

Edinburgh Tram Inquiry Office Use Only

Witness Name: Ewan Ritchie Aitken

Dated: 27/6/17

THE EDINBURGH TRAM INQUIRY

Witness Statement of Ewan Ritchie Aitken.

Statement taken by Alistair Turnbull.

Introduction

1. My full name is Ewan Ritchie Aitken. I am aged 55. My contact details are known to the Inquiry. My curriculum vita (**CVS00000025**) has been submitted to the Inquiry.
2. My current occupation is Chief Executive Officer of Cyrenians. I was an elected Labour Group member from 1999 to 2012. During this time I was Convenor of the Social Justice Scrutiny Panel, Convenor of Education and the COSLA (Convention of Scottish Local Authorities) spokesperson on Education. I was the City of Edinburgh Council Leader from 2006 to 2007 and Labour Group Leader from 2006 to 2008. I was also a member of various committees in that period then I was opposition spokesperson on the voluntary sector from 2008 to 2012. During this time I had involvement in the Edinburgh Tram.

Duties and Responsibilities

3. At no time was I ever a member of the Tram Project Board (TPB), Transport Initiatives Edinburgh Limited (TIE) or Transport Edinburgh Limited (TEL). When I was Council Leader (2006/7) there were a number of key things passed, including the draft Business Case in December 2006. During that period, I was briefed in detail both by Council officers and by Willie Gallagher,

the CEO of TIE. I had to make sure the Business Case proposal that went through in December 2006 had the rigor that was required and I had to make sure it could get through the Council.

4. The question of whether or not I or any Councillors had the relevant qualifications or experience when taking decisions relating to the Edinburgh Tram Project is interesting. I do not think Councillors are elected to be project managers and, therefore, whether or not I had a degree in civil engineering was not the key issue. All that mattered was my ability to assess information, enquire, interrogate, ask for further information and make sure I understood it. In that regard I believe that I and my colleagues had good knowledge or the correct skillset to do that.
5. It is always helpful to have guidance or training but I do not think we regarded the skills required as Councillors to do this, to be different to the skills required to do many things. Councillors regularly had to make those kinds of decisions about capital infrastructure and we received training and support.
6. There was always training available for Councillors. There were courses available on decision making and assessing complex information. None of it was compulsory but I certainly attended some. There was a wealth of experience from officers and elected members round the tables when the trams project was being discussed and we were used to making decisions about large complex projects. I do not think we regarded the skills that we would require to be any different to that required for other decisions. We knew it was a different infrastructure project but I think we felt we had the information we required.
7. I believe there were two perspectives to the fact that not all members/political parties supported the tram project. Firstly, it is inevitable there will be differences of opinions on a Council, or any other elected body, so the differences themselves are not a problem. It is about how you manage them. When we (the Labour Group) were in power and had a majority to take things

through then, while we obviously needed to listen to other peoples' views, we were able to get the things passed that needed to be passed.

8. Secondly, and this was where the difficulty arose, there was the creation of a coalition, where one-half was against the trams and one-half was for them. Things became more complicated because it required a level of collaboration from the part of the coalition who were in favour of the trams, along with groups other than their coalition partners. That did not happen and it became a significant issue because of the difficulty the contractors then had with their confidence in the key decision-making body. If the partnerships are not solid with clear direction and leadership, the contractors are going to be nervous. The difference of opinion amongst political parties was not necessarily a problem but I saw the the weakness of leadership from the coalition administration, becoming a problem.

Initial Proposals (2000 to 2006)

9. The creation of TIE was a Council decision but, as I understand, it was at the request of the Scottish Executive. It was one of their requirements for us to get the resources that we would require. The primary drivers were the creating of additional capacity and the business model suggested that TIE would deliver a number of transport projects. This was to include the Stirling/Alloa/Kinross/Kinross Railway and the Borders Railway. That would generate income and draw on board the people you require to deliver such projects. An integrated approach that would create experience and there was a rationale for that. Councils themselves do not regularly have the levels of knowledge required to build major infrastructure projects. Councils do not build schools, they ask people to build schools for us.
10. My view on the creation of TIE is that I thought it would give coherence. You could integrate these things in a number of ways and it would create capacity and experience so from that viewpoint there was reasonable rationale. When you create arms-length bodies there are always tensions, because politicians

continue to be held to account for decisions they delegate to bodies with separate governance. In particular, when you delegate something that is, essentially, a wholly owned business there remains a tension between political and organisational lines of accountability.

11. There are challenges because politicians want things done and if there are differing views with the other governance structure then there will be a challenge. In Edinburgh Leisure there were tensions between Edinburgh Leisure and the Council. In Lothian Buses there were tensions because politicians want one thing done to meet to desires of their voters but have to compete with the demands of commercial decision-making and legislative limitations that surround those decisions. You cannot avoid tensions, what is key though is how you manage those tensions. Early on was okay as we were learning and appointing. However, when TIEs delivery reduced and there were more and more challenges, the relationship broke down and concerns really grew. I would say, however, that when it was first set up, TIE did have logic that made sense.

12. I am aware that various draft Business Cases and a Scottish Transport Appraisal Guidance (STAG) Appraisal were produced between 2002 and 2006 for the Tram Project. My view here is that asking different people their opinions on the same matter was going to get different opinions from different perspectives. These are iterative processes of understanding the project. You will never get everything right and everything accurate in the first assessment of a project of this nature. What was important was whether or not anything was being flagged up to say the project was not deliverable, and that was not the case. The draft cases were saying "*To deliver this, you will need to do these things and these are the costs, risks and opportunities*". You go through the process of assessing the information, you ask what changes can be made and it is an iterative process. Then you come down to the costs and decide if you are going for it.

13. I am aware of the email (**CEC02082850**) Alison Bourne, a member of the public, sent to every Councillor on 10 December 2003. This highlighted estimated tram costs in the report to Council members to be £473.4 million, yet they were £566.7 million in the STAG 2 and Financial Statement. Members of the public regularly raised issues like this; they read the information and wanted to ask questions about it. We would regularly ask Council officers to answer such emails. Given that it was 14 years ago, I could not specifically say what I did with this particular one. Andrew Burns spent a lot of time providing us with information in response to those kinds of questions so we could reply.
14. This kind of email would not cause me concern but they were a challenge. We needed to be sure of the basis of the estimates and we would have done that. We went through the estimates when it came to passing. You had to as those were the estimates that mattered.
15. In relation to the income from road charging there was no doubt that the defeat of the road pricing proposals meant we were in a very different place. We had to sit down and work hard to identify what was deliverable. Road pricing would have made things very different and we really had to go back to square one. We knew that building a tram network was a very good thing for the city. We needed to create new transport options, reduce the number of short journeys and get more people using public transport that did not use it at all. We also knew the positive effect trams had on other cities. However, we had to start again in terms of building a Business Case. There were a lot of discussions and presentations about whether or not we could deliver the trams without the income from road pricing. The conclusion was that we could but with a radically different Business Case.
16. The Business Case was built on what income was going to be available. How much could we borrow, how much could we get from the Scottish Government and how much could we get from developer contributions. One of the rationales was to help the development of building within Forth Ports. There

was to be 15,000 new houses built and there would be significant development contributions there. The evidence for trams in other cities showed you could attract more businesses to the lines and, therefore, create the opportunity for greater business rates. This gave us an opportunity for income that we could predicate business rate a business rate on. There were also a number of things we could set up in terms of capital receipts and we hoped to make a proposition for that. There was a business case built on all these potential incomes and income streams. It was complex and it was varied but it stacked up. The structure was never going to be as big as we would have had with road pricing but it was deliverable.

