

## **The Edinburgh Tram Inquiry**

### **Witness Statement of Donald Craig Anderson**

Statement taken by Duncan Begg on 23 and 24 February 2017.

My full name is Donald Craig Anderson. I am aged 54, my date of birth being [REDACTED]

[REDACTED]. My contact details are known to the Inquiry.

My current occupation is as a director in a communications company. Previously I served as a Councillor in Edinburgh and was elected Council Leader for the City of Edinburgh Council in 1999. My role in the Tram Project was in that capacity until October 2006 when I stepped down. In 2008 I joined the PPS Group (Newgate Communications) and ran the Edinburgh office until June this year when I left to establish my own company (Playfair Scotland. In the spring of 2010, in my role with the PPS Group, I represented Bilfinger Berger and Siemens in the Edinburgh Trams dispute until its resolution. I have provided a copy of my curriculum vitae

Statement:

### **Introduction**

1. I was first elected to Lothian Regional Council in 1986 and served on the Regional Council from then through to local government reorganisation. At local government reorganisation, I was elected for the Kaimies Ward of the City Council and served in that capacity from 1994 through to 2007 when I left the Council altogether. During that period I was involved as Convenor of Economic Development on Lothian Regional Council and Convenor of Economic Development on City of Edinburgh Council. I had a variety of different positions within the Council associated with that Convenorship, including a period chairing Edinburgh Development and Investment ("EDI") at

Edinburgh Park. EDI is a Council created property development company which still exists for property development in largely, though not exclusively, regeneration areas. The income from EDI was fed back into the Council and, generally speaking, the projects it was involved in were ones the Council wanted for either economic development or regeneration purposes. I served on Edinburgh and Lothian's Tourist Board and I was also on the Board of Visit Scotland for a period. I was elected as Council Leader in 1999 and served from then until October 2006 when I stepped down. After I stepped down I served as the Executive member for Sport, Culture and Tourism on the Council from then through to the Council elections in 2007. There are a whole range of committees in the Council that I served on: I chaired the Policy and Resources Committee for a long time in the Council Executive and, as Council Leader, reported monthly to the full Council and answered questions at each meeting. I have a broad range of experience in a variety of different roles in local government.

2. The Tram Project was one of the major projects the Council was involved in over a prolonged period of time and I was involved in overseeing it, alongside my other duties leading the operation of the Council as a whole. It was therefore a very important and significant part of what I did as Leader and I would provide oversight and strategic guidance where I believed it was necessary. I would get involved in detail if I felt it was necessary and I would give advice and guidance to colleagues and officers in the Council if I was either concerned or keen to see a particular aspect of the project developed, emphasised or taken forward. I had been involved in the initial discussions about a metro (Tram) system in Edinburgh, which took place in the late 1980s, and I believe learned lessons from that. The trams were seen as a very important project and a core project in the modernisation of Edinburgh and in securing growth in the city economy. The council was securing investment across the whole of the Council estate for schools, public transport and a variety of other services and the trams were a key part of that. I cannot remember exactly how frequently we had meetings about the trams, but we had regular discussions, meetings and exchanges of correspondence

on the project from its earliest inception to the period when I stood down as Leader.

3. My qualification for being involved in the Tram Project was that I was elected as a Councillor. In a sense, that is the qualification all politicians have for their involvement in any of the aspect of the work that they do. A Prime Minister or a Chancellor does not necessarily have an economics qualification, the primary qualification they have is that they were elected. My position was no different to any other politician in charge or involved in any other project or service. In that sense, there are no qualifications politicians can get to learn about administration or project management to stand for Council election, or for political office. Primarily, you are there because you are elected and you are chosen by your peers and colleagues to take on responsibilities based on their judgement and your ability to carry out those tasks.
4. I think generally that elected members do not receive enough training and guidance in their roles. It is very difficult in the public sector and in Councils in particular to get the opportunity to spend significant sums of money on training elected members for them to be better able to fulfil their duties. I think it would be very helpful to have more training, but it would not necessarily avoid problems or projects going wrong. Officers are specifically trained for their roles and there are as many (if not more) many examples projects going wrong because of poor decision making by officers.
5. Such training as there was included some modest training in handling the media, which is something elected members do on a regular basis. I am not aware we got any specific training on either project management, property development or anything like that. I learnt a huge amount during my period in the Council largely because, prior to becoming Leader, I was involved in economic development, which fortunately gives a wide range of experience and involvement in handling the issues involved in delivering major projects.
6. I do not think training, in itself, would have been sufficient to help guide me in the tram project. What was sufficient and appropriate in guiding the project

was my general political experience and my involvement in the Council over the best part of two decades. I had picked up experience and expertise that I brought to the table as Council Leader and I used that to the very best of my abilities. I think there is (still) some formal training for elected members involved in specific regulatory functions like planning and licensing and, generally, my view is that is helpful. I think it probably would be helpful to have a lot more information, training and advice for Councillors, although I am not sure it would necessarily transform their abilities to take the right and rational decisions in projects and in their political responsibilities. By and large, politicians have a wide range of experience and get involved in politics for a wide range of reasons. Individual Councils are a result of a blend of that experience and expertise and Edinburgh was no different from any other Council.

7. There was actually, in general terms, huge support across the political parties for the tram project. We had been through a very divisive process, with huge political discussions and debate in relation to the congestion charge and the 2005 referendum. One of the features of the debate on the congestion charge, which remained after debate, was that there was very strong cross-party support for the implementation of trams in Edinburgh. Support was particularly strong from the Conservatives and the Liberal Democrats. Of all the issues we debated at the time, it was the one thing that actually united the main political parties in Edinburgh. There were some very vocal opponents: the SNP was the one political party that gave voice to those concerns and it became involved in opposing the trams. The SNP did not have representation on the City Council in the early stages of discussion of the trams; however that changed when Steve Cardownie defected from the Labour Party to the SNP. Steve began to agitate against the trams and raised some issues, but he didn't raise any specific issues or concerns that caused me to doubt the wisdom of the project. I think the collective view in the Council was very strongly that the trams were a good thing for the development and modernisation of Edinburgh and its transport system. That trams would bring benefits to the city in terms of transportation and economic development and there was very significant political buy-in for that.

8. I cannot speak for the other groups, but in the Labour Group itself nobody was really in opposition to the trams. There were no big internal debates about whether we should go ahead or not; there were discussions about where the trams went, but there was overwhelmingly positive support for their implementation. There were huge divisions at times on congestion charging, which we had to manage by deferring a decision until after the election in 2003, which I believe was the right thing to do. However, there was strong support for the principal and the delivery of the trams.

## Reporting

9. The principal officer responsible for advising the Council on the trams was Andrew Holmes who was the Director of City Development. Andrew is a Council official of longstanding who was very bright and able. His role was supported and overseen by Tom Aitchison, who was the Chief Executive, Donald McGougan, who was Director of Finance and advised on the financial implications of the project and Gill Lindsay, who was the Council solicitor advised on legal issues. Collectively, they would report to the management team in the Council and provide advice and guidance to elected members at all stages of the development of the project. Underneath Andrew were a range of other officers in the Council involved in the project. From memory, some of the key ones involved were Barry Cross, Keith Rimmer and Alex Macaulay. We would with meet with them on a fairly regular basis over the period of the development of the project. I have varying views of their capabilities and there were tensions, I think it is fair to say, in the City Development Department on a range of issues, not just on transport. That was not uncommon in the Council. Very often there were tensions about the efficacy of delivery, the approach officers took and, from time to time, there were disagreements between elected members and officers about particular issues. That is part and parcel of the democratic process and generally speaking I think we managed that fairly well.

10. We had specific meetings to discuss the Tram Project as it was one of three major transport infrastructure projects that were being taken forward at the time. Two of those were the prime responsibility of the Council: the Tram Project and the Edinburgh Airport Rail Link ("EARL"). There was also, of course, the Borders Railway. Those were three very significant projects that, in the aftermath of the congestion charging referendum, were still being taken forward. The EARL project was largely championed by the Scottish Executive and civil servants, but it was being taken forward and managed to a large extent by CEC officers. We would have individual meetings with senior Council officers on the trams and it would specifically form part of our agenda. There would be regular reports to Council committees and there would be briefings for elected members both collectively and individually. Councils are different from Government in the sense that the senior Council officers are available and operate to the whole Council; they do not just operate to members of the administration. We were very keen to foster a culture in which information was shared with opposition groups and they interacted very positively in discussions about the trams. There would be an array of meetings with individuals in other political groups as well that would go on separately and, probably, unknown to me. If a member asked for a briefing on the Tram Project I would not know about it, it would just happen and officers would share information. The culture was that there was an open availability of officers to meet elected members and discuss the Tram Project. There was more than enough time to discuss the trams and arguably, at times you could spend too long on some of the detail, but such is the nature of the democratic process. You had to allow people the time to discuss the trams, you could not curtail debate on a major project like that, nor did anybody want to. There was lots of time allocated to debating the trams, although whether all of it was wisely spent is a different matter.
  
11. Generally speaking on issues like the trams there is a whipped vote within the Council. Having said that, I do not think we ever had a vote within the Labour Group where there was such significant division on an issue that we felt compelled to get people to vote along the party line. To my knowledge we never had a vote for or against trams, such was the broad support. I think

there were one or two individuals who were not positive about the trams in other groups: I am not 100% sure this is true, but I think Councillor Kate Mackenzie was one of those not convinced of the merits of the trams and raised concerns within the Conservative Group. I do not think there were any particular critics in the Liberal Group, at least not that I ever became aware of. Overall, there was very strong support within the Labour Group, within the administration and within the other major groups in the Council. I do not think the trams could have happened otherwise because there were so many other issues and political challenges involved in delivering them. I do not think anybody ever got silenced for asking a question or raising a concern. The approach was to respond to concerns with facts and information. Councillors, and as far as I'm aware officers always responded as positively as we felt we could to any issues or concerns that were raised.

12. In the press coverage of the trams in the run up to key decisions on it, there was no shortage of people raising concerns and questions. This was not something that was wanting of democratic debate; it was fully debated in the public domain. All the issues pretty much were out there in the public domain and so I do not think, either internally or externally. I cannot speak authoritatively for the Liberal Democrats and the Conservatives, but I think we would have picked up if there had been any serious critics in the other political groups and I do not think we did get any real concerns within the council on the principal, though there were many serious issues raised regarding the detail of the proposals, which is to be expected with a project of such complexity..
13. There were lots of constituents who raised concerns and we would always try and address the specific concerns that were raised. My approach in Council leadership was always to try and take the right decisions for the right reasons, to focus on the facts and to have a policy agenda that was driven by facts and evidence. If someone was raising concerns we would address them to make sure we got it right and we were able to provide an answer to the individual, or provide support to a Councillor who was having problems addressing issues raised. We would want to make sure we explained as fully as possible the

benefits of the proposals we were working on. The climate was about trying to identify issues that might be legitimate concerns about the project and try and take action to address them all the way through.

14. We discussed the Tram Project in a plethora of meetings and, in addition, Andrew Burns and I would get written briefings and one-to-one meetings with either Andrew Holmes or the Chief Executive. I would be involved in meetings to address specific issues and I would meet with opposition politicians if they had particular concerns. I think I was kept updated on significant developments relating to the tram project and I do not believe there was anything of significance kept from me, although we often had disagreements on specific issues. Andrew Holmes was a very competent and professional officer who wanted to give the best advice he could to Council, but it's no secret that we didn't always see eye to eye. I stood down as Council Leader at the start of October 2006 and I was extensively involved in discussions about the proposals and estimates for the project up until that point, beyond then I had the same input as other Labour Group members.
  
15. There were challenges in delivering these big projects although, of the three projects we were involved in, EARL, the trams and as a supportive partner of Borders Council on the Borders Railway, of the three the trams was always, in my view, the most sound project financially and from a transport perspective. I think the Borders Railway is an important investment in a part of the country where performance is lagging economically, whereby it could make a significant difference to the regeneration of the area, but it had a much weaker business case than the trams. I felt that, although it was not a project you would invest in solely as a transport project, it was an important project to take forward in order to regenerate a part of Scotland and integrate it more fully into the city economy. I was also aware that, although the business case for the Borders Railway could look quite pessimistic, and at the time was the worst of any public transport project in the UK, there was potential for a higher level of patronage on it. With EARL I was very concerned about the civil engineering involved and that there were really high risks associated with tunnelling under the Airport. Therefore in relation to those projects, I think the



one that was best value and the one that was delivered the best transport objectives. It had by far the most compelling case as an investment for Edinburgh.

