Council.
268. The risks I saw identified a named Council officer charged with the responsibility of following up the risk and resolving it and I was informed that this was also the case within TIE as well. Risk assessments were taken seriously and followed-up.
269. CEC was familiar with the use of local authority companies and had probably made more use of that model, at that time, than any other Council in Scotland. Most of the companies could be traced back to the former Edinburgh District

Council. One obvious example of a company created by CEC was the Edinburgh International Conference Centre, EICC. Another example of a company owned by the Council was Lothian Buses, which was created under the specific terms of the 1985 Transport Act. The Council owned 91% of the shares in Lothian Buses. The Council also owned a number of property development companies. The Council was, by and large, comfortable in having an arms-length company as the primary vehicle delivering the tram project.

270. There were always some difficulties associated with the various arms-length companies. The first difficulty related to elected members who served on the Boards of companies. Under company law, Board members had a duty to the company. This created a potential clash of interests for elected members between their duty to the company and their duty to the public as an elected representative of CEC. The second difficulty surrounded how the Council interfaced with these companies. They were arms-length but had to reflect the Council's values, purpose and policy objectives. To deal with this the Council put in place "shareholder agreements" for most of its local authority companies, which were similar in many respects to the Operating Agreement for the tram project.
271. A major difference in the Council's management and control of TIE compared to the Council's management and control of other wholly owned Council companies was one of scale. Those who were involved in the tram project were working on, what was anticipated to be, a £500m plus project.
272. There were certain factors common to the Council's relationship with most of the local authority companies. The Council was responsible for appointments to the Boards; the Council sought to include private sector expertise on the Boards; the relationship between the Council and the companies was arms-length while incorporating the Council's policy aims in a written agreement.
273. Care had to be taken by the Council to ensure that Boards had the appropriate skill mix to fulfil their responsibilities. For example, Lothian Buses

is a large operational company with a focus on customer care and passenger satisfaction. TIE was charged with overseeing a major construction programme and the Directors appointed to the company were selected with this in mind.

Bonus payments

274. I note the report to Council on 26 June 2003 (**CEC02083550**) which states, when considering TIE's draft Business Plan, that a performance related bonus scheme had been introduced for TIE staff. I can't comment on bonus issues in 2003-04 as I had no involvement in this aspect of TIE's internal workings. I assume the rationale in TIE would have been to provide an incentive to attract and retain staff from the private sector, where bonus arrangements were fairly common. In terms of the Council's awareness and oversight of bonus arrangements in TIE this would have come under the responsibilities of the Director of City Development. I presume the TIE Board would also have had oversight responsibilities for staff bonuses. But, as I have said, I had no involvement in the bonus scheme in 2005 (as set out in TIE ADR Operating Manual dated April 2005, TIE00024099)
275. I note that a report to Council on 29 April 2004 by Andrew Holmes (**CEC02083576**) noted *"In response to the concerns over the impact on the Council's budget that were expressed by the Directors of City Development and Finance, TIE has proposed several efficiency savings", including "a reduction in the budgeted staff bonus level"* (para 3.17). As I have just noted, I have no recollection of this particular report or awareness of what action, if any, resulted from it.
305. I note that a new Operating Agreement between CEC and TIE was entered into on or about 12 May 2008 (**CEC01315172**). I note that paragraph 2.25 of the Operating Agreement dealt with the question of bonus payments. It provided that the TIE Board required to confirm annually to the Council's TMO *"that TIE's incentivisation arrangements are aligned to appropriate Project*

milestones". I note that previous versions of the draft Operating Agreement contained provisions giving the Council greater control over proposed bonuses. I note that this is evidenced by emails from Nick Smith dated 19 November 2010 and 10 December 2007 (CEC00013392) and Nick Smith's December 2007 Commentary found at paragraph 14 of (CEC00013393). [The paperwork trail here is not clear to me. Nick Smith's emails from 2010 are referred to as are those from 2007. All I can assume is that when bonus issues were under review in 2010 his earlier emails from 2007 were referred back to.]