17. The reason the tram network was built in phases was a reflection on the new income streams and not having the road pricing. We knew west Edinburgh, towards Gogarburn, and Forth Ports were two areas there would be an increase in housing. *'Airport to Seaport'* does sound great but the really important bit was the the creation of infrastructure connectivity for the housing that was going to be built rather than the linking of transport hubs.
18. We needed to create the infrastructure first, the basic planning, so that when those houses came on-stream, there was an alternative to the car. The city cannot cope with everybody using their cars all the time. If you are going to build the numbers of houses we were intending to build at that time, we needed an infrastructure that the houses were built round and people knew they would have this real alternative transport. That was the rationale.
19. Another reason the tram network was built in phases was because we could not build everything we wanted to build in the first instance because we did not have the roads pricing income. We had to show the Business Case, the evidence of the income, and then build it. We had conversations about a significant network to be built but it needed a spine to start from. That was what the phasing was about.

20. I have seen the Office of Government Commerce (OGC) Tram Project Readiness Review (**CEC01793454**, page 4) that was delivered to the Chief Executive of TIE on 25 May 2006 and acknowledge the overall status of the project was assessed as 'Red' (to achieve success the project should take action immediately). The report was slightly before I was Leader so I did not have a direct briefing, as I would have, had I been Leader. I know concerns had been raised about the procurement process and things needed to be put in place to get to December 2006 when we passed the draft Business Case. In October 2007 it then went through the Council having gone through the tender process and got to preferred bidder. Having seen the report now, I know the questions we (Councillors) were being asked and the responses we were getting. I feel the action we took was seen to be right because the project would not have been endorsed had we not put those things in place.
21. I note the papers for the Internal Planning Group (IPG) meeting dated 26 October 2006, 23 November 2006 (**CEC01565480**, page 15/25) and 17 April 2007 (**CEC01565477**, page 7/30) and the reference to my appearance in a Tram DVD (**CEC01565482**, page 6/32) and stakeholder dinners. I did appear in the DVD and spoke at dinners. I did various communication work which was the right and proper thing to do, as Leader of the Council. Our task as Councillors was to be the leaders and to communicate with confidence about the project. What we were communicating was that the delivery of the project would be very complex, very challenging and asking a great deal of the city. What I was trying to communicate was that it was worth the challenge, and I did that on many occasions.
22. I knew we were continually revisiting the design work but it was my understanding that was part of the iterative process of designing something. It was going to challenge a significant number of people and you needed to pay attention to that. Just because somebody did not get the design right the first time, did not mean it was all a disaster. I knew we had to talk to people about utilities and sort the MUDFA contracts coming through. We were also promoting the Edinburgh Airport Rail Link (EARL), which was a key part of the

overall package, so my primary task was to create confidence in people that these projects were the right thing to do. I trusted Willie Gallagher's judgement. When people questioned where we were I would talk to Willie about it and he would explain where they (TIE) were and deal with it. I needed to provide people with the leadership and the confidence that the project was deliverable.

23. I was not aware that poor performance by Parsons Brinckerhoff (PB) was an issue. What was portrayed to me was that there were challenges with the design because we had to manage a huge number of different demands. That meant TIE and CEC were not getting things as quickly or in the way they would have wanted. It is perhaps better to say PB were struggling to meet the many views people had on what the design should look like.
24. My view that the tram was in principle the right thing has never changed. My understanding of what it was going to take to do it deepened and I became more and more aware of the complexities we had to deal with, but that is not the same as saying I did not think we should do it.
25. As Councillors we had a lot of input into the Procurement Strategy in the sense that we were indicating what we would want to happen. We had no input into operational decisions about how to make it happen but we certainly understood that the utility diversions needed to be complete before the infrastructure went in but that you did not have to do all utilities around the city before you started the infrastructure. So you could start and build in phases, as each section of utility diversion was completed.
26. The business about infrastructure being a fixed price contract was very definitely the way it was described. We understood there was two elements that would have variance even within the idea of a fixed price contract in this case 95% fixed with 5% variance. You will never build something of this size and built exactly what you started out to do. You simply do not know what you are going to find as you go along and all the theoretical modelling you do

when it hits the ground will face new questions. I certainly understood it to be about 5% variance. I also know there was a great deal of debate surrounding risk management and risk transfer and how that would be dealt with in regard of what would constitute variance. I speak about that later.

27. I do believe Councillors had sufficient input into the strategy. We also needed to distinguish between strategy and operational decision-making.
28. I note the email sent on 4 December 2006 (**TRS00003170**) on behalf on the Minister for Transport (Tavish Scott) that refers to my request for additional funding for the trams project. We (the Councillors) knew the pressures were increasing and I was to take the paper to the Council to get a decision on 21 December 2006. The more certain money we had to spend, the less we would be dependent on other income. This would give more comfort and less pressure on capital receipts. I therefore argued that the tram would enhance the infrastructure of not just Edinburgh as a city within Scotland, but as a gateway to Britain. I recall that a significant number of people who arrive not just in Scotland but in Britain start their UK journey in Edinburgh so we were promoting bringing people in across the country and making it better for everybody. I argued the case that this was not just a city infrastructure but a national infrastructure. However, the most significant thing here is that we did not get the money. I think we were too close to the election.

Events between May 2007 and May 2008

29. The results of the local government elections in May 2007 were crucial to the tram project. The question was how to manage an entire administration in a coalition with significant differences in policy and experience where you were dependent on trust in each other? At that point the trams were the biggest project that needed to be delivered. The Lib Dem Group made a choice to go into partnership with the SNP, who were against the trams. The SNP were very clear about that and although their position shifted later on, at that time, they were against the trams.

30. This returns to my point about the key moments of decision-making. People need to be confident that those making leadership decisions were able to make them clearly and effectively and get them agreed at the Council meetings. The new administration were going to be making political choices and have to be working in collaboration with other parties when they could not depend on their coalition party. They chose not to do that which meant that on several occasions we went into Council meetings for key decisions, without certainty, and sometimes finding the outcome was the complete opposite of what we wanted. If you create that circumstance by the choices that you make, you fundamentally change the relationship between the client and the contractors.

31. Bilfinger Berger were looking at projects all over the world, trying to minimise their risk after the crash had happened. There are huge challenges literally across the world and they see this major project in Edinburgh. A project which needed to be delivered with the required leadership, on behalf of the client. As a result of the election we no longer had the clarity we were used to and there was more nervousness with the overall project increasing risk came for the contractor. The impact of all that, I believe, was fundamental to the problems that we faced.