16. I have been advised that in a document prepared by Alastair Maclean on the status of the tram legal workstream ([CEC00013290] final paragraph), it was stated "*open decision making whilst necessary politically may pre-warn Infraco*". I do not recall seeing this document before, however this is an important point. I think that issues of confidentiality were a fundamental part of the problems that occurred with the Tram Project and I think that the issue of confidentiality was deliberately misused by some people in Transport Initiatives Edinburgh Ltd ("TIE"). I remember in particular one or two senior figures in the Council, particularly elected members, saying that they had conversations with TIE about information they had been given and were told, in no uncertain terms, that everything TIE did was about protecting the public pound and that the release of information would give the contractor advantage. This was a threat, which almost amounted to blackmail, that if any information leaked out either to the press or to Bilfinger Berger, costs would ramp up and the elected member would be to blame for that. I think this cuts to the very core of a lot of the tensions there were about the delivery of the project and a lot of the problems there were in relation to the way TIE operated and the way decisions were taken in the Council. For whatever reasons the discussion about some of the key issues involved in, and related to the tram dispute was restricted and appropriate information was not readily available for elected members, nor was there the appropriate opportunity to quiz officers and officials of TIE properly on some of the key issues.
17. I was involved in Council administration for 21 years. I fully understand that there is a need to have confidential discussions particularly on commercial issues and there is a need in a difficult contractual situation to reflect privately on the issues raised and the questions posed for you as an elected member of a decision-making body. However, there is also at times a need to be open about the decisions you are taking, and the need for appropriate scrutiny and discussions about such issues. The Council is not a private company, and the

council was essentially the client and joint shareholder in the delivery of the project. All its decisions have to be publicly justified and there is no excuse for keeping vital and important information from elected members who are the ones that, ultimately, take those decisions.

18. I think one of the big mistakes of TIE over the period of the Tram Project was that they suppressed information and they presented a view of the situation that was not accurate and that did not properly reflect the facts of the situation. I think it became increasingly difficult for members to take rational decisions based on the advice they got from TIE. I think TIE sought to defend its position by applying a culture of secrecy and led elected members to believe they could not share information legitimately either with colleagues or with others who might actually have more knowledge of the accuracy of TIE's statements and TIE's position.
19. I remember speaking to Richard Jeffrey who was very frustrated as he felt he was in charge of an arms-length company and should just be able to get on with doing what he wanted without recourse to the Council. I think he fundamentally misunderstood the relationship between TIE and Council. TIE was effectively having the kind of relationship a contractor would have with a client. I think Richard Jeffrey assumed it would be like when he ran Edinburgh Airport where he could go off and do whatever he wanted without actually having to answer to elected members or Council officers. I really did not understand his frustrations; TIE was purely a delivery vehicle for the project. It was not an organisation that existed in its own right to perpetuate its own existence; it was there to deliver projects for the city. When it was set up, TIE was intended to deliver a range of transport projects not just one Tram Project. This was a special-purpose vehicle only created to carry out the will of the Council, but it seemed to develop a life of its own and I think that became deeply unhealthy and is at the centre of the problems that occurred.
20. It is difficult for me to say what the other group leaders did in terms of keeping their own members informed. What I do know, as I said earlier, is there was no shortage of meetings and information given to elected members as far as I

am aware. I am less familiar with what information those on the TIE Board were given, but I am not aware of any particular restrictions during the period I was involved as a Councillor. There was almost always an item on the Labour Group agenda whenever there was a relevant issue in relation to the trams and people got the chance to ask questions. If elected members wanted to seek out information there was no restriction in place to prevent them from meeting senior officers and asking any questions they wanted.

21. The political parties received both separate briefings at different times and together as well. Individual groups have their individual decision-making processes and so it is only appropriate that they get information to inform those processes. They should get the opportunity to question officers if they have any issues at all, or that they might feel uncomfortable raising at the full Council. We tried to make sure that all elected members got all relevant information for anything we were involved in and the trams were no different to any other project. It was not a culture in which information was suppressed because we wanted to help inform the decision-making process. Councils tend to make bad decisions when there is a lack of democratic scrutiny and debate. There was no shortage of debate or information during the period I led the Council. If there was a problem, it was considered better to know about it to address the problem as part of the decision-making process than to hope it would go away. I could not say what range of information was discussed in individual groups but the approach of the Council and senior officers was to give elected members all the information they needed to make relevant decisions, there were (I repeat) no restrictions.
  
22. I considered it important for me to get appropriate information to take decisions to move the project forward and, generally speaking, I felt I did. As I have previously mentioned, that is not to say there were no tensions, or arguments in relation to the Tram Project. We wanted to make sure we had all relevant information to make the best decisions we could and that would involve lengthy debates and discussions. Again, our approach was to seek to make make the right decisions for the right reasons and to use the facts and evidence to drive those decisions and that was the way we operated in

partnership with senior officers and those involved in TIE. If there was ever any issue in the Council that I thought I required more information on, I would ask for it or if necessary demand it. I think senior officers of the Council and my colleagues will confirm I was not shy about getting information if I felt it was important for a decision I needed to make. If I felt officers got it wrong I would challenge them. That is the role of the elected member. You are there to analyse the advice you get, but it is your decision ultimately and if you feel uncomfortable or if you feel you have not got enough information then you have an obligation to raise that with the relevant official and challenge the advice they give you. You may not get the answer that you want but it is your decision at the end of the day so you have a responsibility as an elected member to make sure you get the right information to take any decision.

23. Elected members get large volumes of information and at times, to be honest, we probably got too much. I think with regard to the Trams Project that was justifiable on the basis that this was a very significant investment for the Council and for the city's transport infrastructure. We had senior officers who were qualified in their field to provide guidance on financial and technical matters. We were involved in delivering a huge array of transport infrastructure in Edinburgh and we also delivered a record investment in Edinburgh schools over that period as well. We created the city's park and ride network. We took decisions to open a number of new railway stations, including at Edinburgh Park before there were any decisions to stop trains there. We were prepared to challenge and push the envelope and be ambitious about what we were trying to achieve and we did that with, generally speaking, relatively good levels of advice and guidance. I am not aware of any resistance from officers or those involved in TIE, in providing information when I was Leader. As I say, I was very forthright if I felt officers were not giving me the correct advice, or were not giving me accurate information and we had some uncomfortable discussions with TIE. I lost confidence in Michael Howell and his contract was not renewed largely because of the loss of confidence in him by myself and other senior figures. I was forthright in saying so because I really did not think he was capable of delivering the Tram Project either technically or in terms of his personality and

individual ability. I would demand information if I felt I needed it and I do not think there is anything wrong with that. It was my role as an elected member to seek the best advice and information I could in order to make a fully informed decision.

24. I would have expected information relating to the Tram Project to have been a blend of information and advice from TIE officers, overseen and inputted to by senior officers in the City Development Department like Andrew Holmes. My assumption would be that the information would be gathered and presented by TIE and would be 'road tested', if you like, by senior officers in City Development. They would check individual aspects of it based on their experience and their expertise. I am not sure all of the senior officers fully understood the democratic process all of the time, or the fact that they had to appropriately respond to the democratic process. Furthermore, I am not sure I had full confidence in the technical competencies of all of the senior officers in City Development or, necessarily, some of the people in TIE. However, in general terms we had advice that was amongst the best available to any local authority in the country. If you look back at what was delivered during that period in the Council, members and officers worked under huge pressure and delivered an awful lot of very significant improvements for Edinburgh. We had extra funding to help deliver those things but we made a huge difference taking the city forward and in general terms I thought the officers of the Council did a good job, but inevitably with the scale of operation of the council there were issues.
25. I am not sure I can remember receiving any specific concerns relating to the Tram Project from constituents in my area. The Kaimes ward is on the south side of the city and there was never a proposal to take a tram through my patch, though the previous Metro proposals was proposed to go through there. There was a discussion about whether the route should go north-south and down into the south-east of the city, or whether it should be focussed on the north of the city. Because of the route chosen I did not come across the same issues as an elected member representing, for example, Blackhall, where the tram route was going. I am not sure I can remember any significant

critics or concerns for the tram in my electoral area. If anybody did have any concerns they could have written to me, they could have emailed me, or they could have come to see me at one of my surgeries and I would have answered the questions as best I could. I did an annual report back to my constituents which, although it was not sent out to all of them, was produced and distributed in local facilities in the area. I do not think that specifically covered trams though, because its delivery was not seen as a particularly significant issue in terms of the impact on my area.

26. I do not think my understanding or view on the Tram Project was informed by what was reported in the media. I think the role of the media is to scrutinise the decisions of the Council and obviously there was huge focus on the congestion charging referendum and transport in general in Edinburgh. It was, and still is, a key political issue within the Council and within the body politic in Edinburgh. The media was part of the scrutiny of that, which is entirely appropriate. What did happen from time to time was that issues were raised in the media that we had to address and, in general terms, that is a good thing. If there is a problem you want to know about it and so if it gets raised in the press it gives you an opportunity to deal with it. It was more the case that any concerns or issues raised in the media helped refine the project or helped us to address particular aspects where we felt there might be legitimate concerns.
27. I think my understanding of the Tram Project was informed by the information and advice I got from the officers of the Council. Additionally, my understanding came from information from other transport projects I had been involved in or that we had found information about. We had officers of the Council go on trips to places like Dublin and Croydon to look at the tram projects there and that helped to shape my understanding too. In terms of the media, it is there really to scrutinise and analyse what the Council is doing and we responded to that appropriately.

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

## The New Transport Initiative and the creation of TIE

28. I think the recommendation came forward in 2002 from officers in City Development to create TIE. We had been looking at implementing congestion charging over a period of time, which could have been used to significantly invest in transport infrastructure in Edinburgh. We did not have the technical expertise and experience necessary within the Council to deliver that type of transport investment so it was felt appropriate to create a new organisation. Of course if Transport Scotland ("TS") had existed in those days, I think we would probably have seen that as a delivery vehicle for the Tram Project. We felt there was a case to be made for creating an organisation, as we had in other areas within the Council: for the Edinburgh International Conference Centre ("EICC") and also EDI. We felt it was justified to have a special-purpose vehicle to take forward transport projects and to look at a range of different projects in and around the Edinburgh area. Ultimately, it was the Council that was responsible for creating TIE and at the time it was a logical and sensible decision I think, given that we did not have that expertise within the Council. Andrew Holmes was the Director of City Development and was the lead officer on transport issues so it would be natural for him to put forward his view of how these things should be taken forward. He made a number of recommendations surrounding the creation of TIE, which the Council then considered and decided on in due course.
29. There was a need to employ professionals who had technical experience and expertise in the area, who would specifically work on the proposals full time to take them forward in a way that Council officers probably would not be able to do. It was about making sure we had the capacity, professionally, to take those projects forward and we had a special-purpose vehicle to do so.
30. We were concerned about the ability of the Council to be able to deliver that scale of transport investment [see new Transport Initiative Report dated 2 may 2002, **USB00000232**] and I shared those concerns.

31. I do not think the fact that TIE was an off-balance sheet company was a huge factor and I am not specifically aware of that being discussed at all. We were used to setting up special-purpose vehicles for individual projects or areas of activity. The benefits of it were that you created an organisation that had an expertise that could be used to work on a specific area of policy, or an individual project or development. That was seen as advantageous and fitted in with the approach the Council had been taking in Edinburgh for some time. I would not say it was a natural extension of what we were doing, but it was familiar territory. We had done it in other areas of Council policy and it had been successful, so it was logical.
32. I am not sure of the detail of how it was set out that CEC would exercise control over TIE. It was a special-purpose vehicle and it only existed at the behest of the Council. It only existed to deliver what the Council wanted and therefore, to that extent, it would be an organisation that was controlled and shaped by the Council. That is not to say it would not give advice and guidance to the Council, but ultimately the relationship is very similar to that of a client/contractor. TIE was the contractor, employed to deliver the Council's objectives in line with the Council's aspirations and that the basis on which it operated.
33. Generally, I understood the obligations owed by TIE to the Council were that they had a responsibility to present information fairly and accurately and to work as a partner in delivering the Council's agenda. They would make sure the Council was kept fully informed of its operation and operate with the same ethics and probity that the Council operates under. I would expect it to deliver the Council's agenda in line with the Council's aspirations and demands, providing advice and guidance where necessary.
34. I am aware that political progress during September was discussed at the TIE Board meeting on 15 November 2002 [TRS00008470] and it was noted that the Labour Group had reached no decision on congestion charging on 17 September. I cannot remember specifically an individual meeting with Ewan Brown, the chairman of TIE, regarding the importance of pursuing



Approval in Principle, although I met with Ewan on many occasions around then and we spoke on a regular basis. I remember we had lots of debates about the congestion charge and I think it was an unrealistic expectation in TIE that delivering the congestion charge was going to be easy. We had huge ructions within the Labour Group and we were about to go into an election in 2003. Edinburgh, in political terms, is always a finely divided city, and there was no guarantee we would win those elections. Understandably, Labour Group members were concerned about the impact of congestion charging in the elections and I felt, along with colleagues, that it was appropriate that we actually take forward the referendum after the elections. The political complications of doing so would be far less than trying to take forward congestion charging before them, and we simply did not have the ability to just implement congestion charging. We had been given a responsibility to consult by the Scottish Executive and rightly or wrongly we chose to consult by referendum.