306. To assist the enquiry I can set out, in the paragraphs below, my recollection of and involvement in considering bonus payment issues in TIE.
307. I first became involved in a discussion about bonus payments when David McKay raised it with me, which would have been in late 2008 or early 2009. He informed me of his concern that, potentially, high bonuses could be awarded to senior staff in TIE at a time when the project was not running smoothly. Following a period of review TIE changed the bonus scheme for its senior staff and aligned it much more clearly to the achievement of specific milestones in the tram project. It quickly became apparent that these milestones would not be achieved, effectively rendering the bonus scheme null and void. As far as I am aware, from the time David McKay first raised the matter with me until I left the Council in December 2010 no bonus payments were made to senior staff in TIE. I fully supported David McKay in the actions he had taken in relation to bonuses in TIE as I felt strongly he was doing the right thing.
308. The Operating Agreement between the Council and TIE contains references to the arrangements for considering and authorising bonus payments. In the original Operating Agreement certain responsibilities were placed on the Council's Tram Monitoring Officer. In a later version of the Agreement that responsibility was changed to rest with me and there was a reference, for example, to the requirement to conduct a review of TIE's remuneration policy. Given the circumstances of the tram project I did not at any time initiate a

review of remuneration policy in TIE or endorse any bonus payments to senior staff. Consequently, consideration of the need to report to elected members did not arise.

309. I note the Tram Governance Report dated 23 October 2008 prepared by Alan Coyle (CEC01053689). It looked at the gaps between the suggested governance structures and what was actually happening in practice. The report notes (at paragraphs 3.25 and 3.26) that Appendix 2 of the Close Report had set out the governance arrangements, including that the TIE Board retain its Audit and Remuneration Committees, membership of which was restricted to Non-Executive Directors. It is suggested that this statement was contrary to TIE's Business Plan, approved by the Council, which stated that Willie Gallagher, Executive Chairman of TIE, sat on both the Audit Committee and the Remuneration Committee. I didn't see Alan Coyle's report at the time so I don't recall this being raised with me. Looking at it now, he was correct to draw the conclusion he did about the Executive Chairman of TIE's membership of various sub-committees. However, the issue was overtaken by events following Willie Gallagher's resignation the following month (November 2008).
310. By email dated 26 May 2009 (CEC00880015) David Mackay advised me of proposed bonus payments to TIE staff. I forwarded the email to Jim Inch who suggested that as well as Mr Mackay sharing the "big picture" he might also share the "small picture". Council exercised supervision and control over TIE bonuses at this time through the Operating Agreement, as noted previously.
311. As I have indicated above, prior to late 2008 early 2009 I had no involvement in TIE bonus schemes. My engagement with this issue came in the period following Willie Gallagher's resignation and his replacement by David Mackay. The general background was that the country was in recession and there was growing public concern over bonus payments in both the private and public sectors. In relation to the tram project in particular issues over project delays were becoming more prominent in the first half of 2009. And, as I have already said, David McKay was aware of the sensitivity attached to bonus

payments and took action to tighten the proposals for senior staff. He shared the details of this with me and discussed the new arrangements with the Council's Director of Corporate Services. Having said all this, no bonus payments to senior staff in TIE were made following the introduction of the revised bonus scheme.

312. I note that by email dated 16 July 2009 (**CEC00665646**) David Anderson circulated a second draft of a proposed report to Council on 20 August 2009. The draft report (**CEC00665647**) included a section dealing with proposed new bonus arrangements to give the Council "*proper oversight and control over any bonus payments*". I note that by letter dated 20 July 2009 to Mr Anderson (**TIE00317803**), David Mackay raised certain concerns in relation to the draft report to Council. I note there was subsequent email correspondence in which Mr Mackay requested that the whole section on pay and performance be deleted from the report (**CEC00698019**). That chain includes an email dated 23 July 2009 in which Mr Anderson noted that he would take my guidance on the issue of Executive remuneration. I note that the final version of the report to Council on 20 August 2009 (**CEC00823532**) did not include reference to bonus payments to TIE staff. I can't recall specifically whether there was a discussion between myself and David Anderson on this at the time. Given that I was copied into a number of the emails, I was aware of the issue at the time of the draft report being shared with TIE. My presumption must have been that David Anderson and David Mackay had settled on an agreed position and that David Anderson decided it was not necessary to include reference to bonus payments in the Council report. It may be he was satisfied by David McKay's assurances, as set out in his letter of 20 July 2009, that he had tightened up the bonus scheme for senior staff. As I have said previously, I did not consider it appropriate to pay bonuses to senior staff in the middle of 2009.
313. By email dated 23 September 2009 (**CEC00672873**) David Mackay sent me a paper (**CEC00672874**) containing proposals to revise the TIE bonus scheme. An accompanying slide presentation (**CEC00672875**) noted "*No formal linkage between bonus payments and corporate performance ... linked mainly*