32. Moving on to the £500 million capped funding the SNP government announced the Tram Project would receive from Transport Scotland. It was the first time the SNP had been in power and this was their first big challenge. They were in a cleft stick, on one hand they were against the tram and on the other hand they were the party in government not wanting to act in a manner that would be perceived as a political point score. They found what they believed to be a compromise, by getting an Audit Scotland report. The motion was passed by the Parliament and said that the Scottish Government will not cancel the Edinburgh tram project arbitrarily.

33. The Audit Scotland report said, at that point, that the Tram Project was on time and on budget. On that basis the SNP approved continuation and funding but capped it to limit the exposure of the Government. The biggest problem was that Transport Scotland was removed to limit, I believe, the exposure the Scottish government faced to any problems the project experienced. This made things more difficult because Transport Scotland could have brought real and independent expertise that still understood the public sector. We were not able to replace that Transport Scotland relationship with another source of expertise with similar skill sets, which, I believe, made things more complicated and complex. They were a resource that was crucial to the whole process. I was not surprised when they were put back on the project in 2011.
34. The steps taken by CEC to cope with the capping of the grant were to look at the additional capital receipts we required. This was all in the context of land values dropping and we were uncertain of what we would get.
35. I note the reference to the Council meeting on 23 August 2007 (CEC01891408 page 65/72) and the question to the Executive member for Transport and Infrastructure about how much of the Council's contribution of £45 million is expected to come from developer contributions. I did not ask the question, it was Councillor Iain Whyte.
36. The Council's approval for the Final Business Case for the Tram Project was sought in October and December 2007. Councillor Henderson led for us on this and we went through it in real detail asking questions about income streams, capital receipts, risk levels and management. The answers we got gave us the confidence required to take it through the Council. As Leader I would not have let that happen, if I was not confident with all the answers. I believed, at the time, that the information I had was enough to make the judgement call.
37. I knew there had been negotiations with pre-qualifying bidders and at least some of the information we were getting about the figures related to those

conversations. Obviously we could not be part of them, but we were receiving assurances about the deliverability and cost frame and that there were bidders interested in making it happen. That is one of the key elements of knowing whether or not something has potential. I knew there was a considerable amount of work to be done before Final Close, but that is not unexpected on major infrastructure work. I certainly believed there was sufficient information for the business case to hold up.

38. I note that the Final Business Case advised of a separate report being prepared for the Council to set out the result of the tender evaluation and give recommendations as to the preferred bidder for each contract. I looked for that separate report and could not find it. It was not in my set of reports so I am only able to recall in the broadest terms. What we were looking for was a combination of the best value and experience and that appeared to be what was being offered.
39. I have little recollection on the Infracore bids being based on preliminary design. I did know there was the potential for increased costs when you have detailed designs. My view is that even if we had thought we had every design down to the last pack, there would still have been variations, and a contingency for variations. However, I cannot recall whether or not the design was described to me as preliminary.
40. I cannot recall, in detail, the level of completion for design and utility works in late 2007. However, I knew that, as you go through the process, the iterations that are required in design have the potential to add cost. The bidder could say they will do the design for a price but if you then ask to change the design, even a bit, they cannot change it for the same price. An increase in price follows, and there is then risk. This refers back to the 5% variance and the contingencies.
41. The plan with the utility diversion works was to get everything into one place up on the side of the roads so we always knew where it was. I cannot be sure

exactly when, but I did discover that had not happened. However, I continued to be reassured by TIE, particularly through Willie Gallagher, that the cost and risk could be met with the money we had. I was still Labour Group Leader at that time and I was meeting Willie Gallagher on a reasonably regular basis to ask questions.

42. The Infrastructure Contract was much the same, and I understand the difference between fixed costs and fixed price and the requirement to have variations with that. I believed we were beginning to manage the variations within the price that we had, which was a key part of our decision to progress. I am not sure if it was the most important part, because there were many, but it was about managing the information and risk that was being taken.
43. I knew how much allowance for risk there was for TIE and CEC and the contingencies. I was reassured that the costs estimated for the levels of variation that was believed would occur could be met within the contingencies we had built into the budget.
44. In the lead up to contract closure, in 2008, there were various increases in the price of the infrastructure contract. I understood the utility diversions were more complex than people had realised, or believed, and that design challenges were certainly one of the reasons for those increases. I believe the increases were also partly down to other modelling and the response to consultation.
45. I note the minutes of the Policy and Strategy Meeting dated 13 May 2008 (**CEC01891564**) and the references to the Convenor (Councillor Dawe) and Vice-Convenor (Councillor Cardownie) appointments. As I understand these were reappointments on that date rather than first appointments. The Policy and Strategy Committee was a new piece of governance created by the incoming coalition and they created the Standing Orders so you would need to ask them about the reasons. However, as I understand it, this was simply a requirement of the Standing Orders for them to be reappointed to those roles.

If Council did not appoint them directly it was not unusual to reappoint Convenor and Vice-Convenor roles at the first meeting of a new committee cycle.

46. I recall Tom Aitchison was at that meeting and submitted a report to the Policy and Strategy Committee (**USB00000357**) advising that the estimated capital cost for Phase 1a had increased to £512 million and, in return, TIE had secured a range of improvements to the contract terms and risk profiles (paragraphs 2.7, 2.9 and 2.11). This is an example of the difficulties you have when doing commercial negotiations with an elected member decision body. We (CEC) were ultimately financially responsible for the project and had to be part of it, but if you have to wait for a committee every time you want to make a decision, you are in a difficulty.
47. The concern was that to continue to delay may have increased the price further, so we (CEC) needed to reach a decision. My understanding was that we were informed that as a result of increasing the overall price, there had been a transfer of risk. So if we paid more, and there were changes, they (the contractors) would meet those costs. That was certainly the basis of the conversations I had with Willie Gallagher to make sure that we got to that point. I am not sure going to the full Council would have changed the outcome in terms of the vote. Representatives of all the political parties and other key people were aware, and it was public, so it was equally transparent.
48. Members of the Policy and Strategy Committee (Councillors) were briefed before all meetings in relation to the tram project. I know we did have briefings with spokespeople and group leaders, from officers and from TIE in the form of Willie Gallagher and others. I cannot say for certain whether the Tram Sub-Committee had started but we certainly had members on the TIE Board so we knew from them where we had got to. We certainly had lots of briefings. We (Councillors) would receive written and oral briefings from our representatives on TIE and from Council officers.