35. Whilst I could understand the concerns that Ewan and, I think, Michael Howell had at the time about progressing with the Tram Project as quickly as possible, it was unrealistic and did not bear any relation to the reality of the politics. There was no way we were going to press ahead and just implement these things at that stage without having recourse to the political consequences of those decisions. That was why we decided to push back the issue of congestion charging until after the elections and that took a lot of the heat out of the discussion within the Labour Group. I remember Steve Cardownie was particularly anxious, as were others including myself, to ensure that we did not take any rash decisions ahead of the Council elections. I am not sure that TIE understood the politics of the situation, but saw it from a blinkered professional and technical point of view. It was neither a professional nor a technical issue, it was a hugely political issue and it was only appropriate that we dealt with it in that way.
36. There is always pressure involved with big projects and there probably was pressure to conclude the Business Case and estimates for the project in order to secure the funding. Such pressure was no different to any other major

project we would have been involved in, that is part and parcel of delivering them. There are always going to be pressures with timescales because on major projects time is money and construction inflation would, ultimately, impact on the price of the tram.

### **Initial Estimates for the Tram Network**

37. Scottish Transport Appraisal Guidance (STAG) and draft Business Cases for a tram network were produced, with different estimates, between 2000 and 2004. I understood officers in TIE to have been involved in preparing the cost estimates. I think Michael Howell would have been around during that period so Michael would have been involved. Senior officers within the City Development Department including the likes of Barry Cross, Keith Rimmer and Andrew Holmes, I think, would also have been involved in preparing the cost estimates to varying degrees. There could also have been an input from finance officers at the Council in checking some of the facts and figures.
38. I am not sure I could be definitive in terms of saying who had how much input into preparing those estimates, but I would have expected senior officers in the City Development Department to be intimately involved in discussions, input into them and make sure that the information in those estimates was robust.
39. There were lots of discussions about the nature of the various STAG Appraisals produced during this period and the assumptions within the Business Case. I think there were lots of discussions about the risks associated with the project as this was one of three major transport projects that were being considered by the Council. I had concerns about the trams - who would not have, it was a big project and there are always dangers and risks associated with big projects, but I think my concerns were less significant about the trams than they were about EARL and the Borders Railway.
40. I cannot speak for other Councillors and I cannot remember specific issues back at that time, but there would have been concerns about individual

elements of the cost estimates for the proposed tram network. I think we felt we got relatively robust information about the costs of the projects we were involved in. We had been involved in major investment in our school estate and had been through procurement processes in relation to those. We were involved in delivering three new railway stations over the period and we were involved in delivering Park and Ride around the city in a way that had not been delivered before. Handling big projects was something that was part and parcel of council business. I think at the time I was relatively comfortable that the information we had was the best it could be, although I am sure that some of the issues would change and evolve over time. Such is the nature of major projects.

41. There was a very compelling case for the Tram Project, both in terms of transport investment for the city, but also in terms of the development of the city generally. It would attract investment and regenerate parts, particularly the north, of Edinburgh. The case for investment in north Edinburgh on the basis of delivering regeneration was overwhelming and compelling. One of the things that came out of our fact finding visit to Croydon, I think Iain Whyte was involved, was that whatever else trams did, they regenerated areas they went through and Croydon was a great example of that. The tram completely turned around some difficult and challenging local communities and increased property prices, local investment and general prosperity in the area. At a strategic level, we were keen to achieve that for north Edinburgh.
  
42. I am aware that Minutes of the TIE board meeting on 25 November 2003 [TRS00001887] noted that a workshop between TIE and CEC had taken place on 5 and 6 November and a report was produced. It was agreed that there was a need for a shared decision making structure for those action areas where CEC and TIE must be closely co-ordinated on the programme and project management front. In addition to this, it was noted there would be a monthly high level liaison meeting between the Chairman, Ewan Brown, and myself at CEC. My understanding of the way things operated at that time was that, in essence, it was a shared decision making structure but ultimately it was the Council's role to take the key decisions. I do not know if this signifies

there were tensions coming from TIE as they had not been able to influence the Council as much as they wanted to in the decision making process. I cannot remember and I do not know what other people's views were. Ewan was quite demanding in pushing the Council to take forward matters more quickly and more enthusiastically than perhaps we did at the time and I can perfectly understand that for someone who was involved as the Chair of TIE. However, we had wider responsibilities to the public in Edinburgh and ultimately it was for the Council to take the decision. Although we wanted a shared decision making structure with TIE involved in the decisions, I do not think there was ever any ambiguity or confusion that these were decisions that would be taken by the Council and we would not be led by TIE beyond what we were comfortable with.

43. There were lots of high level meetings with Ewan, I do not know if they took place on a regular monthly basis, but they were certainly regular. We had lots of discussions; there was no shortage of engagement between Ewan and me. I could understand TIE and Ewan wanting to push hard and fast on getting decisions through the Council as he had a responsibility in his role. He had his role, but I had mine and that was different.
44. I do not think Ewan and I ever met on a one-to-one basis, we would quite often meet with the Chief Executive of TIE, the Director of City Development and the Chief Executive of the Council. I am not sure it was necessarily a decision making process, it was more about sharing information. Any decisions that had to be taken would be done through the normal route. Quite often we would have meetings in the Leader's office in the Council and, generally speaking, my business manager would keep notes. Whether every issue that was discussed would be minuted I do not know, but I presume Andrew Holmes and Tom Aitchison would take relevant notes on issues they had to action and my business manager would have taken notes. It would not have been the practice to have someone there to take a verbatim minute.
45. I am reminded that a member of the public, Alison Bourne, emailed every Councillor on 10 December 2003 in relation to the imminent meeting at which

Councillors were to approve the lodging of the Tram Bills [**CEC02082850**]. In her email, she stated:

*“Costs – We note from the main report to Council (Trams) that, on 11 December, you are to be asked to approve the costs, as detailed in STAG 2 (page 71 for line 1; and page 88 for line 2) and Financial Statement. Are you aware that these documents show a different total cost (£566.7m) than the total being shown in the report to Council (£473.4m)?”*

I am also aware that on 11 December 2003, Mrs Bourne was part of a deputation to the City of Edinburgh Council on the subject of the route of Tram Line 1 and the costs which elected members were being asked to approve that day. The deputation, apparently, raised concerns that *“the cost of the project ... was being seriously understated and that realistic sources of funding required to be identified”* [email dated 1 August 2007 from Mrs Bourne - **CEC01926998 refers**]. We had lots of very vociferous campaigns and deputations about the trams as they worked their way through the Council at different stages. Alison was not the principal critic, there were a number of others in west Edinburgh particularly, some of whom were more prominent, but she (Alison Bourne) was one of the people involved. We went through the estimates that the officers prepared and we had discussions about them and the issues that were raised by individuals and members of the public. Individual groups were able to be briefed by the officers in relation to the concerns that were raised, so I do not think there was any attempt to try and shy away from the fact that other people took a different view about the costs of the tram project, and again that is not unusual on major projects.

46. You had to accept that there were people who did not agree with the Tram Project and were looking for reasons to argue against it. Even if you doubled the budget of the trams there would still have been people arguing it was not enough or the right thing to do. I do not think that it caused us any undue concern or undermined our faith in the reliability of the information we were given at that stage, because these were estimates. The estimates depend on the assumptions you make when putting them together. Small variations in an estimate can make a big difference. At that stage I think we were confident

the information we had before us was fairly reliable. It may not have been perfect but these were estimates and when it comes to a major project like this. In essence, you never know what the cost of a major project is going to be until you tender it. You can make assumptions on the basis of how much other tram projects cost. We looked at the individual costs of tram projects per kilometre and we looked at Dublin in particular. Dublin had a range of issues with utility works that we predicted would be very similar in Edinburgh and we spent a lot of time going through that. I do not think there were any undue concerns that the project was seriously off course at that time.

47. If it was the case that there was a real funding problem in delivering the tram project, there was always the option of delivering a shorter route within the funding envelope available. I do not think there was any thorough discussion of that at an earlier stage, but it was an available option to the Council. Obviously though, we wanted to deliver the maximum network that we could for the resources that were available.

#### **The October 2004 Arup Review**

48. In October 2004, Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, produced a review of the Business Case for line 1 [CEC01799560]. I have noted 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, the following concerns were noted:
- i. 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 (Granton);
  - ii. there was a significant shortfall in funding (perhaps in the order of £82-£190m);
  - iii. the total amount added for contingency on capital costs was 25% (cf 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
- iv. 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 do not remember specifically the Arup report on its own, but I was aware that the figures were subject to scrutiny. There were a lot of discussions in relation to the robustness of the Business Case over the period of the implementation of the early stages of the project. I took a different view of the economic benefits of the scheme because this was a project that was linking up the key areas of growth in the city. We had what was becoming Scotland's principal airport and we had Edinburgh Park, which at the time was one of the best business parks in Europe. Around Edinburgh Park are a huge array of jobs and economic activity, indeed it was the fourth commercial centre outside the city centres of Edinburgh, Glasgow and Aberdeen at the time. It connected to Princes Street and one of the concerns we had was that we were not maximising the potential of retail in the city centre. Trams were seen as a mechanism for helping to secure additional investment into the city centre and north Edinburgh.

49. If you look at the arguments that TH Real Estate ("THRE") put forward for purchasing Edinburgh St James Centre, one of the factors that influenced their decision was that it was to be at the centre of a tram network. More recently Tesco Bank has spoken of the importance of trams for its investment in Edinburgh, and even more recently the very significant investment in St Andrew Square and around Leith Walk is testament to the difference the tram can make in terms of inward investment. The tram also connected Haymarket and the Council was keen to progress the redevelopment of the Haymarket gap site. There is a crying need to regenerate the north side of the city, not just for the citizens who live there, but also to make the city work more effectively and provide development opportunities of Brownfield land. Doing

so could help assuage the pressure there is in Edinburgh for development of greenbelt land.

50. My support for the trams was as much about economic development as it was about transport. You could shift a lot more people more efficiently on the trams than on the buses. From that point of view, given that we had one of the busiest and most congested transport corridors in the whole of Scotland coming from the Airport to the city centre, I thought it was absolutely vital for the future development and prosperity of Edinburgh as a capital city. I am still utterly convinced that the trams are hugely beneficial to Edinburgh as a city.
51. I do not remember specifically the figures that Arup quoted regarding the shortfall of funding, but they would have been discussed in the context of the information we had from TIE and senior officers in City Development. I do not remember the details of those discussions. In any Business Case you make assumptions and assessments of the ability to carry out the work and the scope of the work in terms of the impact that will have on the cost of the project. There are always opportunities in major capital projects to shave off funding in individual elements of it by looking at particular aspects, for example, there may be ways to minimise the investment for particular parts of the route by changing the way it is laid out. We were satisfied that the financial case was relatively robust. Trams were always better placed in terms of the fundamental case than was the case with EARL or the Borders Railway.
52. This was a big project that carried risks and the issue of Optimism Bias was something that we discussed at length. I perfectly understood the need for Optimism Bias in projects; I have been through a lot of major projects in my time at the Council. People make assumptions that things will go well when they plan a project. It was not that we took the view that Optimism Bias was not in place, we felt we had enough of a buffer with the financial provision we made. There was the potential to either shorten the line or look at the scoping again at a later stage. There were lots of people challenging the assessments of the Tram Business Case, critics and friends alike. It was important that we



addressed that information and got reassurance in the discussions that we had with senior officers and TIE that the costs at that time were relatively robust. That is not to say that over the passage of time those assumptions and calculations would not change, these are big projects and things can move quickly.