to individual performance” and “Inadequate performance management processes to underpin/justify payments”. Looking at the report against the background of David Mackay’s advice to me that he intended to review the bonus scheme and link it to tram objectives being achieved I think it demonstrates a sensitivity in TIE to the issue of bonus payments. It contains a provision that bonus payments to TIE senior staff could only be made on the completion of the project. The key words are *“on time and on budget”*. That was a very significant change. Because the project wasn’t completed on time or on budget it rendered null and void any bonus payments for senior staff.

314. I note that by email dated 25 September 2009 Jim Inch set out a number of concerns in relation to TIE’s proposed revised bonus scheme (CEC00687814). The email was Jim Inch’s response to my request to him for a view on TIE’s proposals. I had asked Mr. Inch to stay close to this issue with TIE and to ensure that no action was taken by TIE which would leave the Council vulnerable to public criticism. The matter was resolved in that no bonuses were paid to senior staff.
315. I note that an email dated 10 June 2010 by Nick Smith (CEC00258236) noted that, under the TEL Operating Agreement then in place, the question of bonuses to TIE staff required to be agreed by the TEL Board, through its Remuneration Committee. In addition he notes that (1) the remuneration principles to be adopted each year by TEL’s Remuneration Committee required to be approved annually by the Council’s Chief Executive in advance of each annual accounting period and (2) a full review by the Council’s Chief Executive of TEL and TIE’s remuneration strategy would take place every three years to ensure that such strategy remained appropriate in the market from time to time. I don’t think I ever saw Nick Smith’s emails. In the period between the new Operating Agreement coming into force (mid 2010) and leaving the Council (December 2010) I did not undertake a full review of TIE’s remuneration strategy nor was I asked to approve the remuneration principles to be adopted each year by TIE’s remuneration committee. Bonus arrangements had been locked down and with the tram project at a critical

stage it would, in my view, have been entirely inappropriate to initiate remuneration reviews. There were other, more pressing, priorities.

316. I note that Mr Smith's email of 10 June 2010 also noted that some TIE employees may "roll up" their bonuses until project completion, which may count as part of "final salary" for pension purposes. I don't know whether rolled up bonuses were ever paid because that would have happened after I retired. Presumably they would only have been payable had the tram been built on time and on cost, which did not happen.
317. I note that a paper to the TEL Remuneration Committee in June 2010 (CEC00301222) recommended that no TIE bonuses be paid for 2009/10. I further note Mr Jeffrey's staff announcement in that regard (CEC00314582). I was of the view that this was entirely the correct thing to do.
318. I note that the minutes of the Council meeting on 14 October 2010 (CEC02083123) noted that an undertaking had been given to provide a report on remuneration matters for Council owned arm's length companies and that the Chief Executive was instructed to ensure that a report was provided to Council on remuneration matters at TEL. As the Council minutes indicate reviews of corporate governance issues, including remuneration arrangements, were underway across the Council's local authority companies. This was partly in response to the economic conditions prevailing at the time and issues specific to individual companies. The reference to TEL relates to the fact that for some time work had been underway to prepare for the eventual merger of TIE, TEL and Lothian Buses. TIE and TEL were moving ahead with interim organisational arrangements and the designation of individuals to fill key positions in the senior management structure. Alongside this, remuneration proposals were emerging. I advised David McKay that I was uncomfortable with some of what was being proposed and that the Council would see these matters as falling within their domain rather than that of TIE and TEL. New posts of Chief Executive and Chief Operating Officer had been flagged up for the merged company structure, with new (higher) remuneration arrangements. Given the position of the tram project and the

wider public sector environment, I was taking steps to stop any additional salary payments being made at that time.