49. I cannot recall the details of the improvements that were made to the contract but, what seemed to be a significant achievement by TIE, was that the additional payments bought them (TIE) transfer of risk. Therefore, Bilfinger Berger (BB) would meet the consequences of further design change, or moving utilities . To me, that seemed a helpful approach and we were getting more for our money. Risk is fundamental to all these things and this was a direct response to the management of risk.
50. I cannot remember how long the Policy and Strategy Meeting (CEC01891564) was, but I do recall there were two other presentations. These were not on tram issues. They would have centered responses. There was also a division on an issue of immigration; it was an amendment I proposed which was rejected by the administration. However, I am certain the tram proposal was subject to a proper discussion because that was what happened with the Tram Project.
51. I have no recollection of the Infracore Pricing Schedule (Schedule 4) (USB00000032, page 5/55) being mentioned or discussed at the meeting on 13 May 2008. I have seen the document and I know what it is about, but I do not know whether it was mentioned at that meeting.
52. I am aware that the certified extract of minute from the Policy and Strategy Meeting of 13 May 2008 (CEC01222172) notes that the committee authorised the Chief Executive to instruct TIE to enter into the contracts. This was certainly giving authority to TIE to attend to the contracts, that is clearly the case. However, it is not the normal process so the Council were approving the conclusion of the contract. It was debated regularly thereafter so I am not sure we can say anything was being "signed off". I do note the Tram Project Board Report dated 4 June 2008 (CEC00080738, page 9) also refers to the Policy and Strategy Meeting of 13 May 2008 but that does not help, it only shows what has already been described. I would say we were approving the signature that would be true. The Policy and Strategy Committee can act on behalf of the Council, and with the same authority.

53. My understanding on risks surrounding the infrastructure contract (Infraco), at the time, were that the increased price included the transfer of some risk and some more risk that related to design and utility diversions. We (Councillors) understood it was not completely transferred because that could never be the case. We believed there was more transfer than had previously been the case and that is one of the many reasons why the agreement was reached.
54. Again, the infrastructure contract was as fixed price as it could be, but you must have contingencies because things might happen. In as much as there were risks that the contractor was taking, it was fixed for that and we believed we transferred more risk for that price. The procurement strategy had been met, which was to get somebody to deliver.
55. I am aware that work had been carried out to develop the Business Case for line 1b in October 2008 and that consideration was being given to a network of lines 1a and 1b at 29 April 2009. We knew the financial challenges that were being faced but we also knew that 1a and 1b would have a significant impact on the ability to deliver housing at Forth Ports and Leith. We knew that the city needed more housing and we knew that delivery of the trams would assist with that. The question was whether or not the contributions based on land values would hold up because of the crash. It was worth asking the question whether it could be delivered because, had it been delivered, we would be in a much better situation. We would have been a step closer to a network rather than a line. There was risk with that option and given that it was predicated on land values at the time of the crash although there is an argument that proceed with 1b would have mitigated land value reductions. There were huge challenges to overcome, and the administration decided they did not wish to proceed.
56. I note the minutes for the Transport, Infrastructure and Environment Committee meeting on 29 July 2008 (**CEC00455427**) refer to the Council welcoming the signing of a Concordat between the CEC and the utilities

companies in 2007. I signed that Concordat when I was Leader of the Council because it was my initiative. It was directly related to utility companies not carrying out repairs after digging up roads and pavements, particularly companies who were not required to ask for Council permission to dig them up. Broadband companies, for example, are not required to ask permission but some others do. That was what the Concordat was about and the fact it was welcomed may have been an attempt to use it for the trams. I do not think had any effect whatsoever as any impact was it intended to have to have had did not relate to tram works, nor were, to my recollection, any of the companies involved in the tram works, signatories to the Concordat.

The Dispute (May 2008 onwards)

57. Following on from the signing of the Infraco Contract in May 2008 we (Councillors) were given regular updates by senior Council officers and by TIE in relation to design, utility works and the infrastructure works. We also had representatives on TIE who would inform our group meetings and our executive meetings.

58. I am aware of the dispute that arose in respect of track laying works in Princes Street in February 2009. We (Councillors) understood this was about the business of price and design and who carried the risk. This seemed to be at the heart of the whole issue. Rapidly after the signing of the contract in May 2008, Bilfinger Berger came back asking for more money. I understood they argued the increase was because of changes in the prices of steel though that did appear to be a cover for their desire to mitigate their risk. The administration left this to officers to sort out. From there on relationships seemed to go down the tubes. Once Willie Gallagher was removed following political pressure from one half of the coalition administration, there was a complete lack of trust between TIE and the contractor and, as much as Richard Jeffrey tried to repair things, trust never seemed to be rebuilt. One might say the problems stemmed from certain operational issues, but it was actually all a manifestation of just how bad the relationship was between CEC,

TIE and the contractor and the lack of political leadership in understanding the primacy of good relationships in any contract .

59. I acknowledge the email Councillor Phil Wheeler sent to Council Leader Jenny Dawe on 27 February 2009 (**CEC00868427**) informing her about his meeting with Richard Walker of BSC and the email Mike Connelly of TIE sent to David Mackay on 11 March 2009 (**TIE00446933**) regarding his meeting with Margaret Smith MSP and Alison McInnes MSP. I did not know about the meeting Councillor Wheeler had with Jenny Dawe, we were not really kept in the loop on that. I do not think it was appropriate for Council Wheeler to be engaged in, what was essentially, negotiations. This appeared to be BBS attempting to influence elected members, which only created a lack of trust elsewhere.
60. It is entirely different for Mike Connelly of TIE, or frankly for BB, to meet with the MSPs, as they were a step away from direct decision-making. There was no direct relationship, so to influence them, I think, is a different thing, but I do not think it was wise for Councillor Wheeler to be in the position of negotiation.
61. My main concern from these emails is point 1 in the email from Mike Connelly to David McKay (**TIE00446933**). He says that, Richard Walker who is BB, *“admitted to both MSPs that he told a lie at his meeting with Jenny Dawe and Donald McGougan regarding the completeness of the contracts that BB had in place with its suppliers”*. It is an extraordinary thing for Richard Walker to admit to MSPs that he had lied regarding the completeness of the contracts and, if it is true, for him to have lied to Jenny Dawe. It also confirms my view that such direct meetings should not have taken place but also what other occasions similar lies were being told when briefing politicians or other partners.
62. I acknowledge the email Councillor Ian Whyte sent to Jenny Dawe, Phil Wheeler, Allan Jackson, Tom Aitchison and Donald McGougan on 10 December 2008 (**CEC01054035**) noting concerns about comments made by

David Mackay in relation to TIE never starting with a fixed budget. We knew David Mackay often said things when speaking about the project publicly that were open to interpretation, which in part, was one of the reasons for a continued negative relationship between the Council, TIE and the BSC consortium.