53. We were in an economic boom so concern about the delay in delivering the project was a concern in terms of construction costs; the quicker you could get on with it the more affordable the project would be. There were a whole range of issues and it was neither an easy nor a straightforward issue to get through them, but in general terms we were comfortable with the advice we got. In the context of other major projects we were involved in, As I have repeatedly stated, I was much more concerned about the capacity for the EARL project and the Borders Railway.
54. I do not recall seeing the TIE response, dated 12 November 2004, to the Arup report [CEC01705043], but I assume I did. We were under a lot of pressure to contain the costs of the tram project because it would have been a big decision to say it was actually going to cost a bit more. That said, the Council is an organisation with significant resources at its disposal. At the time I left the Council, we had I think £44m in the allocated balances from the sale of a site at Haymarket, which was set aside for modernising pay. No other council had access to such finding. I was aware that if it was the case that there was a need for an additional contingency, or an additional sum for the Council to deliver the tram project effectively, then that sum was available. That was a decision the Council could have taken but I feel compelled to point out that what went wrong with the tram project went way beyond anything to do with contingencies. This is a project that spiralled out of control and got involved in a lengthy contractual dispute that caused enormous damage and huge costs. Whether there was a 20% or 40% contingency available was not the determining factor in what went wrong with the trams. It is blindingly obvious that what went wrong with the trams was of a different magnitude completely to what would happen in a normal project that had a cost overrun.

## The 2005 Road Charging Referendum

55. In February 2005, following a referendum, the public voted against the introduction of road user charging, as I have mentioned. The income from road charging was a huge factor in the financing of CEC's proposals under the New Transport Initiative including the tram network. What congestion charging would have given us was an opportunity to deliver probably about 30 years of transport infrastructure within a five to ten year period. It would enable us to develop not just a tram line, but a tram network throughout the city, including the north/south route and a lot more. It would have given a source of revenue against which you could borrow to make huge investment in public transport. There would be huge benefits from congestion charging in relieving the pressure on the city's roads and tackling pollution in some key areas of the city centre. There was also the added benefit that there would be a huge amount of additional money and I remember having this discussion with Ken Livingstone in relation to congestion charging in London. As he saw it, the financial consequences for London were not as significant because it was a very small part of a multi-billion pound budget. In Edinburgh we had a great public transport system based around an excellent bus company but that had limitations. What this would have given us was the opportunity to really transform the transport infrastructure in Edinburgh in a way that was not possible by any other means. The loss of the congestion charging referendum meant that the ambitions for Edinburgh's transport network had to be significantly scaled back.
56. To my knowledge, councillors were concerned about the affordability of the tram network, rather than the tram project without the congestion income. You could not deliver the tram network that was envisaged as part of the congestion charging agenda. We had been allocated money from the Scottish Executive to take the tram proposal and the Edinburgh Airport Rail Link forward. That money was available and could be used for that. It was the opportunity to enhance beyond those proposals that was taken away by the loss of the congestion charging referendum. It meant we had to scale back

our ambitions for Edinburgh, although there were still very important projects we were able to take forward, and the tram was one of those.

### **The May 2005 Draft Interim Outline Business Case**

57. In May 2005 TIE produced a Draft Interim Outline Business Case [CEC01875336] within which it was noted that 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 £206m (page 14). I am aware that this appears to contradict TIE's earlier assurances in their response to Arup's report [CEC01705043] that "*the figures previously reported by TIE remain the best estimate of the likely future costs and there is no additional "£220m shortfall"*". I think we were aware over the period of the consideration of the tram project that there was a need to reflect the increase in construction costs because construction inflation at that time for some projects was in the region of 12% per annum. I cannot remember if it was around this time, but when they were looking at the costs of the second Forth road crossing, they actually priced it to take account of inflation factors. I thought this was actually quite a smart way to do it, because with any of these big projects if you define the cost at a specific time, construction inflation can add significant sums to it every day. You then get into an argument with the public about costs rising, proposals not being robust and not having the right financial information. Over the course of that period we became aware that, whilst the initial costs of the tram project at the time would have covered the development of it, with inflation kicking in you were beginning to see a significant shortfall in your ability to build the kind of line you wanted. I do not think I was involved extensively in the discussions with the Scottish Executive about the need to reflect inflation in the costs of the tram project, but over that whole period there was a discussion about that. There was a realisation that unless we got some movement in terms of the inflation factor in the tram project, we would not be able to deliver it and the costs were beginning to move away from what was needed to deliver the project.

58. I think construction inflation was a factor in why TIE and CEC felt under pressure to meet such a challenging timescale. I think construction inflation is always a factor in these things, although for a big project like this construction inflation levels would be lower. We found that when we were building a school or a community centre construction inflation was 10% to 12% per annum, as it was the peak of the property boom and Edinburgh was doing extraordinarily well. There would only be a small number of companies that could deliver a project on this scale and the profit margins these companies make is smaller than general construction companies. As the sums are so big, the impact of construction inflation is big, so there was a need to take the tram project forward in a reasonable timescale to ensure we did not get caught in the spiral of trying to keep up with the impact of construction inflation, which could have killed the project.
59. At the time we wanted to deliver as much as we could for the economic development of the city and the tram project was seen as fundamental to that. We were keen to get on with it for that reason. Pressures were building at that time regarding greenbelt development and we did a report to the Council that reviewed our approach to the greenbelt. We were moving away from a circular protection of the city's greenbelt to developing along transport corridors. Policy was being joined up between transport and development in a way that hadn't been achieved before. Pressure was intense, though, because of the downturn in 2008, a lot of housing was delayed and those pressures have only just come back recently. We were acutely aware of the need to regenerate north Edinburgh and facilitate development there. We wanted to deliver as quickly as we could because we were ambitious about the city. We wanted to improve Edinburgh, take it forward and saw this investment as a means of facilitating further inward investment and development. Over the period we were considering the tram project, the market at Edinburgh Park slowed down substantially and development just stopped. In order to get that momentum back we were keen to see the trams developed as quickly as possible.

## 2006 Reports to Council and Draft Final Business Case

60. I am aware 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, which comprised £490m from the Scottish Executive and £45m from the Council. The figures quoted in the report to the Council appear to be based on the Edinburgh Tram Progress Report of September 2004 [TRS00000209]. I do not think the need to restrict, or “phase” the scope of the tram network specifically in relation to the delivery of the tram project as it was laid out at that time caused me any concerns. We could not deliver a tram network after the failure of the congestion charge referendum, but we could deliver a tram line which, in itself, was a transformative transport investment. I do not think the reliability of the initial cost estimates changed at all in any dramatic way and my confidence in the estimates at that time was not affected. I certainly had confidence in the ability of the City Development Department to deliver the project. I cannot remember when exactly Willie Gallagher came in, but he had experience of delivering large projects, albeit in heavy rail. At that time I had confidence in the ability of TIE to deliver, however this was always going to be a challenging project that needed a combination of technical and political skills to deliver..
61. The Trams were to connect the important hubs of development in Edinburgh, running from the Airport, which even at the time we knew was going to be the biggest Airport in Scotland because it was growing faster than Glasgow. It would connect Edinburgh Park, which as I say was the fourth commercial centre of Scotland and it would connect the city centre. It was then going to connect to Leith as well, an area we were passionate about regenerating and reconnecting to the city. I think even in the absence of the tram running down Leith Walk, we are seeing the benefits of tram investment in terms of regeneration in Leith already.
62. I do not know that the Scottish Government played any significant part in the decision that recommended a first phase be built from the Airport to Leith

Waterfront. Even if they had a view I am not sure we would have necessarily listened to it unless they were going to withdraw the funding. I took the view that it was our city and our decision as to where that investment should go. We were perfectly comfortable we had taken the right decision to build the first phase from the Airport to Leith.

63. The other aspect of going to Leith was that Leith has one of the highest concentrations of people in the UK, because Leith is a highly tenemental area. That was a balance because we did get criticism on aspects of the route, for example in west Edinburgh where it was not directly adjacent to houses in some parts of the route. In Leith however, you were connecting to an area that had a lot of people and many who were without work. At the time Leith had a higher number of people who were unemployed than areas like Craigmillar, Wester Hailes, Pilton and Muirhouse. From our point of view, it was important to connect the people without jobs to the jobs without people. It was a critical issue for us to try and connect areas where there were pools of unemployment with areas where there were jobs in order to get people into work and provide a labour supply for some of Scotland's most successful businesses. If we did not achieve that we were aware we would constrain Edinburgh's growth.
64. I think it was an important factor for the Council 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. Important not just in relation to the trams, we were looking at this in terms of public transport investment generally.
65. I was also involved in discussions with a former Director of City Development, George Hazel, who was looking at a project round the south suburban loop that would deliver passengers by creating value from development along the route. All the research showed that wherever a high quality public transport investment like a tram was put in, property values increased by at least 15% in the immediate vicinity of the route. A case we looked at was the London underground, to see how we could capture that value and use it to invest in

the infrastructure. Ultimately, the project was not seen to be commercially viable in transport terms by city development, but the funding approach was robust. Put an investment into an area on the basis that it will increase the tax take, then use the increase of tax take to repay the upfront finance. I suppose we were at the early stages of looking at that and it was in a city where the economy was growing very strongly. It was reasonable to assume you could get fairly attractive amounts of money out of the developers in order to facilitate the trams. The way that development is working at the moment, Councils are trying to get money out of developers for housing sites to invest in infrastructure; a perfectly legitimate and appropriate way to do it though a balance always needs to be struck.

66. If a tram was to be put along the waterfront and through Granton now, you could predict how much extra money you would be able to get in tax take and borrow against that. It would be difficult to deliver, because of the controversy of the trams, but it would make a huge difference to the viability of the project and it would make it much easier to organise the funding for it.
67. The Edinburgh St James project is a live example of how this can work. The developers were anticipating being at the centre of a tram route when they took the decision to buy the St James Centre. They were very keen to see the trams extended, and there is a tax incremental variant being applied there. The Scottish Government has given money for the infrastructure around the St James development in order to facilitate that on the basis that it will increase the value of property around there. That provides the tax that can be used to repay the initial investment in the infrastructure. It has moved on a bit and it has changed but the principles were there in the early days and are the same now, it is just more widely used, though not necessarily for transport or trams.
68. On 26 January 2006, Councillor Burns and I moved the Council to make recommendations for the funding and phasing of the Edinburgh Trams [see letter dated 19 January 2006 from Donald Anderson - **TRS00000249** and CEC Committee Minutes dated 26 January 2006 - **CEC01891456**]. The only

member that I recall opposing the trams at that stage was Steve Cardownie, who had defected to the SNP and that was the SNP position at the time. The overwhelming majority of Council members in the main political parties were all hugely supportive of trams and that had been the case from the earliest discussions of the congestion charge. The Liberal Democrats and Conservatives had opposed the congestion charge but were in support of the trams. We did a lot of work to try and make sure we answered a lot of the criticisms of particular groups of campaigners and residents along the tram route. That included (understandably) inordinate amounts of work on badgers in west Edinburgh, which became a particular issue. At that meeting there was overwhelming support despite the fact that some Conservative Councillors came under a lot of pressure from residents in their areas. I know Alan Jackson, a Conservative, came under pressure and he was not entirely happy with aspects of the detail of the tram route, but he was prepared to support the project on balance because it was the right thing to do. From memory, we did not have a vote in the Labour Group about whether we would go ahead with it or not, it was a unanimous decision. I do not know about the other political groups, but there was huge cross-party support for the project [see letter from Tom Aitchison dated 7 February 2006 - **TRS00000262**].

69. I gave evidence to the Edinburgh Tram (Line One) Bill Committee on Tuesday 6 February 2006, the minutes of which can be found at **CEC02083972**. I stated that I anticipated the utility diversion works would start in the autumn of 2006 and that work on the new infrastructure would begin in the following year. I am not sure if I had a fixed view whether 100% of the utility work would be complete before the tram project was fully implemented, but it was a big issue for us. We knew that in Dublin there was huge controversy around the on-street works. I think it was horrendously difficult for the authorities in Dublin and it meant that the tram project there was deeply unpopular with a lot of the residents. I think they had not fully anticipated the need to make sure they diverted the utilities before they laid the tracks. Andrew Holmes and officers from the Council were sent over to Dublin specifically to make sure they were ready and prepared to get that aspect of it right. We thought it was absolutely fundamental that there were proper measures in place to get the utility



diversions done, particularly in a city like Edinburgh. When roads are dug up, you are not necessarily sure what kind of things will be found underneath.