Governance

General

319. I think all those involved in the tram project recognised that there was a degree of complexity in the governance arrangements, with three companies involved – TIE, TEL and Lothian Buses. In addition, a key role was played by the TPB in taking the project forward. The Council took care to appoint individuals with senior commercial experience to the Boards of the companies. And, the relationship between the companies and the Council was set out in Operating Arrangements. Elected members and senior Council officers were also appointed to the Boards to help assist with the co-ordination, co-operation and control needed between the companies and the Council. Board meetings were held regularly and were run professionally. In short, the governance model had been thought through by the Council and was designed to facilitate the development of the tram project and the integration of tram and bus operations.
320. As noted above, the roles and responsibilities of the key bodies involved in the delivery of the tram project were set out by the Council and individual Board members understood their roles.
321. As far back as June 2005 it was Council policy to encourage a degree of overlap in the membership of the Boards. Part of the rationale for this was to prepare for the integration of tram and bus operations while the tramline was being built. For example, consideration had to be given to route planning, ticketing policy, IT systems, management and operational arrangements and the like. I don't recall any concerns being raised at the time that the membership arrangements were adversely affecting the independence and objectivity of Board members.

322. As the tram project progressed and problems arose the “control” arrangements came under strain. While TIE was responsible for the delivery of the tram, the Council was accountable as far as the public were concerned. As noted earlier in this statement, difficulties arose in terms of what could be accurately reported to Council; what would be reported in public; and what steps the Council could take to improve project delivery performance. Increasingly, and throughout 2010 in particular, having TIE operate at “arms-length” and with a significant degree of independent working was called into question.
323. TIE was the organisation charged with procuring and delivering the tram project. Its governance reporting line was through TPB and TEL.
324. I note that on 20 July 2007, Jim Inch prepared a Briefing Paper for me entitled *“TIE – Governance Arrangements”* (CEC01566497). The paper noted that (i) *“it is now vital that more rigorous financial and governance controls are put in place by the Council given the funding cap that has been placed on the project and the greater financial risks that are borne by the Council”* (para 4.1); (ii) *the current governance controls were “complex”* (para 3.1); (iii) combining the roles of Chair and Chief Executive of TIE was seen as a stopgap measure (which had been in place for nearly two years) and was contrary to one of the main thrusts of the Cadbury Code, namely, the separation of the roles of Chief Executive and Chair (page 3); (iv) there was no service contract for Neil Renilson as Chief Executive of TEL (page 3); (v) while the Director of City Development was CEC’s Company Monitoring Officer for TIE, in terms of corporate governance it could be suggested that the roles of Company Monitoring Officer and Director of City Development should be separated (page 5); (vi) *“TEL is envisaged as TIE’s monitor. However the fact of not having any money of its own and being paid by TIE undermines TEL’s position”* (page 5); (vii) the TPB *“is not a legal entity”, “there is doubt as to whether the Council can competently delegate its powers to the TPB”* and the TPB *“which sits outside TEL and TIE in fact has no control over, or makes the decisions”* (page 6) and (viii) three options were identified to achieve these enhanced controls, including (a) winding up TIE and bringing

the relevant and necessary staff into the employment of the Council; (b) TIE continues to progress the project on the basis of a fully documented principal/agent agreement with the Council and (c) the Council to set up a tram committee, to replace the TPB and essentially performing the current TPB functions. These matters would require to be considered and discussed *“at the very highest levels within the Council”* (page 8). By way of general background a number of points can be made. Firstly, Mr. Gallagher was appointed Executive Chairman of TIE in the summer of 2006 and so it is incorrect to state that in July 2007 he had been combining two roles for two years. When the Council endorsed Mr. Gallagher’s appointment as interim Executive Chairman I pointed out my preference for an organisational structure which separated the roles of Chief Executive and Chairman. It was the circumstances in play at the time (eg the finalisation of the Business Case) that led me and the Council to take a pragmatic approach and to support Mr Gallagher’s appointment as Executive Chairman for an interim period.

325. Mr Inch’s report was in response to my request to him to review a number of governance issues which were current at the time. In the summer of 2007 it was anticipated that the final Business Case would be presented to the Council by the end of the year and that, following a positive decision by the Council to proceed with the tram project, financial close would follow. So it was important to ensure that the governance arrangements were ready to be implemented. For example, Operating Agreements were being prepared and clarifying the delegated authority of the TPB was work in progress.
326. Discussion concerning the governance arrangements took place amongst senior colleagues within the Council, would likely have been discussed at the IPG and would have been raised with elected members. Matters for decision by elected members were referred to the Council. For example, in December 2007 the Council took decisions relating to the delegation of powers to the TPB and the designation of a senior officer in City Development as Tram Monitoring Officer. A Tram Sub-Committee was also established as part of the revised governance arrangements.