63. However, what he was saying, in essence, was not untrue because there are levels of cost, price and budget iteration. It was the description fixed budget that was the issue. He was talking about the understanding of the difference between fixed cost and fixed price, where all of the risk would always go to the contractor for design, but we knew the Picardy Place design was not final. This is the debate about what was meant by fixed price contract. In terms of communication, we (the Council) were aware design changes could mean additional cost, but we had measured the risks and believed we could do it within the total amount of money we already had committed.
64. It was never my understanding that it was a 'fixed price' in an absolute sense. We believed it could be achieved within a given total price envelope, including purchases beyond the initial cost which were to be made made for additional agreed prices within that total. This included elements that BB disputed, but which TIE and CEC believed they (TIE and CEC) would win in court. I remember a conversation with David Mackay when he told me TIE were confident they would win everything in court on the basis of the legal advice they had been given. This was at least in part, I understand, why he believed it could all be achieved within a final fixed price envelope. This legal advice, as I understood it, that came from three QCs who were in agreement that TIE could win. Later on however, a further two QCs were asked and gave opinions which disagreed with that view so the basis of Dave Mackay's confidence was on less solid ground. This was all over a period of time not just at one point.
65. The TIE strategy was basically to go to court. They seemed to go to conflict by default and believed they would have a series of wins in court that would drive down BB into acquiescence. I always thought that was wrong. As soon

as you go into court the trust between participants is gone and that is what happened. The reality is, in any contract, that you need the right kind of relationships between the key people. Political leadership was needed which we did not get. It required the coalition to be leading on this to be saying how they wanted it to be dealt with. They chose not to do that because as an administration they were divided and found it very difficult. That meant it was left to Council Officials and TIE who believed the courtroom was the place to win, which was wrong. I do not think that strategy was approved by the Council. It was reported we had gone to dispute at court and we were told TIE had won some and lost some and were going to continue. By that time it was too late even although we expressed different views. My view remains the same today, taking the dispute to court was the wrong thing to do.

66. In relation to the contract dispute resolutions procedures we (the Council) were given reports and briefings by TIE on what had happened. We were told how many disputes had been won and lost, although some of the ones that were lost were apparently only on a technicality, so were considered a win. It was not a good description of what we wanted to see. What was described to us was that BSC were doing the absolute minimum to maintain their contract, so they were not in breach of contract. I never believed the win/lose description of the relationship was conducive to getting the result you wanted.
67. The updates and outcomes came from David Mackay, Richard Jeffrey or sometimes from Council Officials. To begin with they seemed to be favourable towards TIE, which is why they argued their case, but after a while they stopped doing it because the decisions were clearly not in TIEs favour.
68. I note the Edinburgh Tram Network Update dated 30 April 2009 (CEC02083772) which referred to negotiations that led to a supplementary agreement for the Princes Street infrastructure works and subsequent Press Release (TRS00016944). We were not involved directly in those negotiations but there were regular updates to the TIE Board before it came to us (Councillors). The question as to whether or not Councillors were given

sufficient opportunity to consider and comment on the agreement is interesting. Was it actually something that we should consider and comment on? I think we should have been talking about the whole process not that specific agreement alone. There were also issues around commercial confidentiality and what we could be told, but I would say we were probably not given sufficient opportunity to consider and comment on the Princes Street Supplementary Agreement.

69. There were a number of issues that I understood to be the rationale behind the Princes Street Supplementary Agreement (**CEC00934643**). There was a view that we needed to communicate all the work that had been done, to show people we were getting a result. That result being the laying of tracks on Princes Street so, in one sense, it was about visibly communicating progress.
70. However, there were the underlying requirements to minimise disruption for both the Festival and Christmas, which were key to the city, and that is why the agreement was to work flat out to get it done. The retailers view was that they should work 24 hours a day to make it happen, to minimise disruption. From that point of view, there was a rationale for doing it given that we wanted tracks on Princes Street, and there were agreements for Gogar and Edinburgh Park as well.
71. I do not think the Princes Street Agreement paved the way for BSC to claim further costs in respect of other on-street works. It may have added to it, but I think the tipping point was the view they succeeded in getting from the QCs.
72. I note the minutes of the Council meeting on 30 April 2009 (**CEC01891440**, page 9/61) and the reference to severe concerns over the fiscal and political management of the project. It was also noted that the Tram Sub-Committee had not fulfilled their full functions. I would like to stress that I was not a member of the Tram Sub-Committee and it does concern me that the Inquiry thinks I was. What happened here was an example of the politics that went on. The SNP amendment to shut the trams down was lost. Then the SNP

voted for the motion to keep the trams going which was a direct contradiction of their amendment to shut it down. They did that because they needed to keep the coalition going.

73. The reference in the document (**CEC01891440**) to concerns over the fiscal and political management project was from our (Labour) amendment which did not pass. We (Labour Group) had huge concerns over the management. We (Labour Group) believed the governance was in a mess and that is why we were asking questions over the budgets. Even though we were strong supporters of the tram, we were questioning the financial situation and the contingency budgets. We knew the trust had been completely lost and that the Tram Sub-Committee had not been doing its job. They had not been meeting regularly at all. That is what this was about, a statement from the Labour Group declaring where we believed things were and asking some hard questions. There was no cross party co-operation and no political leadership. The voting I just talked about shows that (paragraph 72). An outsider looking in saw the political administrations provide opposing motions, then the one that lost suddenly votes for the one they opposed. There were people in the gallery, looking at the minutes and watching all that. It was not helpful and deeply frustrating.
74. As I have said I was not on the Tram Sub-Committee. The Tram Sub-Committee was set up in December 2007 so we would get cross party collaboration of information as it just had not happened previously. My view, even although I was not a member of the committee, was that the Tram Sub-Committee did not fulfil its functions.
75. I do not specifically recall receiving a briefing on the opinion offered by Richard Keen QC on the interpretation of the Infraco contract (**CEC00356397**). It is perfectly possible we did receive one as Councillors, because we received many briefings on QCs' opinions but I cannot recall that one from any of the others.

76. Richard Jeffrey said similar things in briefings, so it is no surprise to see them written down now that the opinion has been shown to me again. I think he genuinely wanted to repair the relationships but they had reached the point of no return. The processes that were being used by then were, frankly, why we ended up at Mar Hall. That was when Sue Bruce arrived and things became much better.
77. I note the reference to not being '*fully briefed*' on the adjudications because of the confidentiality. To be honest, we were briefed initially but once they began to lose the adjudications TIE stopped briefing us on the detail. Perhaps it was because of confidentiality and a breach of contract. I believe there was supposed to be a no disclosure agreement, so it may have dawned on TIE that they should not be briefing us in the way they had been. We did ask a lot about adjudication decisions in lots of different ways and I am pretty certain we kept asking for legal advice. Richard Jeffrey picked up the consequences of the bullish "*See you in court*" attitude and life was very difficult for him. We did seek the adjudication decisions and we were told some of the outcomes, but TIE certainly stopped telling us. I do not know if that was because of a possible breach of contract, because they kept losing the adjudications, or because one might be convenient for the other.
78. I acknowledge the letters sent by BSC to the Council members in 2010 (**CEC00548823, TIE00301406, CEC00013012**). This was part of their (BSC) communication strategy. As I understand, BSC believed they were holding to the confidentiality agreements of the Dispute Resolution, but they also believed false information was being given to the Councillors about the BSC position. They therefore chose to lay out their position to the Councillors.
79. If I was being a cynic, I would suggest BSC knew the letters would get into the public domain but that it would not be them that put it there. I think they believed they were being portrayed as the '*bad guys*' and David Mackay's comments would certainly lead them to believe that. It was a pretty sad set of circumstances BSC got themselves into that they felt the need to write to

every Councillor directly to state their case in the hope of a leak to the press. We can debate the specifics of the cost overruns and so on but this is about something much more systemic, which was a broken commercial relationship, of which cost overruns was only one consequence.