70. I have been involved in projects in the Kaimes ward I represented where a scheme that was built in the 1960s was being regenerated. There new houses were being built and old houses refurbished. Almost none of the utilities were where they were outlined in the utilities plans: they were simply not properly recorded or installed (I'm not sure which) and so we knew this was a fundamental issue. Andrew Holmes also knew it was a fundamental issue and we saw and got assurance that the officers were taking it seriously. We sent them over to Dublin to make sure they knew how to learn the lessons of what happened in Dublin and apply those lessons when it came to implement the trams in Edinburgh.
  
71. I cannot remember when the meetings to discuss this took place, but I can remember making those points to them very forcefully. They agreed, and they understood this was going to be one of the fundamental challenges for the trams. Everybody knew that once the Dublin tram was implemented it was hugely popular, but to get it implemented was difficult and Edinburgh is a highly articulate community in which the challenges would be formidable. We have one of the highest proportions of residents with higher education qualifications of any city in the UK and people like that will not just sit passively as things go wrong, they will understandably raise concerns, and there was no chance that major issues on trams would go unnoticed. We knew that one of the fundamental challenges to delivering the trams was to get the utility works right and we got reassurances from Andrew Holmes and others in TIE that it would be properly handled and they were doing the right work in order to prepare themselves for that. I cannot be certain, as it turned out, they had actually done that, but we certainly got those assurances.
  
72. It is true to say there were lots of objections to the trams but there are often lots of objections to anything in Edinburgh and the tram project was not unique. Those objections were from residents and organisations, but there was genuine belief across the parties that this was the right thing to do for

Edinburgh. There were individual concerns from some politicians in other parties about aspects of the tram. I remember there was one junction at Starbank that Alan Jackson, the Conservative Councillor for Trinity, was very concerned about. We did not go with the option he preferred and I remember him raising concerns about that. Notwithstanding that, there was strong support for the trams and we did not have to make any assurances because the parties bought into the whole concept and what it could do for the city.

73. I stated to the committee that I believed the scheme could be built on a phased basis and that I was confident that, with continued work for a period of time, the whole scheme could be secured. Trams have been enormously popular everywhere else we looked and had been extended. Indeed I think we have seen that coming to pass, now that the trams have been built into Princes Street the Council is working very hard to try and deliver an extension down to Leith. I have no doubt that once that is done there will be another look at trying to take it beyond Leith in due course. We knew that every tram project developed in Europe had been extended; nobody put a tram line in and then thought it was a mistake. There was absolute confidence that once it was in it would get extended in due course and for good reason. It is a very efficient and comfortable way of transporting people around a city. Even though the issue that a lot of people would have to stand when they were on a tram was thrown at us on a number of occasions during debates, people are relatively comfortable doing that because it is actually quite a nice and comfortable journey. It was demonstrably popular everywhere else it had been delivered and there was no doubt in my mind it would be extended.
74. The Convenor of the committee noted that the Council had committed around £45m of its own resources to the project; however the convenor queried where the Council was going to find the funding to construct the remaining sections. Andrew Holmes noted three potential sources: mobile Government funding, development funding and potential revenue from the tram translated into additional capital funding. I do not think this meant anything in itself for Council services but this was a Council project so if there were problems with it, the Council would have to find ways of trying to resolve them. This is a

Council that has a significant capital budget and resources at its disposal. At that time we had sold the Haymarket site in Edinburgh, which had been valued at £14m, for £44m. We allocated that into the Council's balances under the banner of being for modernising pay. I was acutely aware no other Council in Scotland had provision for modernising pay so if it was the case that, for example, the tram needed an extra £20m to £30m, there was that resource available. However, what transpired was not just a cost overrun; it was an absolute political and logistical disaster because of the errors, failures of delivery and ultimately the contractual dispute that occurred between TIE, and Bilfinger and Siemens. There were potentially risks and implications for the Council as the funder of last resort of the project but they were not unrealistic risks at that stage. There was a potential resource available to meet a significant cost overrun if the Council chose to use it. Ultimately, it did not choose to use that funding.

75. In Dublin there was private sector investment in the infrastructure of the tram network. As the Edinburgh Tram network developed, I envisaged more and more private businesses would become interested in getting involved. I think the problem with what happened in Edinburgh was that in 2008 we hit an economic downturn. Although this did not kill off the property market in Edinburgh, it delayed and stopped a huge range of investment across the city. Assumptions that were made about private sector contributions could not be relied on in an economic downturn and that was the challenge presented to both TIE and Councillors responsible for the project. We were in very different economic circumstances. Edinburgh was at the peak of a long boom, which transformed in 2008 and very quickly there was a very significant slowdown in the economy. For the first time that I can remember in my adult life, there were many people losing money on property transactions in Edinburgh. The economic circumstances and economic backdrop changed dramatically in a way nobody could reasonably have seen coming. At the time, I would not say any of the assumptions were misplaced, but the economy changed completely and very quickly and so the Council and TIE were put in a very much more difficult situation.

76. I am aware that during the evidence session, Michael Howell of TIE noted that the base cost of the airport to Leith stage was expected to be £429m and that the total anticipated funding of £535m was therefore £106m more than the base cost for that length of line. He felt this headroom allowed TIE to be reasonably optimistic about the Roseburn route fitting within the cost envelope. With hindsight it is easy to speculate about whether the initial cost estimates were reliable. What we do know is that the problems that happened with the tram project were not to do with the initial estimates; they were to do with a variety of failures in delivery, the contractual dispute and all of the fallout from that. That affected the timescale for the delivery of the project and the costs associated with it. The fact that the utility works went wrong and that TIE, for whatever reason, did not know what utility works had been done properly on which parts of route, seriously affected the project. Even as we were at the far end of the discussions of the tram dispute with Sue Bruce and they were talking about the possibility of getting the tram to go down Leith Walk, I remember asking if the utility works had been done properly down Leith Walk. At that time the view was that they probably had not been, and that the city would have to go back in and do them again. These were factors that were far more important to the delivery of the project and the cost estimates than the initial projections that were made by TIE.
77. On any of these projects that run over a long period of time you need a high degree of political confidence because they run across different administrations. The person that is the Leader of the Council at the start of the project is unlikely to be Leader of the Council at the end of the project. Therefore, you need a robust political base to take it through and we had that in Edinburgh. You also need strong leadership and continuity at officer level within the Council and I do not think we necessarily had that. I believe there were problems in terms of the Council Leadership, politicians, officers and staff within TIE. I think that coloured the relationship between Bilfinger and TIE as well. All of these things had a far more pronounced impact on the tram project than anything to do with the initial cost estimates.

78. I believe a communications update to the TIE board on 24 October 2006 [CEC01829170] noted that meetings with Councillors were continuing to be scheduled and attended by Willie Gallagher. I think the purpose of such meetings was simply to keep the Council and elected members updated about the progress on the project. I do not think it was anything more or less than that.
79. I went to lots of tram meetings and discussions with Willie Gallagher although I am not sure whether I was at this particular meeting. By then I had actually stepped down as Council Leader so my responsibilities in overseeing the project in that sense stopped. I was still involved, as an ordinary Labour Councillor and former Council Leader, and was passionate about the tram project, but it would not have been my role to help lead it.
80. I am advised that at a TIE board meeting dated 30 October 2006 [CEC01829157] there was a review of progress and achievements on the tram. It was noted that:
- sustained better performance by designers, Parsons Brinckerhoff remained an issue. Parsons Brinckerhoff were noted to have “*frankly failed to deliver the quality required*”. It was noted that this issue had implications for the procurement strategy and for the programme;
  - the utility diversion contract (“MUDFA”) was awarded to McAlpine and preliminary work was recorded to be underway. This was noted as another key milestone which would help with the firmness of cost estimates; and
  - prior to issue of the invitation to negotiate for the Infraco contract, an independent Gateway review was performed to assess readiness for issue, as further comfort on the quality of the tender documentation. The review team, fully supported the issue of the Infraco Invitation to Negotiate (“ITN”).

I am not sure how much I was aware of these issues at this stage, but I was certainly aware there was an absolutely pressing and imperative need to

make sure that the design issues were progressed quickly. If the design issues were not progressed, there would be a problem when a contractor was appointed to carry out the on-street works. The contractor would be ready and on site to carry out the works but would not be able to do so because of the incomplete design work. It was therefore a fundamentally important issue and something that would have been an absolute priority for Council officers in TIE who were working on it at that time. If I had any concerns I would have expressed them I am sure and so I am not sure whether that was shared with me in any great detail as an ordinary member. It may have been something that was restricted to Andrew Holmes, Ewan Brown and the TIE Board and others who were involved at the time.

81. I cannot be specific with regard to the implications on the procurement strategy and for the programme of the designer's failure to deliver. I am not aware that I was involved in discussions on it but there is no doubt that the fact that the design work was not progressed had a huge impact on the delivery of the project in due course. Whether it impacted at that stage is a different matter. I think there was still time before the contract for the on-street works was to be signed for the design work to be progressed and it was obviously a concern that it was not going ahead as it should have.
82. I am not sure whether early works on utilities had the desired effect of firming up cost estimates as envisaged. Looking back on it, with my involvement latterly in the project, it was clear that the works on utilities were not appropriately handled. They were not carried out efficiently and effectively in order to enable the on-street works to proceed and that was a huge issue in a number of different locations across the tram route. Whether and how much I was aware of that at the time I cannot say.
83. I am advised that the independent gateway review recommended that the ITN for the Infraco be issued. I cannot remember who undertook the independent gateway review. I am not sure I was involved in discussions about the design work and utilities and I cannot say one way or another whether I was concerned about the impact on the bids being offered. I do not recollect there

were major issues raised at that time from officers in the Council or from TIE regarding serious concerns that the design work was falling behind to such a degree that it would impact on the Infraco contract. There may have been issues raised but I cannot remember and I certainly cannot remember to what degree they were raised. By then my brief was culture, tourism and sport and I threw myself into that. I had a lot of work to do between the period that I stood down as Council Leader and when I came off the Council and I was preoccupied by that so it might be that I was not involved in some of these discussions.

84. I am not aware of being involved in discussions regarding the Infraco bids being primarily based on preliminary design [as referred to in Tram Project Board Report dated 31 October 2007 - **CEC01357124** page 11]
85. To my knowledge there was never discussion about postponing the issue of the ITN until the issues with the designers had been resolved and the utilities works were more complete. I cannot remember that being discussed either as part of a group decision-making process or in part of the discussions I was involved in. I think the question should have been put at the time as to whether it was the right thing to go ahead when there were still outstanding issues with the design work. I think that is something that would be a concern. It may be that there were measures proposed that would deal with that, although I think that proved not to be the case and that the design issues actually became an impediment to progressing the tram delivery as timeously as it should have been delivered. Looking back on the project I would be interested to know what the debate and discussion was at that time amongst those in TIE and City Development involved in that discussion.
86. I am aware that by joint report to the Council on 21 December 2006 [**CEC02083466**] the Directors of City Development and Finance sought members' approval of the draft Final Business Case for the Edinburgh Tram Network. I think I was relatively comfortable with the draft Final Business Case at that time. There were issues and I think we were all aware of the need to make sure that the utility works in particular were dealt with promptly

and appropriately. I perfectly understand the need to try and secure a high proportion of fixed costs with the capital costs of the project. It was the right aspiration and the right objective to have, but whether it was actually achieved is a different matter. At that time there were no major alarm bells sounding to suggest something might push the project off course or affect the costs of the delivery of the project.

87. I think the utility works were the most significant risk affecting the timeous completion of the project within budget. I do not remember being as aware of design issues being a concern during that period. Making sure we got the utility works right was absolutely fundamental for a number of reasons, particularly the impact it would have on the delivery of the project and the impact it would have on residents and businesses along the route. We were acutely aware that for some small businesses a lengthy and longer than necessary delay in carrying out utility or tram construction works was a life or death decision. A large organisation could afford to take a hit over a period of time; however, I was very clear that the smaller businesses might not survive. That was why it was imperative, not only that the utility works were concluded satisfactorily, but that they were done timeously as well.
88. Andrew Holmes, as the principal officer, had responsibility for keeping control of the tram project. The Director of City Development was overseeing it and Andrew was acutely aware it was his responsibility to make sure it was delivered properly. Tom Aitchison, as Chief Executive, had an overseeing role, getting involved where he felt it was necessary or appropriate. TIE officers were responsible for implementing it but in terms of actual accountability, ultimately Andrew had to make sure the tram project was delivered.
89. I think I understood the timescales and the plans for the procurement of the project. I am not sure of the extent to which I was aware of there being a fixed price for the infrastructure works but certainly you wanted to try and fix the costs as much as possible. That was an objective that I think everybody would share, to try and make sure there was a maximum level of security with the costs. I am not particularly aware of that being an issue or major debate at



that stage in the Council, I think it was just accepted that was the way it was going ahead, that it was the obvious thing to do and it was the way we would want to see it delivered.