305. I note the Discussion Paper dated November 2008, “*Governance Performance and Restructuring Options*” (CEC01162045). It appears to be drafted by Graeme Bissett. It noted that “*Essentially, there is one company too many. TEL was created in 2004 to coalesce the tram project with [Lothian Buses] at a time when relationships were poor*” (p2). I note an email dated 23 January 2009 (CEC01041668) noted that at the Audit Committee, Deloitte, as part of their analysis work, also looked at potential governance weaknesses as well as major streamlining opportunities. As just noted, the governance arrangements evolved and changed over time. Broadly, three phases can perhaps be identified; the period up to Royal Assent; from Royal Assent to Contract Close; and from Contract Close (May 2008) onwards. Governance arrangements evolved to reflect changing circumstances. I think this helps to put Graeme Bissett’s comments into context. He was not saying the governance arrangements were not working well; rather, he was trying to build upon existing arrangements and improve things where necessary.
306. I was not aware of the work carried out for TIE by Deloitte’s until the Inquiry drew my attention to it. The conclusion that there was one company too many was reasonable and the Council tried to address this. Following a review of the options it was concluded that the ownership of TIE’s shares should be transferred to TEL to begin the process of forming one single company.
307. Work on the merger of the two companies progressed but progress was slow. This was due to the range and complexity of the issues involved and the need to prioritise staff activity on other matters as the tram project encountered difficulties. My own views changed over time and before leaving the Council I envisaged an enhanced role for Lothian Buses in running an integrated public transport service in Edinburgh.
308. A note was produced to capture the points of principle discussed and agreed at a meeting on 28 July 2009 between myself, David Anderson, Donald McGougan and representatives from TIE (CEC00825672). The changes to the governance structure took place around that time and are set out in the reports to the Council in August 2009 and the Policy and Strategy Committee

in September 2009. The main change was the transfer of the Council's shares from TIE to TEL. This was accompanied by changes in relation to the composition of the Boards of TIE and TEL. The oversight of remuneration arrangements was also changed, with proposals needing the approval of the Chief Executive rather than the TMO.

The City of Edinburgh Council

Council officers

309. The Director of City Development had prime responsibility for overseeing the delivery of the tram project. He was the designated Senior Responsible Officer. The Head of Transport was the designated Tram Monitoring Officer. The Director of Finance was responsible for the authorisation of payments to TIE, for professional advice to the Council and commentary on the financial aspects of the tram project. The Council Solicitor (later the Head of Legal Services and Administration) was responsible for advice on legal and contractual matters and the preparation of Operating Agreements.
310. I chaired the Council's Internal Planning Group. The IPG was originally established to ensure internal co-operation within the Council in their dealings with TIE. It later developed a wider role in terms of information sharing, project oversight, communications and identification of key work strands etc.
311. I note the views of Mark Turley as set out in his e-mails dated 12 May 2010 (**CEC00236984**) and 15 June 2010 (**CEC00241274**) in relation to the remit of the IPG. I recall that Mark raised his views with me ie that the terms of reference of the original remit of the IPG required to be reviewed. I encouraged him to give some thought to that. He was correct in saying that the IPG couldn't take on the executive responsibility for the tram as that would have confused lines of accountability.

312. The role, remit and responsibilities of the TMO are set out in the Operating Agreements. The TMO was responsible for insurances, claims management, remuneration, communication protocols etc. It was originally envisaged that the TMO would be a primary point of contact between the Council and TIE.