80. The refreshed Business Case the Council were provided with on 16 December 2010, to build the tram from the Airport to St Andrew Square, was probably the best outcome, given all the other issues. We needed to deliver the tram. Not delivering it would have been detrimental to Edinburgh's reputation and to some of the potential investments that were coming to the city.
81. Reviewing it by a specialist public Transport Company with no previous involvement was about scrutiny and independence. The Council were constantly being challenged about the figures and the rationales that we were basing our risk management on, and there was a huge undermining of trust between many Edinburgh citizens and the Council. The project had been subject to some bad administration and this was an opportunity to give people confidence again that it would work.

The Mar Hall Mediation in March 2011

82. As I recall the proposals for mediation at Mar Hall were not a formal thing. We (the Council) were not consulted as such, but the consultation was about Sue Bruce realising that she had to find a way of getting people to talk to each other again. That was a good thing and a lot better than we had up until then.
83. We were told the mediation had been successful in the sense that they had found a way of communicating that was not predicated on conflict. Other than that, we were not given details and I do not think that is surprising.
84. The mediation brought about a method of reaching agreements and an understanding or a better understanding about where risk lay when it came to

managing disputes. To me, that seemed to be the key issue and work certainly progressed after mediation in a way it had not done previously.

85. We did receive briefings on the mediation but I do not think we (the Council) needed to know the detail. What we needed to know was that the mediation had happened and the relationships were better and that was achieved.
86. I am aware of the Council's decision on 25 August 2011 to build a line from the Airport to Haymarket before, shortly afterwards, voting to build a line from the Airport to St. Andrews Square. This was a consequence of the pro tram part of the divided administration failing to collaborate with other pro tram Parties. a lack of confidence about the overall progression and the political and professional capacity to progress the project. We (the Council) therefore proposed to go as far as Haymarket because that would minimise the borrowing requirements that were piling up.
87. This raised some huge challenges for the relationship between TIE, the Contractor and the Council because it was a massive change. The Business Cases were reviewed, and ways of managing the borrowing pressures were brought forward. Then the decision was taken to go to St Andrew Square pretty rapidly afterwards because we had new information that said we could manage the financial pressures in a new way.
88. I acknowledge the Edinburgh Tram Project Update and minutes from the CEC meeting on 2 September 2011 (**CEC01891529**, page 87/131) where Lesley Hinds and Andrew Burns moved for an amendment to instruct the Chief Executive to bring about several changes in relation to the Tram Project. I note the request to take the trams to St. Andrews Square would take another £231 million. Following the decision about Haymarket and St. Andrews Square, the Scottish Government (SG) were confirming that they wanted it to go to St Andrew Square and we (the Council) were saying that we realise the costs, but our challenge was that we needed SG and TS involved again in terms of both organisation and finance. The last time the SG had made a

decision like this they gave us £500 million having had an Audit Scotland Report that said '*clearly defined project management and organisation*' and '*sound financial management*' something that could not be said about the project by 2011. I do not think it was actually Council members who placed reliance on that, it was the basis on which the SG made its decision to give £500 million.

89. In relation to Audit Scotland, there were 2 reports, 2007 and 2011. The quotes referred to in the CEC Minutes of 2 September 2011 (**CEC01891529**, page 87/131) refer to the motion in 2007 and that is what I have just spoken about (paragraph 92). If, however, we are talking about the 2011 Audit Scotland Report then there was great reliance placed on it by Council members because it was an independent assessment showing what would produce the value we required. It also said that the governance needed to change, TS needed to get involved, and that we needed to remove the arms-length element. That was an important aspect.
90. I am aware of the Settlement Agreement reached on 15 September 2011 and we (Councillors) understood there would be a new governance structure. TS would become more involved. The principal relationship would be the Council and BBS and not TIE and BBS. As a result of all that, there was also a new governance and delivery team, which had much more clarity and the ability to make the relationships work.
91. In relation to the views of our constituents, we always had regard to them, but they held widely varying views and part of the task of a politician is to hear them all and make a judgement as to what is the best route thereafter. It is literally impossible to please every constituent in the sense that they understandably can and do want very different things, which is where the art of political discernment is required.
92. All the information we (Councillors) received suggested the cost of cancelling the project would be greater than the cost of completing it. That is not just

simply the contractual requirements but all the reinstatements and processes that had to happen. There were also the enormous reputational challenges that would be created by not continuing. It was about the capacity for Edinburgh, in particular, and Scotland generally, to deliver large infrastructure projects that require complex investments. The longer term consequences and confidence in investors could have been severely damaged by the project not being delivered. Even although it was not being hugely enhanced by the tram's delivery, which had not been a great example, of political leadership and governance not to do it would have been even worse.

93. Following the Settlement Agreement in September 2011 Turner and Townsend came in to be the capacity within the Council for project management. They were new to the project and were able to take a fresh look. They were embedded in the Council rather than at arms-length.
94. Transport Scotland were there on behalf of Ministers to oversee major infrastructure projects funded by the Scottish Government. That is the way they are across the country so it was not unusual. What was unusual was that they had not been involved from the beginning. Their involvement led to much greater clarity of the decision making process

Project Management and Governance

95. Generally speaking when it came to the delivery and governance of the project, I think, up until 2011, there were too many bodies and organisations involved. Had the TIE model gone to plan where they were delivering a number of projects and it there was a level of capacity to deliver those projects, it may have been different. The truth was that it was not wise to create an arms-length company to deliver something that created such an unclear decision-making process. I also think the relationship between Lothian Buses and the trams was a problem that should have been dealt with more quickly. That was where some of the resistance was being created and we

needed clarity on that. We also needed to make sure the right people were appointed to roles.

96. In relation to specific roles and responsibilities, CEC's job was to set the strategy and ensure the finance was available. TIE were to deliver the project having been given the strategy and the finance. TEL were to deliver the integration once the project was running. The Tram Project Board had to oversee the Council's participation in the delivery. Transport Scotland were supposed to be there on behalf of Ministers to ensure that the money, granted by Scottish Government, was well spent.
97. The removal of TS meant the loss of key capacity, experience, connection and access to Ministers. A whole series of significant roles that TS, quite rightly, played in the investment of infrastructure across the country. It was unusual for them to not be involved but we simply had to accept it. It appeared to be a political decision to ensure the SNP Government distanced themselves from something they originally said they did not support.
98. I do understand the politics of that decision, but I think that pragmatism would have been wiser, and that people would have understood. The SNP Government did not want it to happen in political terms, but the Parliament voted that it should happen. They (SNP) may actually have gained more credit by agreeing they did not want the trams to happen but because it was then backed by Parliament, saying they would support it and make sure it happened, at the best time and to the best quality. So I think it was an unwise decision on the part of the SNP Government to not include Transport Scotland from 2007.
99. In relation to the involvement of CEC officers and members, there is no doubt there should have been a lot of involvement, and when I was Council Leader (2006-07) I was very involved. I made sure we provided leadership and that potential contractors had confidence in what we were doing, why we were doing it and how we are going to do it. I built the relationships with everybody

involved because there were a number of stakeholders and they all had to understand what was going on. The problem was, with a political division and lack of clarity over governance, the roles for Councillors became unclear and they became less proactive in the right places. In some senses Councillors allowed themselves to become more involved in the operational side of things than they needed to be, instead of concentrating on leadership to make the operational side more deliverable.