## **Events in 2007 to May 2008**

90. I understand that each party group was briefed on the Infraco contract prior to the Full Council Meeting on 1 May 2008 and that Councillors were shown a slideshow presentation summarising key aspects of the project at that stage [CEC01276012]. I was not on the Council by this stage and have no knowledge of this presentation.
91. As I have mentioned, I stood down as Council Leader in October 2006 and as a Councillor prior to the City of Edinburgh election on 3 May 2007. This local election changed the administration of the City of Edinburgh Council from a Labour administration to a Liberal Democrat/SNP coalition. The tram project was politically contentious prior to the election and was one of the biggest issues of debate within the Council and the city. There was cross-party support amongst the major parties, although there was a lot of noise about it, however prior to the elections it was not seen as a fundamentally important political issue in Edinburgh. It was not something that would have affected the outcome of the election in any dramatic way. The introduction of proportional representation was more important and meant a different political make-up of the Council. Proportional representation resulted in SNP Councillors in larger numbers and Green Councillors for the first time. The tram project was contentious with some people, but it was not something that I think most residents in Edinburgh were unduly concerned about.
92. I do not think anybody could be unaware of the fact that the SNP Councillors did not, in principle, support the tram because Steve Cardownie and others SNP Councillors made a lot of noise about it. However, there was an

agreement between the Liberal Democrats and the SNP that they would put that opposition to one side. They agreed to retain a joint administration between the two political parties that enabled the Liberal Democrats to take forward the tram proposal.

93. At the time I stood down as Council Leader it was one of three projects going ahead and my general views at that time were that the tram project was the best and it was the one I was most passionate about. This was because I thought it was the one that had the strongest economic case. I thought it was the one that had the best transport impact because it was connecting up very important economic hubs in Edinburgh and it was running through the busiest transport route that we had, in an area where there was going to be substantial additional development as well. I was optimistic and very hopeful that the tram would be delivered, make a huge difference and become popular, as it has. I was also optimistic it would be extended and despite the fact that we have a very truncated route, it is going to be extended. I was very positive about the tram.
94. There is always concern that something can go wrong with a big project like this. It can hit difficulties and politics can get in the way. There was an administration at Holyrood that did not support the trams, so there was a great degree of uncertainty as to whether the project would go ahead. All of these things were concerns but, by order, they were significantly less than my concerns would have been had the EARL project gone ahead. I believe the risks associated with EARL were greater and the transport benefits for Edinburgh were more limited, although there were significant benefits for parts of Scotland that would have been connected to the Airport.
95. I was comfortable with the governance arrangements for TIE and the tram project before and at the time of the national election [TIE Governance Arrangements Briefing paper - **CEC01566497**]. I think you have to remember I was never someone who found it difficult to give direction to officers or members of TIE where I felt it necessary or justified. This was a project that was being delivered for the Council and the people of Edinburgh and was the

Council's responsibility. TIE was never an organisation that was meant to have a life of its own, able to bend the will of the Council or direct the Council in how the project should be delivered. It was simply there to do the will of the Council in a professional way. That was my view of the governance arrangement and I was comfortable with that. What transpired, however, was something different.

96. I think the change in administration at a national level had a profound and deep effect on the tram project. Effectively the Scottish Government orphaned the project by stepping away from it, despite the fact that it was providing the money to make it happen. I understand the political concerns about the tram project and the opposition to it, but I think the Government and Transport Scotland should have stayed more actively involved. TIE became the only source of advice and information for a lot of the officers and elected members who were taking decisions on the project. If TS had still been at the table, it would have been a critical friend, if you like, and would have been able to point out – and perhaps prevent, some of the failures that emerged. That would have enabled issues to be tackled at an earlier stage and TS's transport expertise could have been fully utilised in the delivery of the project. I believe, that had a very profound impact on the way the project was delivered.
97. I am aware that a Highlight Report to the Chief Executive's Internal Planning Group ("IPG") on 30 August 2008 [CEC01566861] noted that the capping of the grant from TS changed the risk profile for the Council. The Scottish Government was a key part in the delivery of the project, as the vast majority of the money came from there. However, the way that the project was signed off and the fact that the Scottish Government stepped back meant that the Council obviously took on more responsibility (and risk) for delivering it. Without question it took responsibility as the Funder of Last Resort, although whether it handled that responsibility correctly is a different matter. This was the Council's project and if it went wrong everybody knew it was the Council that would get the blame for it.

98. The Infraco contract was signed on 13 and 14 May 2008, a year after my departure. I am not sure I can remember the detail of the extent to which the aims of the procurement strategy would be met except in the most general of terms. Before I left we were comfortable that there were mechanisms in place to take the project forward, but that there were some huge challenges to its delivery, not least regarding the on-street utility works. I realised that there would be huge difficulties in delivering the project and that communication and engagement with the local communities, who were going to be affected by the works, would likely be a bigger challenge than the finances. At one level you can fix the finances with money, but if you hit practical problems putting the tram works in the middle of Edinburgh there are huge implications, not just for the delivery of the project, but also for the operation in the city. As it turned out it was catastrophic for Edinburgh, not just the practical implications of what took place but also for the reputational damage that Edinburgh suffered. When I left the Council, and I have thought about this many times, I don't believe I could have foreseen the nature of the problems that arose in the delivery of the tram project. So many of them just seemed so off the wall, irrational and not what you would have expected to happen.
99. Ultimately, responsibility for the risks arising from incomplete and outstanding design, approvals and consents and outstanding utility diversion works was the Councils. TIE was obviously the delivery mechanism for that and was responsible for making sure it happened in good order. The risks were also with members of the public in Edinburgh because if there were problems on-street then the Edinburgh public would be inconvenienced because of those problems and that is what transpired. There were terrible inconveniences to residents and businesses during the works to the extent that the reputation of the Council and the city was seriously tarnished.
100. The risks were there to be managed and mitigated by TIE and the Council working together. Some people argued that the provisions that were there should have been higher and there should have been more money allocated to financial risk and that is a perfectly legitimate point of view to take. That was not the case with other transport projects at that time and this was no

different, but you could make the case that there should have been a larger contingency. I was aware of those debates and I understood the arguments for Optimism Bias. We spent a lot of time reading and looking into Optimism Bias as elected members and it is good practice to make sure you have adequate provision. Again, one of the things that gave me comfort was that by the time I left the Council there was a substantial amount of money in the Council's balances. As I have said, there was £44m allocated for modernising pay that could have been utilised. What took place on the tram project was not anything that could have been coped with under normal Optimism Bias. This was a problem many times worse than could have been predicted for an ordinary procurement of a project like this. Having a two year contractual dispute, with the range of issues regarding implementing utility works and the time lag with design, were failures that no one could have reasonably foreseen.

101. The fact TIE was initially set up to carry out a range of projects and ended up only running one project was an issue. That had a profound impact on the way people in TIE behaved because the costs of TIE should have been spread over a range of capital projects in order to spread the costs and minimise the impact on any one particular project. This was the only project that TIE had at the end of the day and that fundamentally changed the psychology of those staff working in TIE and the way they behaved towards implementing the project. I think there was undue haste and eagerness to deliver the project to the extent that some of the key decisions taken in relation to the project were compromised.
102. At that time I did not have any understanding of the entitlement on the part of the contractor to seek further monies on the basis that there had been a variation under the contract. I know from my involvement in large projects that a variation on a project that has been contracted can be more expensive than having a fixed contract implemented by a contractor. If you look at what happened on the Scottish Parliament, the initial costs were estimated at £40m and it cost way more than that. The reason for that was because they started construction and developing the project in a way that was undefined and they

changed the specification a great many times all the way through. The power of the negotiating position is very different on additional works you request from a contractor than it is from the initial contract award itself and for major projects everybody understands that. It is not a risk that would have been unknown to people who were in TIE or in the Council. If you get a specified contract, fixed as fully as possible in terms of the cost, then you broadly know what you are dealing with. The more changes you make to that contract the more cost risks are associated with it.

103. In 2008, I was asked if I wanted to be interviewed for a position in PPS. I had set up on my own specialising in communication issues, but when I got the approach I thought it was well worth looking at. PPS are a good company with a long track record, they had a vacancy in their Edinburgh office so, I was interviewed and appointed.
104. I ran the Edinburgh office of PPS and I oversaw the work the company was involved in, in Scotland. A large part of that is property and development-related communications. We were involved in projects housing projects, wind farm developments across Scotland and we worked on retail projects across Scotland. We had a wide range of clients and projects and I oversaw that work.
105. In the spring of 2010 PPS Group was appointed to provide high level strategic advice and advise on how best to respond to the many challenges faced by Bilfinger Berger/Siemens ("BBS") as a result of what was by then the UK's highest profile contractual dispute. In my role with the PPS Group, I came to represent both Bilfinger and Siemens in the Edinburgh trams dispute. By that time the dispute had been dragging on for a long period of time and I was trying to break the log jam that was there as it was clearly not progressing. There was a huge array of press coverage about the contractual dispute between Bilfinger, in particular, and the Council. The reputational damage to Edinburgh and the controversy around the project had reached fever pitch by that stage. As someone who was passionate about the city and delivering the tram project, I wondered if there was a way of trying to break through the

impasse and try and get the facts through to members of the Council. Bilfinger and Siemens appointed me and I advised them as best I could on how to respond to the various issues that were going on at the time.

106. I came to be appointed by BBS after we brought an independent consultant, Jeremy Hamilton, into our office to help with the workload we had at the time. As it happened, he was working on behalf of Bilfinger and we had lots of arguments because of discussions I had had with people in the Council and with David Mackay. I actually got on really well with David Mackay until I was appointed by PPS. David did not share any confidential information with me, but he did express a view about the contractor and the nature of the relationship they had with the contractor. Initially I accepted his views and my perceptions were very coloured by the information I was given.
107. Over a period of time I became really concerned this was not a normal contractual dispute. It was dragging on for so long that it was becoming a huge issue for the delivery of the tram project. I was beginning to wonder what was behind it all and we would have discussions in the office about it. Bilfinger and Siemens representatives came to see me and briefed me on the challenges they faced. In particular, they felt critical information was not getting through to elected members and those taking decisions in the Council about the way TIE was behaving. Having sat through a lengthy presentation by Richard Walker and Michael Flynn, where they went through some of these issues in fairly fine detail, I thought they had justifiable concerns.
108. I could not understand why the dispute was being allowed to drag on in the way that it was. After discussing it with Richard and Michael I felt it was worth trying to intervene to see if I could make any difference and try and bring it to a conclusion. They knew I was in favour of the trams, they knew I was somebody who was supportive of it and that was not going to change.
109. I do not think I was ever concerned that my previous position as a Councillor might give rise to a conflict of interest. I made it clear to Bilfinger and Siemens that I would not do anything that would damage the prospect of delivering the

tram. If they were appointing me, they were appointing me on that basis and if I disagreed with a position they took, I would not get involved in helping implement that position. As it happened, I never had to face that choice when I was working with Bilfinger and Siemens. Their interpretation of the contract proved to be correct and they never tried to do anything to undermine the tram project or to try and cause problems for its delivery. What they tried to do was seek a resolution to the dispute they were involved in.

110. At one point, I gather that without my knowledge, my name was suggested internally within the Council to handle the communications for the tram project in the Council. I understand that it was blocked, I think for entirely sensible reasons. I do not think it would have been understood by members of the public and I do not think it would have helped deliver the project. However, I do think there was a rationale for my engagement with BBS to break the log jam. Members of staff and elected members of the Council often work in the private sector because of their experience and their expertise and that is a perfectly legitimate thing. I was taken on by Bilfinger and Siemens because of my experience and expertise, which is exactly the same.