Council members

313. In terms of how members (including the Council Leader, the Finance and Transport Convenors, Group Leaders and individual members) were advised of developments in relation to the tram project, I would regularly brief the Council Leader, often at our scheduled weekly meetings. There were further meetings where the sole focus was on the tram. These increased in frequency in 2010. The Director of Finance would brief the Executive member for Finance and the Director of City Development would brief the Executive member for Transport. Opposition spokespersons were also briefed. That was a well understood arrangement in the Council. When tram reports were submitted to Council, political groups were briefed in the run up to the meeting. This provided an opportunity to question officers on the reports and allowed political groups to consider what line to take at Council in relation to the recommendations in the report. By this I mean whether to support the recommendations in reports, in whole or in part, and/or whether to propose notices of motion or amendments instructing Council officers to report further on additional matters.
314. A determined effort was made to try and keep elected members informed about progress on the tram project. This happened not only when reports were submitted to Council but on an on-going basis. At times this activity became very intense. In the last quarter of 2010 activity was focussed on finding a way to resolve the dispute between TIE and BBS and many meetings took place between Council officers, individual elected members and political groups.
315. Members, especially those in leadership positions, were briefed on significant developments and problems arising. Providing estimates of the cost of

completing the project was less straightforward, given the uncertainty which surrounded these estimates. The process by which TIE was working up cost estimates was discussed and wherever possible, emerging cost ranges were discussed with members.

316. The need for commercial confidentiality and how to balance this against public reporting requirements was a constant problem. Reporting in public on details, such as revised cost estimates being prepared by TIE or on legal advice which TIE was in receipt of, would have put TIE at a clear commercial disadvantage in its dealings with BBS. As I have said above, more information was made available to elected members in private briefings but I recognise that this was not the same as public reporting. Every effort was made by Council officers to ensure that members were kept informed and were enabled to take key decisions on the tram project. A key difficulty which was also faced by Council officers, was that the Council could be advised what was going wrong but finding solutions and a way forward was much harder to identify.
317. My report to Council on 20 September 2007 (**CEC02083455**) discussed revised governance arrangements and noted that a Tram Sub-Committee, being a sub-committee of the Council's Transport, Infrastructure and Environment Committee, had been established to review and oversee decisions with respect to the tram project. The tram sub-committee is a matter of some regret to me insofar as it was a genuine attempt to recognise the role of elected members in relation to the tram project delivery. For reasons that I've discussed, their role became difficult. From the spring of 2009 onwards, concerns surrounding the tram project were of such prominence within the City as a whole, and in the Council in particular, that there was an expectation that most or all members wanted to be involved in discussing and debating the issues. That meant that there was a requirement to direct the flow of reports to the full Council rather than the tram sub-committee.
318. It was initially proposed that the tram sub-committee should be presented with the minutes of the TPB. However, the TPB were discussing items of a highly

commercially sensitive nature. Putting those minutes to the tram sub-committee, in public, was not appropriate. This is one example of an issue where the need for commercial confidentiality impeded the work of the tram sub-committee.

319. I note the Tram Governance report dated 23 October 2008 prepared by Alan Coyle (CEC01053689). It noted certain gaps between the suggested governance structures and what was actually happening in practice. The action note of the meeting records the steps taken to address the points he raised and, as far as I am aware, those were followed up and did not impact adversely on the governance arrangements.

The Tram Project Board

320. The TPB was established in 2005 and was a key component in the governance structure for the tram project. I think it may have been a specific requirement set out by Transport Scotland. It was created as a high level project management body to oversee delivery of the tram project. The TPB was structured in line with best practice principles for project management and in line with OGC advice. Named individuals undertook specific roles and responsibilities (eg Senior Responsible Officer, "Senior User Representative").
321. The role and remit of the TPB is set out in the Financial Close documents. In summary, the key features were: to oversee the execution of all matters relevant to the delivery of an integrated Edinburgh tram and bus network; to appoint the Senior Responsible Officer and Tram Project Director; to receive reports from sub-committees established to oversee specific areas, as approved by the TPB; to ensure project work streams are executed according to robust programmes under the leadership of the Project Director; to approve the submission of funding requests and to recommend approval of funding terms to the TEL Board. TPB will also confirm to CEC compliance with all relevant aspects of the grant award letter; and, to ensure proper reporting

through the TPB Chairman to the TEL Board and to CEC (as appropriate) of decisions made.