100. The evidence would suggest that Council oversight and control over the trams project was not as good as it should have been. The fact that we had to change the governance half way through and the fact that relationships were not as they should have been does suggest some significant weaknesses, particularly once the contract was signed and the implementation began.
101. The reasons for those weaknesses, to me, come down to a coalition administration divided on trams, a complete misunderstanding of the significance of providing good communications, leadership and the need to collaborate with other pro tram Parties, the dangers of becoming too embroiled in the specifics of operational decisions and unclear governance relationships.
102. In relation to the performance of specific bodies and/or senior personnel the Labour Group did express concerns about the number of amendments, particularly from about 2009, as to what was going on. For example, as early as 2008, the Tram Sub-Committee had already failed to meet regularly. I refer to Edinburgh Tram Project – Political Decisions and Events Timeline (**USB00000345**) which was created by the Council as a timeline of decisions that were made for those of us who wished to use it. It was created to assist those of us who were no longer in the Council so that we could recall things, because some of these decisions were over ten years ago. The document contains the date, the committee, the title or decision being made and the outcome. They are basically an extract of the minutes from each meeting. It is not anything that is not in the public domain.

103. Regarding senior personnel, we definitely had concerns about some ability of their capacity, particularly after Willie Gallagher was forced out. The way in which TIE was acting in the context of the disputes, as was exposed from 2009, was a concern. I would say that from then right up until the change in 2011, we saw the need for mediation. We (the Council) understood there were questions about how things had been structured and you can usually manage the structure if you have the right people, but I think that was the problem, and we did express concerns. We then supported the change in structure in 2011 because we knew there was a problem. We talked to lots of people about our concerns, which led to the support for the change in structure in 2011.
104. I attended a meeting of the Council on 23 August 2007 at which Councillors were asked to note that a revised governance structure was required for the project. The major change was the creation of TIE, which was to be the implementation body and that was a request by the Scottish Government. TEL developed the case and TIE were created as this arms-length structure, but also to generate further income and capacity. It was also to begin the process of understanding where Lothian Buses fitted in, but I do not think that part was really ever dealt with properly. A change that was made to the governance structure, in December 2007, was the introduction of the Tram Sub-Committee. It was created, but did not operate as it should have done.
105. I note that a review of Council Owned Arm's Length Companies was discussed at a CEC meeting on 28 May 2009 (**CEC01891438**, page 22/65). I further note the minutes of the Council meeting dated 10 February 2009 (**CEC00455422** page 14/27) state that the Audit Committee had referred a report on the findings of a review of major projects in relation to the work of TIE on the tram project. The review, by the administration at the time, was of all Arms' Length Companies, so it was not specific to TIE, albeit TIE would have been part of it. I cannot recall the outcome of the TIE review itself but I think there was a view that things needed to change.

106. At a meeting on 26 January 2012 the Audit Committee noted a further revised governance structure was to be implemented as part of the decision to continue the tram to York Place. A key feature of the arrangements was to have a political oversight by means of a monthly All Party Oversight Group and a quarterly Audit Committee. Transport Scotland were also to be involved at all levels of the project. This is what should have happened in the first place. The imbedding of Transport Scotland at every level was the right thing to do and that should have happened all the way through the project. As a consequence, when it did finally happen, we (Council) had to repair the damage, but I do think it got the project completed.

Reporting

107. The officials, within CEC, who were responsible for advising Councillors of developments with the trams project were Tom Aitchison and Sue Bruce as the Chief Executives, Andrew Holmes as Head of Economic Development, Dave Anderson as Head of Transport, Donald McGougan as Head of Finance and Marshall Poulton as Head of Transport. They were the ones who had to make sure it happened. There were other individuals who came along for specific pieces of information but the ones I have named were who we were looking to within the CEC to tell us what was happening.

108. It was as important that we had as much time as we required outside Council meetings to get information we needed on the tram project. This was crucial so that when we came to making decisions we could debate, and we had plenty of that. It was more about how much time we spent preparing before discussing. I regularly talked to Council officers to ask questions and emailed them to get information back in preparation. We discussed it extensively at Labour Group meetings as well. I would say we had sufficient time to discuss and consider.

109. It was regularly on Council agendas, but as one of many things we do in the Council. It is conceivable that separate meetings could have been held, but it

was important that it sat within the general decision-making structure of the Council rather than creating separating meetings. When we were making proposals on amendments, we voted along party lines because we discussed it and agreed what we were going to do in the Labour Group, as did others. That was normal and was how we discussed and voted on everything else. It would have been unusual to have a free vote. In truth, it was the lack of certainty in voting outcomes which led to a sense of increased risk for the contractor.

110. As a Councillor, I was kept informed of tram project developments through group briefings. We also got regular email briefings from TIE and from third party spokespeople who had separate meetings. We could also get specific information if we requested it which happened on a regular basis. We would find out information by asking questions, reading the papers, and just wanting to know more.
111. Other Council members and Group Leaders did receive separate briefings. Sometimes they would get TIE or spokespeople together and then we would get informed by our spokespeople. When I was Leader of the Council and Leader of the Labour Group I got regular briefings from Willie Gallagher. It was interesting that after the elections in 2007 there were few cross party briefings other than within the structures of the Tram Board or the sub-committee despite the fact that the pro-tram of the coalition needed our support.
112. As Labour Group Leader I would report to our Labour Group Executive and the Labour Group Internal Meeting. The Executive met weekly and the Labour Group met monthly. If written briefings were required I would put them together for meetings. I would meet regularly with Willie Gallagher and when I felt a briefing was required I would get him to provide one particularly when the information was technical or financial.

113. We received a high level of information and it was very complex. To fully understand we (Councillors) needed to spend time unpicking it to make sure that we understood and could ask the questions that we needed to ask. I certainly feel that we had the right level of input into decisions that were our responsibility. The decisions that were our responsibility were making sure the case was made, that the communications were in place, and that finances were robust. We understood things like Optimism Bias, Risk Management and so forth. I do not recall ever being in a situation where I could not get enough information. If there were times when I needed to know more, I would know where to go to get it.
114. I do believe the Councillors were provided with sufficient information on the tram project, certainly initially. There was lots and lots of information. As I have said, the task was to distil it and get to a point where we understood what was being asked of us. I believe that we did that well when we were in power and we did it as well as we could, given the limitations, when we were in opposition. If we needed guidance we could ask for it. For example, when there was a requirement for remedial work on Princes Street, we got a civil engineer in to show us exactly what had happened so we understood and could present explanations to our constituents. I can remember from all the meetings I ever went to that guidance and further information was always available. You certainly have documents on this inquiry that show I asked for further explanations and information. I trusted people that provided information to be truthful and for the information to be accurate.
115. If we received any information that was not clear and intelligible, or if I did not fully understand, then I would simply ask again. I suppose we (Councillors) constantly talked about whether or not we had all the information we required, but there comes a point where you have to place some trust and faith in the relationship you have with those giving the information, otherwise you would never do anything.