## **Events in 2008/2009**

111. I think I became aware of the dispute fairly early on because of some of the press coverage and also from feedback I had been getting from ex colleagues in the Council and from David Mackay. It was something that became relatively high profile fairly quickly and I was aware of it fairly early on.
112. My understanding is that there were a number of issues causing the dispute. There was the need to ensure that utility diversion work was complete before Bilfinger went on site and started to carry out the work. There was also an issue in terms of the amount of design work that was complete before they (Bilfinger) could start working and there were issues in the interpretation of the contract regarding variations in the instructions to Bilfinger. I understand that TIE felt it could instruct Bilfinger to carry out the work at a cost it felt was



appropriate, whereas Bilfinger's interpretation was that they would produce cost estimates for each variation. Those would be judged on their merit and that is principally where the dispute arose and what the issues were. I think it is fair to say there were also personality issues between some of the key protagonists. Whatever the contract, if people work together to try and resolve the issues in that contract, a lot of problems can be solved. I think one of the issues that coloured this project was that some of the disputes were unnecessarily personal between the protagonists.

113. I found people on BBS quite reasonable, but of course like anyone they made mistakes, and they have admitted they made mistakes, some of these in the early stages of the implementation of the tram project. My interpretation is that those mistakes coloured the relationship between TIE and Bilfinger and that TIE's perception of BBS never changed from those early stages. Bilfinger learned lessons from the early stages but I do not think that was ever acknowledged and taken on board by TIE. I listened carefully to every comment in every meeting I was involved in with Bilfinger in case there was a comment that gave away an inappropriate form of behaviour, or an inappropriate interpretation of information, or an inappropriate ambition in pursuing the project. Nothing I ever heard in any of those private meetings or with any of the Bilfinger staff I worked with, raised any concerns in me that they were anything other than a contractor trying to find a fair outcome to the dispute and they were prepared to be reasonable in order to achieve that. That will not be the perception in TIE because there was a very fixed view about Bilfinger. I think one of the early cost estimates that Bilfinger gave was wrong and that, I believe, sparked off the view in TIE that they (BB) was simply out to make money.
114. I am not sure I knew what strategy TIE had to resolve the dispute other than to play the man rather than the ball. Their comments about Bilfinger almost verged on abuse at times and the way they handled the press was unnecessarily antagonistic towards Bilfinger. David Mackay is a good man and I think he was honestly trying to do what he thought was right but I think he was wrong. I think he was wrong in the fixed view he formed about

Bilfinger and he was wrong to be so definitive about his views. He also relied on poor advice from within TIE about the facts of the situation. Ultimately, I think what proved to be the undoing both of David and of TIE was that those judgements were wrong.

115. I think that TIE abused its position as a project delivery vehicle for the Council by basically putting a gun to the Council's head and insisting they would decide what was to happen in relation to the dispute. This goes back to a comment, I believe, was made to elected members "*If you question anything that we are doing while we are trying to protect the public purse, you will be responsible for the outcome, you will be responsible for costing the tax payer more money*". This scared people into a position where they felt they could not intervene because they felt they would be blamed by TIE for costing extra money and for giving the position away to Bilfinger. It was almost like a form of Stockholm syndrome where TIE was the only voice that was heard within the Council about the contractual dispute. It was the only source of information the Council had and I did not see any serious attempt in the Council to take a wider pool of information. I am sure it probably happened and that some people within the Council did question what was going on in TIE at different stages, but I did not see any systematic approach to road test or challenge what people were being told by TIE.
116. There are lots of reasons why it took so long for TIE to come to the realisation that the interpretation of the contract was wrong and it is painful and, I think, heart breaking that the advice the Council got was consistent with the initial impressions advice that TIE gave. That advice led people in TIE to think they had a 100% guarantee that their legal position was accurate. My experience in the Council was that I have never known a lawyer to give a 100% surety on anything. They will qualify any decision on the basis of probability and that was one of the tragedies of the whole project. TIE's interpretation of the contract was wrong and it took far too long for that to be found out. Bilfinger's interpretation of the contract was right because their interpretation of the contract was better than TIE's. .

117. I do not consider that TIE was open and transparent when reporting to the Council on the dispute. I think the way that the information flow to the Council was controlled and the way that key facts were kept from the Council was a dereliction of duty. TIE was a delivery vehicle for the Council and was completely beholding to the Council. I think at various stages TIE were not honest and open about the project and became a rogue organisation that in large measures existed to keep its own existence going. I am a passionate believer in trams and I was as frustrated as everybody that it was taking far too long to deliver the project. If the tram project ended TIE were all out in the cold and I think that was one of the primary things that motivated some of the key individuals in TIE, particularly because of the external economic climate. It was not, necessarily, about delivering the project, it was about being there to deliver the project and having a job.
118. I am not sure I have a detailed knowledge of the processes of the Dispute Resolution Procedures but my understanding is that TIE was keen to use them when they thought they were going to go in their favour. When they started to turn against that view changed.
119. One of the fundamental aspects of the whole problem with the dispute goes back to the interpretation of the contract. TIE lost the vast majority of the disputes but presented them to the Council as if they had won them. I could not say people in TIE lied to the Council about the outcomes of the disputes but there was a deliberate misinterpretation of the adjudication outcomes and accurate information was withheld from elected members. I do not know if it was withheld from officers but I don't think anyone demanded the information they should have had by right. I remember asking a couple of Councillors if they had read the dispute outcomes and they had not, they had just relied on a presentation from TIE. Similarly, a senior officer in the Council was uncertain and told me 'he thought he had read one'. Direct access to the adjudication information would have helped clarify the issues for elected members.

120. One of the things I find most bizarre about the whole thing was why people were not being given the information. If I had been Council Leader at the time an adjudication came out, I would have expected it on my desk as soon as possible, or somebody would have been chased to find it. I do not care about any issues of confidentiality may pertinent to the dispute and to the project, as a councillor you are expected to handle confidential information every day. As Council Leader, indeed as an elected member you are entitled to access information, however confidential, that can help inform you to make the right decisions for the right reasons and I believe I would have demanded that. I do not understand why elected members and senior officers of the Council were not more demanding. If elected members and officers had been given ready access to that information I believe they would not have accepted the interpretation TIE presented and this dispute would have been substantially shortened with the cost savings consistent with that.
121. If you are involved in the biggest contractual dispute in the UK, I cannot for the life of me understand why members and officers would not be demanding to see every bit of paper they thought could help inform them to make a better decision. I cannot understand why politicians were so passive in that regard. There was that underlying threat from TIE about commercial confidentiality, which is a fundamentally dishonest way to behave to elected members. TIE officers had a responsibility to the Council to give honest and full accounts of the information they received. No interpretation I have seen of the behaviour of TIE officers shows they were open, transparent or forthcoming. I believe that TIE became a rogue organisation that put its own interests, and those of a small number of staff within TIE, ahead of the interests of the Council or the City of Edinburgh.
122. I do not think elected members realised their responsibilities and the powers they had to demand information, I think they were too shy and too reluctant. I was never shy about demanding information of officers, and I respected the lines between officers and members, but I was in charge. It was my responsibility to get the information I needed to take decisions for the city. I think they were just too shy and passive, which is no excuse, but does

explain why TIE was able to escape scrutiny for such a long period of time. Senior officers of the Council, Tom Aitchison, Andrew Holmes, Dave Anderson and others, should have been demanding access to the pertinent information as well and again I do not understand that either. I think there was a view of entitlement formed in TIE that the tram was their project and that the Council was essentially there just to facilitate their existence. The Council was there to enable the tram project to proceed and TIE was only there as the delivery vehicle. TIE took on a life of its own that was completely unjustified and the lack of scrutiny by the Council collectively was unforgiveable.

123. Bilfinger was a company that did not really understand either the press or the media and that is understandable. They are a big engineering company, used to carrying out projects, they are not in the forefront of political debates and I think they suffered because of that. People involved looked after their interests as the contractor but only in their interpretation of the contract and they were proven to be right. It was unlike any contractual situation they had been involved in and I think they were overwhelmed by that. I do not think they quite knew how to deal with it but when it came to the analysis of the technical issues and the analysis of the legal issues, the position of Bilfinger was far more robust than the position of TIE and the Council, as was proven to be the case.
124. There was a real desire in TIE to get the project beyond the point of cancellation and I think that is why they negotiated the Princes Street Agreement [Press Release - **TRS00016944** refers] in the way that they did. Rightly or wrongly, I think that affected the attitude of both sides to the delivery of the project thereafter. Had TIE taken longer and perhaps thought more seriously about how to carry out the Princes Street works, things may have turned out differently. However, my view is that TIE staff were simply desperate to get the Princes Street work started in order to get the project beyond the 'point of no return' in order that it couldn't be cancelled.
125. I believe that on 13 August 2009 Richard Jeffrey of TIE sent an email [**CEC00679723**] to Councillors/members of the Board to inform them that

Bilfinger/Siemens/ Construcciones y Auxiliar de Ferrocarriles (“BSC”) were not happy to start works on Shandwick Place unless this work was undertaken on a cost plus arrangement. I was not involved in discussions about the contract prices. I am a communications and political consultant. My understanding was that Bilfinger Berger was trying to find a way to move ahead and make the project work. Staff had their view of what the contract meant, and had an impasse with TIE, which took another view. I think it was put forward as a suggestion by Bilfinger as a way to break the logjam. Whether it was right or wrong I cannot say, but clearly it did not succeed in winning TIE. I believe it was understood what the contract meant and by that stage progression of the on-street works was not as it should have been. There had not been the percentage of design works completed that were meant to be completed.

126. The Princes Street Agreement was done in haste, and in my opinion, it was done for the wrong reasons because it was done to take the project beyond the point of no return. It was not done to expedite the contract works appropriately and for that reason I think the Princes Street Agreement was a mistake, one of many mistakes, but an important one. I remember I met one of the contractors that worked on Princes Street at a conference. They put in some sort of rubber buffer at the side of the rails in Princes Street and he had told TIE that it was wholly inappropriate and would not last. The person from TIE he was talking to told him dismissively he did not know what he was talking about and of course it had to be ripped out and done again.
127. I am led to believe that by email dated 4 March 2010, [CEC00474750] Alan Coyle sent the Directors of City Development and Finance a Briefing Note [CEC00474751] setting out the estimated cost of the three options that formed part of “Operation Pitchfork”. The estimated cost of completing the works appears to have been between £644m and £673m. I do not remember ever hearing the phrase Operation Pitchfork until after I finished working on the project. I think some of the people in Bilfinger may have been aware of it by name, but I was not, and I certainly was not aware of the cost estimate in detail. I do not know who had prepared those cost estimates or which option was the most viable.

128. On 8 March 2010, on my advice, Richard Walker of BBS sent a letter [CEC00548823] to Tom Aitchison, Gordon Mackenzie, Donald McGougan and David Anderson. There was no restriction on information Bilfinger could send to the politicians so my view was that we should try and get the facts out there in a way that went beyond TIE. There was no real purpose trying to argue or rationalise with TIE on the key issues because staff there were not listening and they were not going to engage productively. We had to try and get senior officers and members to understand more about what was going on regarding the behaviour of TIE and the facts of the dispute.
129. The letter was Richard Walker trying to expose the Council to the facts as Bilfinger understood them, to try and convey information to the Council that might give it cause to reflect on whether it was getting the best advice from TIE. TIE was misinterpreting the adjudication process and not handling the progression of the tram works and administration of the contract properly. I thought it was an entirely justifiable thing to do because ultimately the Council was the client. The Council was the organisation that was responsible if the project went wrong and it would have to pick up the tab if there were any cost overruns. My approach is always to try and use facts and information and if somebody proves you wrong you have just got to accept and retreat. If your information is correct then, over a period of time, you will get the result you want because the truth is the truth. Ultimately that is what happened, TIE was exposed as an organisation that had gone rogue, giving bad advice and misinforming the Council, Transport Scotland and the Scottish Government eventually destroying its own credibility.
130. I hoped that the letter might encourage people like Tom Aitchison and Donald McGougan to seek out the adjudications. I was really disappointed that they did not become more proactive in getting more of the factual information. Tom Aitchison is a good and decent man and was a good Chief Executive for me to work with, when I was Leader. I have always had a good personal relationship with him and I thought if we provided some good solid information, it would have an impact pretty quickly. It did not happen. However

you cannot sustain a campaign that is built on things that are not true, and that, essentially is what TIE sought to do.

131. I found it puzzling that the Council accepted views from David Mackay and Richard Jeffrey that were a complete variance to the truth. I do not get any sense that people in TIE felt the scrutiny of elected members to any great degree. The impression I got was that they were left to their own devices. I really could not understand the passivity of elected members and senior Council officers in relation to TIE. They seem to wield an unbelievable amount of control over the Council in a way that seriously damaged both the project and the reputation of Edinburgh.
  