322. In December 2007 the Council delegated general authority to the TPB for the tram project, working through TIE and TEL. The TPB reported formally to TEL. Over time there were changes, for example, to the TPB's sub-committee structure. As noted above, the TPB reflected good practice guidelines from the OGC, with a membership drawn from CEC (officers and elected member), Lothian Buses, TIE and TEL. I had no specific concerns over the individuals appointed, all of whom were experienced professionals with senior level backgrounds.
323. The role of the TPB is set out above and one of its responsibilities was "to ensure project work streams are executed according to robust programmes under the leadership of the Project Director". TIE was the organisation charged with delivery of the tram project, reporting to the Tram Project Board. But as the project ran into difficulties the TPB did increasingly operate in an executive capacity.
324. Once the tram project was delivered it was envisaged (until late 2010) that TEL would oversee the running of tram and bus operations in Edinburgh. Their primary role was to prepare for this, through work on route planning, ticketing etc. referred to earlier. The TEL Board was also responsible for the Operating Agreements with the Council.
325. I note the email dated 26 September 2007 (**CEC01561555**) where Colin Mackenzie expressed certain concerns relating to the lack of accountability of the TPB to CEC, that TIE were responsible for the delivery of the tram project (and were accountable to CEC) and that the proposal that the TPB set up various committees ran the risk of further weakening the accountability of TIE to CEC. I did not see Colin McKenzie's email at the time. It was reported to Council in August 2007 that the TPB was not itself a legal entity and had (at that time) no direct delegated authority from the Council. This was rectified in December 2007 when delegated authority was granted from the Council. In devising the governance structures the Council was trying to strike a balance

between ensuring that it would fulfil its oversight role for the project while also recognising that it had delegated authority to TIE (and the TPB) to deliver it. The responsibilities of the TPB to CEC prior to December 2007 were broadly as set out in my answer above. They did not change substantially on formal constitution.

326. I note the joint report to Council on 20 December 2007 by Andrew Holmes and Donald McGougan (**CEC02083448**) sought approval for the proposed new governance arrangements (as shown in appendix 1 of the report). The report explained that the TPB would be formally constituted as a committee of TEL (para 4.2). In June 2007 Audit Scotland stated that the *“Tram Project Board exercises overall governance of the project and has full delegated authority from CEC through TEL to take the actions needed to deliver the project”*. Looking back, I don’t think this was accurate. In the report to Council in December 2007 there is a reference to the fact that I had reported to the Council in August 2007 that the role of the TPB required to be formalised. The December 2007 report then went on to address this and the Council delegated authority to the TPB. In a later report to the Council, in May 2008, it is stated that the draft Operating Agreement had been amended to reflect the (then) fully up to date position and that *“provision has been made for the TPB to oversee all matters affecting the programme, cost and scope of the project”*. On 12 May 2008, in TIE’s report on the contract close documents, there is a reference to the Operating Agreements now being in final agreed form and that the *“TEL agreement sets out the specific authority delegated to it by the Council with acknowledgement that TEL will sub-delegate its authority to the TPB.”* All of this indicates that the TPB would have been formally constituted shortly after financial close and on the signing of the Operating Agreements.

TEL

327. TEL was created in 2004, at a time when the Council had ambitious plans for transport improvements in and around Edinburgh. The thinking was that an overarching organisation could be formed to take forward transport policy

development but with a strong operational and delivery aspect. That all changed after the road congestion charging referendum when TEL's role became much more specific and focused on the integration of tram and bus operations.

328. In terms of the role, remit and responsibilities of TEL, I refer to a report on Project Governance in August 2006 (**CEC01758865**). It states that *"the role of the TEL Board is focussed on statutory stewardship role and has overall responsibility to deliver an integrated network"*. It was generally understood that TEL's primary responsibility or role was public transport integration. (TIE's primary responsibility was getting the tram built). The powers formally delegated to TEL are set out in the TEL Operating Agreement which became operational after Financial Close in 2008 and which TEL was responsible for complying with. TEL formally reported to the Council and submitted an annual Business Plan.
329. The Council had control of TEL via appointments to the Board, whose membership included elected members. The non-Council members on the Board were drawn primarily from the private sector. Appointments to the Board reflected the Council's wish to have a range of complementary skills in the Board membership. For example, there were individuals with heavy rail experience, light rail experience, public policy experience and so on. I had no concerns over the qualities and experience of the individual Board members. Neil Renilson, for example, the Chief Executive of Lothian Buses, was a nationally recognised figure with extensive experience in the public transport field.
330. Lothian Buses questioned whether a body such as TEL was needed to implement tram and bus operations in the city. Given their size, market share and reputation within Edinburgh they believed that they could undertake the role of integrated transport operator. This became a prominent issue in and around the last few months of 2010. Lothian Buses, and the Trade Unions representing their staff, were concerned about their futures and wanted as

much clarity as possible. I personally went to meet the Board of Lothian Buses on two occasions in an attempt to clarify Council policy.