116. On occasion we would be told that 'commercial confidentiality' limited what we could be told. Sometimes that could be overcome by use of what was called the 'data room,' and I do recall that being used on some occasions. The data would be kept in the room rather than distributed and you could go and look at it. Grappling with commercial confidentiality certainly was not unique to the tram project. I can think of several occasions where we had to use a data room or we could only know so much, but we also had to make sure we knew enough to make decisions. The danger comes when commercial confidentiality is used as an excuse to hide things. That happened during times of dispute, but the mediation got us over it. As Councillors, we were certainly pushing for everything we needed.
117. Although I would get direct briefings from Willie Gallagher, everything that came to us from TIE, still came via Council Officers or Council Officers were present when they were given. For example, when Richard Jeffrey would come and speak to us there would be other Council Officers present too, which was right.
118. When we made requests for information we would make it to a Council Officer, who would take it to TIE. I do not know the extent to which information was checked by Council officers or what criteria they would be using to check it. I do remember asking Council Officers if we had everything we needed, but that is slightly different from asking if everything had been checked and was accurate. You have to trust people.
119. My memory of CEC officials informing us (Councillors) of concerns about the contract were that a major concern was ensuring the finances stacked up behind the Business Case. We spent time making sure finances were accurate and robust because we knew we were going to have to bring more money to the table than we had originally intended. That, in turn, meant we were carrying a greater amount of the risk.

120. Many of my constituents emailed me regularly, particularly when there was an issue in the papers. My view was they should all get a reply which I hope I achieved. What I tended to do, because so many emails covered the same ground, was to get a bank of information which I would use to reply to people. Generally speaking, there would be a flurry of emails before a Council meeting and I would respond as best I could. Some people were happy with my responses and some people were not. Issues were often raised at community meetings as well where you would respond as best as you could. Views varied from extreme opposition to passionate advocates, and everything in between.

121. When I was group Leader I endeavoured to ensure that the media did not influence our (Labour Group) views. The decision by the Evening News to take a particular perspective on the trams meant that the public narrative was influenced by the media in a particular way with little to balance it, though the then editor argued all he was doing was simply reflecting the views of his readers.

Cost Overrun and Consequences

122. As I recall, very soon after the signing of the contract we (Councillors) were informed that Bilfinger Berger said it was going to cost significantly more. The reason was the increased price of oil having an impact on the cost of steel. Apparently their earlier estimates for the steel required were going to cause them some real challenges. There were significant disputes on the risks involved in design issues and the costs of building something that was not in the original design.

123. I note the email dated 30 January 2008 relating to small businesses and the Edinburgh Tram Compensation Scheme (**CEC01393706**). There was a document produced by Ray Russell of the Federation of Small Businesses (FSB) suggesting businesses were losing thousands of pounds. We (Councillors) were aware of the situation and when the utility works were going on, particularly around Leith Walk, we introduced a process of rates

relief that related to the construction. We also introduced a "tram help us" scheme where staff visited small businesses on a regular basis to see what we could do to help including with some support with the cost of rates. We put up more signage, got more information out to them and did a big publicity campaign. We really committed to giving as much support as possible. One might argue we could have done more but we did a great deal.

124. Looking at financing options following the Mar Hall mediation there was a view that we could get more from developer contributions and we could get more from capital receipts to the project. That would mean less spent on other things, but there was also a view that the positive impact the trams would have on the economy would mitigate this as new money would follow on.
125. The effect that had on the Council's finances and expenditures was additional pressures. It would mean that in the short-term some capital projects would have to go back a bit because we had to spend the money on the trams but we would get there in the end.
126. Councillors were kept properly informed of the cost overruns throughout the project. We received a lot of information as it became clear. We always knew a project like this carried risk but at the point we made decisions, there was sufficient understanding of the risks to know it could be managed. I think the example of the transfer of risk through the increased price is one where TIE and, in particular, Willie Gallagher understood it was a key concern of ours and that would be an example of us having indicated that we knew there was a risk and that it needed to be managed.
127. I think a major consequence of the failures with the trams project is the damage that was caused to Edinburgh's reputation. I think it has been repaired but it was damaged. There was a short term impact on the Council's finances but the biggest impact was on the Council finances that were not related to the tram. Austerity is a much bigger impact than anything that the trams cost. I actually think the fact that the tram is now performing ahead of

the Business Case means that my former constituents and the citizens of the city now have the beginnings of an integrated transport system that a capital city should have. The fact that a number of political parties included a tram extension in their 2017 local government manifestos suggests that people have moved on and understand a tram system is a good thing to have in a city of our size.

128. The shortened line certainly meant we did not achieve everything we wanted to achieve as early as we could. The objectives were to provide an Airport to Seaport that would also enhance the potential of Forth Ports leading to the development of housing. That has not happened, at least in part, because of land values rather than because of the tram itself. If we are lucky, we are perhaps five or ten years from where we need to get to. Interestingly, the benefits set out in the Business Case were based on a turnover model aimed at the trams being self-financing within a given period of time and, at the moment that seems to be ahead of schedule.
129. I would say the body or organisation that was ultimately responsible for ensuring that the trams project was delivered on time and within budget was the City of Edinburgh Council.
130. There were a number of internal factors that contributed significantly to the failure to deliver the tram project in time, within budget, and to the extent projected. Those factors being the divided leadership from 2007 and the governance structure and the conflation of fixed price and fixed cost, which led to the breakdown of the relationship between client and customer.
131. Those reasons, along with the demise in land values, because that was one of the predications of capital receipts, the advent of austerity and the removal of Transport Scotland, as a consequence of the view of the Scottish Government along with the complete lack of political leadership from the coalition administration. All those things, although there were some others,

conspired to create what one might describe as a 'perfect storm' and, as a result, bad decisions were made.

132. The failures might have been avoided had there been better cross party collaboration with the parties who were in favour of the tram, particularly at the point when contracts were being signed. That would have shown a coherence of leadership. To have had a clearer political response to the question of price and the challenges over variations, a focus on maintaining good relationships with contractors when difficult conversations were needed and not on winning in court would have not so undermined trust. Transport Scotland being there to advise because I think they would have assisted in providing that clearer political response. All those areas weakened us and relationships became so bad that we needed to go to mediation.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 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

A solid black rectangular box used to redact the signature of the witness.

Date of signing June 26th 2017