331. As noted above, TEL had been created at a time when the Council had ambitious plans for transport provision in Edinburgh and beyond. By 2009-10 the rationale for TEL was increasingly coming into question and I had come to the view that Lothian Buses could fulfil the role of integrating public transport provision in the city.
332. By letter dated 18 March 2009 (CEC01002539) David Mackay advised me of the number of TIE staff and their competencies and capabilities to manage a £500m capital project. I note that that email mentions an email dated 16 March 2009 from Evelyn Mackenzie (CEC01002490). I have already commented on this earlier in my statement. This came about following an SNP councillor asking Councillor Cardownie "*what professional qualifications do the staff in TIE have*". This was the reply that was sent to him.

Transport Scotland

333. Following the formation of an SNP administration in May 2007, and the vote in the Scottish Parliament in June 2007, TS's role in the governance of the project changed and they withdrew from participation in the TPB. Although TS withdrew from the governance arrangements for the tram project, regular contact was maintained with them, given their role as funder. There were regular meetings between staff from City Development, Finance and TS, often at Director level from the Council. As project difficulties increased issues were raised and shared with TS.
334. Had TS continued in the governance arrangements (given their experience of large transport projects) it might have been advantageous. But I have no reason to think that their withdrawal from the governance structures led to less scrutiny of information provided by TIE.

PARTNERSHIPS UK

335. Partnerships UK was a national advisory body consulted by the Council on the procurement strategy to be followed in relation to the tram project. As far as I am aware their advice was followed and implemented. For example, Partnerships UK was supportive of the idea of having a two company model ie TIE to oversee the tram construction and TEL to operate the trams. As an arm of Government, Partnerships UK was an important and influential body.

OGC Reviews

336. In May 2006 an OGC Readiness Review was carried out of the tram project and a report of the review was delivered to the Chief Executive of TIE on 25 May 2006 (CEC01793454). The overall status of the project was assessed as "Red" (i.e. *"To achieve success the project should take action immediately"*). I did not see a copy of that report. A second OGC report was carried out in September 2006 (CEC01629382) which resulted in an "Amber" rating. I did not see that report either, although I was aware that it had been undertaken.
337. I note that the Office of Government Commerce produced a *"Project Risk Review"* on 15 October 2007 (CEC01496784). This review came in addressed to me on 15 October. There were two documents. There was one in early October (which was OGC3). Following that TIE asked for some follow-up work to be done. I think the paper entitled *"Project Risk Review"* is the follow-up report? I recall attending a presentation given by an OGC representative in October 2007. I was encouraged by the OGC3 report which, taken together with the review undertaken by Audit Scotland a few months earlier, gave a re-assurance that the project was being developed and managed professionally and had achieved a "Green" rating. The OGC3 report did point out that there was work to be done before financial close and this was followed up by TIE and the Council.

Consequences

338. There was significant disruption to residents and businesses arising from the tram project and this was exacerbated by the significant delays which occurred. Businesses in the City Centre and areas such as Leith Walk were particularly affected. A number of initiatives were undertaken by the Council in response to this. Communication with the public and businesses was stepped up, albeit the news was often that delays would last longer than originally anticipated. With businesses a number of measures were implemented. These included trying to minimise works in the city centre during the Festival and over the Christmas period; amending parking charges in the city centre at Christmas to encourage shoppers to visit; and putting in place measures to adjust the business rates paid by small businesses in particular. A number of early morning meetings were held with business representatives to allow direct communication and to give businesses an opportunity to raise concerns with the Council and TIE. An added difficulty for businesses was that the country was moving into recession from 2008 onwards at the same time as delays were beginning on the tram project, creating a double blow for retail businesses in particular.
339. The damage to the Council's reputation from the tram project was also significant and public trust and confidence was undoubtedly adversely affected. The truncation of the line at York Place rather than Ocean Terminal also means that the regeneration of Leith has not proceeded as originally planned. And, given that the Council borrowed to ensure that the line to York Place was completed, this will have led to an increase in debt servicing charges and possible knock-on effects on other programmes at a time when public finances are tightly constrained.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 110 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..... 15/12/16.....