132. I am aware of the email correspondence dated 11 March 2010 [CEC00590097] between myself, Gordon Mackenzie and Mandy Haeburn-Little. It notes that I was due to meet with them as a member of PPS, representing both Bilfinger and Siemens, my objective being to help resolve the issues. The meeting never took place and to be honest I was not surprised. If you are portraying an agenda that is untrue and at variance with the facts, the last thing you want to do is sit down and talk it through with somebody who knows it to be untrue. I do not know if they were scared or dismissive or whatever, but it was deeply unfortunate that elected members and senior officers in the Council were not more critical of the information they were getting from TIE. If something goes wrong you have an obligation to try and find out why and to resolve it in a way that minimises the damage to the Council and to the project. Rather than try and take control of it and move the agenda forward, I got the impression that elected members and senior officers were like rabbits caught in headlights and did not really know how to respond.
  
133. I was never concerned that my representing both Bilfinger and Siemens might give rise to a conflict of interest. If Bilfinger had asked me to do something that would have either undermined or damaged the trams, I would have refused. It was not difficult for me and I was never asked to do anything inappropriate. I was never put in the position where I had to choose between



my obligations to my client and my belief that the tram was a sound investment for Edinburgh.

134. In the proposed meeting, I wished to talk through some of the key issues that were holding progress back and look at steps that could be taken to move the project forward to a successful conclusion. This goes back to my point that there was information being presented to the Council and Councillors that was inaccurate in relation to both the contract that had been signed and also the way that contract was being applied. The adjudications set out fairly clearly that Bilfinger's interpretation of the contract was correct. However, it had been portrayed to the Council and to elected members that somehow TIE had won a great victory in these adjudications. This was self-evidently not the case. My hope was that if you kept repeating that often enough, someone would realise there was something terribly wrong with the way they had been advised.
135. As an elected member you have a responsibility to learn about the decisions you are taking and use your position to get the best outcome for the people you represent. That means sometimes you are strategic, sometimes you go in and look at the detail of issues, sometimes you question, sometimes you demand and sometimes you support officers if they are making difficult decisions. You have a wide range of responsibilities and the fact that you are not a professional engineer does not mean you cannot understand a document that sets out adjudications on a tram dispute. If you need advice and guidance on it you can go and get some. There are people that you can go to, there are ways in which you can test information you get, it is just part of your job. You do not get good governance without high levels of scrutiny and unfortunately when it came to the tram project there was no such scrutiny from the members and senior officers.
136. I am aware that in an email dated 11 March 2010 [CEC00461693] Tom Aitchison noted that I had sent him two text messages, the first noting that I had seen the three adjudication decisions and that TIE had unequivocally lost each one, the second seeking Tom Aitchison to link me up with Donald McGougan to see if we could resolve these issues. I was trying to get the

facts over to senior people involved in the decision-making process and Tom and I have known each other for a long time. I thought if he got that information he would follow through. As Director of Finance, I was hoping that Donald McGougan would actually take a more active interest in it because of the financial consequences. I have had lots of arguments with Donald McGougan about financial issues that were much less significant than Edinburgh trams and again I found it puzzling and bewildering that he did not take an interest in trying to control the trams expenditure to a greater degree. I was not particularly concerned about whether they thought I was a turncoat or a good or a bad person, I had a job to do for my client and I was trying to do it to the best of my ability. That job was also consistent with delivering the trams properly. I was genuinely trying to open up a dialogue with senior people in the Council to try and take the project forward, but they were simply not up for it. In my experience, if people do not want to discuss things and are not open there is generally a reason for that and it is usually because they are not confident about their arguments. If people are confident they are right they will generally happily argue with anybody, which is what you would normally expect. Nobody that I saw at any point tried to do that.

137. I am not sure TIE knew they did not have a firm footing or if they were just scared of engaging. These adjudications were delivered in black and white to TIE and could have been handed over to the Council for senior elected members to look at for themselves. That they were not given the opportunity to make up their own minds was because there was an agenda in TIE about keeping the correct information away from elected members. That is why this dispute dragged on for such a prolonged period of time. Had senior elected members and officers been more critical of the information they were getting from TIE, there would have been substantial savings to the council taxpayer and the project would have been completed far earlier.
138. Referring to the email dated 15 March 2010 [**CEC00461901**] that I sent to Tom Aitchison and the degree of authority BBS invested in me, Richard Walker was happy to support this approach. I reported back to him how we got on but it was not much of a report because we did not get very far.

139. The experience and qualifications I possess that enabled me to provide strategic advice to BBS in these circumstances was an understanding of the Council and Edinburgh. I understand Council procedures and I understand the politics in the Council probably as well as any elected member or officer. I have the ability to understand how to get information through to the Council and giving advice on things such as sending the letter to senior members of the Council. I am confident on communications generally and I think that is probably why there was a suggestion from within the Council that I should take up that role on the tram for the Council and TIE. I am (I believe) good on strategy and that can in my experience be in short supply in public administration. Strategy is one of the most difficult things for people to do and the bigger the project, the more important strategic issues are. I advised Bilfinger and Siemens to the best of my ability and ultimately the work that we did brought about the end of the dispute and the demise of TIE.
140. I am aware it is noted in a report to the Tram Project Board ("TPB") dated December 2010 [CEC00191942, page 17] that I was to deal solely with PR issues. I was not given authority to negotiate deals or agreements with the Council. I was trying to engineer the circumstances in which the parties could come together and discuss the fundamental issues. I was also trying to get over the facts of the situation because we had to rebut a considerable amount of misinformation about Bilfinger. I did not lead directly on the communications issues. I am aware there was a dossier that went round the press about Bilfinger, trying to portray Bilfinger as "*a dodgy company*". It was just nonsense.
141. I acknowledge the emails from Gordon Mackenzie dated 14 March 2010 [TIE00288677] and Tony Rush dated 16 April 2010 [CEC00445284]. In relation to my working relationships with Council Officers and TIE I would say I still get on relatively well with Tom Aitchison. It was difficult because they did not want to engage and if we spoke on any issues we would have to spend time talking about trams. By and large they did not particularly want to engage

at that time which I understand to a degree. We had professional contact; it was not about any kind of relationships that we previously had.

142. I sent an email to Tom Aitchison on 21 June 2010 [CEC00263117] in which I noted that the figures contained in item 3.5 of the tram report were disputed by the contractor and it was their intention to clarify the position in due course. This was me setting out the difference in the various issues that went through adjudication. When you go into an adjudication process, the contractor has to put in the maximum scope for the work and the figures would get adjusted because the scope of the project would change. If you needed to build a six foot wall and you were only going to build a four foot wall, the price would change. This list was basically misinformation about the initial claim put in by Bilfinger, presented as TIE managing to get these reductions by being tough on Bilfinger, which was not the case. Most of the reductions in each of these issues were changes to the scope of the work rather than Bilfinger getting the contract price wrong. That was what I was trying to get over to Tom and to the Council.
143. TIE was trying to say it had saved the Council £10m because they had been tough in the way it dealt with Bilfinger and if the Council let them away with it there will be lots more of these things. Not only was that not true but in order to save that £10m they prolonged the lifespan of the project by a significant period of time and this on a project that cost £2m a month to run.
144. I remember one discussion I had with a Bilfinger official in relation to the Murrayfield underpass, when they were talking about trying to get a decision out of the Council to work there. TIE wanted it to be top quality and BB tried time and time again to get a steer from the Council as to what it wanted. Bilfinger were quite happy to scope it down and deliver it more cheaply but they needed direction from the Council. I remember the person from Bilfinger saying that sometimes no decision is more expensive than the wrong decision because of the time it takes. There was no realisation in TIE that as this juggernaut kept rumbling on it was costing £2m a month, which, in itself, was adding substantially to the cost of every aspect of the tram project.

145. I think there was a mentality in TIE that was more about keeping TIE going because they would lose their jobs if the project stopped. They would be out of jobs market at a very difficult economic time and if it took a while longer to deliver the tram project that was not necessarily a bad thing. Whether that was a deliberate strategy or whether it was just convenient for them to believe that I could not be precise.
146. To my knowledge, the figures were not adjusted so that both the contractor and TIE were content.
147. In view of the continuing dispute with the Infraco Consortium, a review of the options available to TIE/TEL/CEC (“the Client-side parties” or “the Client”) was performed in early 2010 [CEC00088182]. This paper noted that at a senior level meeting held on 2 March 2010, BSC made a proposal, followed up in writing, for a re-phasing of the project which envisaged completion between Airport and Princes Street by April 2012. It also noted that in March TIE/BSC entered into discussions on the possibility of a “*mature divorce*” with the expectation that a series of amendments to the contract could lead to a value for money firm price for off-street works plus a section of the on-street works (St Andrew Square was emerging as the likely affordable and viable first phase). This became known as Project Carlisle. Senior level meetings were held with TIE and the Infraco Consortium on 22 March, 25 March and 14 April 2010. I did not attend any of the senior level meetings referred to in paragraph 5.1 of this paper as that was not my role.
148. I did not advise BSC on technical aspects of the project. I remember discussions taking place and we had to keep in touch to try and understand the issues that were around at the time, but it was not my role to give them technical advice. Bilfinger did their analysis of the technical issues, took that forward to TIE and tried to seek a deal.
149. There were tensions between Bilfinger and Siemens because Siemens had bought substantial amounts of kit at its own expense that was required for the

tram project. If the tram project did not go ahead that would have been abortive expenditure, so it had a different relationship with the Council in the discussions that took place. It was not that they thought TIE were behaving appropriately or that the Council were doing the right thing in supporting the approach TIE took, but it wanted the dispute resolved to avoid abortive expenditure which is perfectly understandable. Having said that, Bilfinger and Siemens shared an agenda between themselves and all the key advice given was received positively by both Bilfinger and Siemens. The companies worked together to the same agenda to point out that there was a dysfunctional client in TIE and the Council. However, there is no doubt that the pressure that was on Siemens meant the Council found it less direct to deal with. They were not, perhaps, as strident as Richard Walker would have been on behalf of Bilfinger because if the project stopped for Bilfinger, they stopped getting paid, whereas if it stopped for Siemens they took a significant loss. I think there was at times attempts by TIE to play one off against the other and portray Siemens as being more pragmatic. There was no difference in the in substance to the position both took with TIE.

150. I am led to believe that on 23 April, Siemens requested a meeting with Tony Rush, TIE's specialist advisor. I did not attend this meeting and I do not know what was discussed nor what the outcome was.
151. I am aware that the paper notes that TIE's objectives were to pursue the following actions identified in the Pitchfork Report:
- 7 September 2016 Monitor opportunity for BB
  - Wrap it into a revised Infraco Contract compliant with procurement regulations
  - Find a new way of working with BSC which mitigated against further dispute risk.

There were a number of abortive attempts to try and get deals and make progress on the developments, but I am not specifically aware what happened after that.

152. I was generally aware that 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 [emails **CEC00387018** and **CEC00247389** refer]. I knew that this was a serious attempt by both TIE and Bilfinger to make progress, although of course I was not involved in the discussions. As I said, it was not my role to advise on technical aspects of the development, but I was aware it was going on and aware that the discussions were continuing.
153. From my point of view, termination of the contract through Project Notice [**CEC00434875**] would have been a catastrophe. I think Bilfinger's objectives changed through the course of the project. During the course of this project however, their objective became to not lose money, rather than to actually make a profit. If Bilfinger had stopped, the main damage to Bilfinger would have been reputational and indeed it suffered huge reputational damage. The real risk was that the project would have to have been retendered and that would have destroyed any project of delivering trams by making the costs prohibitive.
154. I well remember a project I was involved in at Liberton High School, where the contractor went bust and we had to bring in another contractor. The new contractor had to do the work that was required and check the work that had already been done. The same would have happened with trams. Then there was the reputational damage done to Edinburgh as a result of this project and I would not underestimate any of that. To have gone for a project like this and not delivered anything would have been catastrophic for the city's reputation and as a location for inward investment.
155. I emailed Donald McGougan on 21 June 2010 [**CEC00410825**] noting that I was concerned that para 3.5 of the Council report did not reflect the final figure for matters resolved through the disputes procedures. I noted that Bilfinger would provide an explanation of the facts as they saw them in advance of the council meeting. Those facts and figures provided were

disputed because they were wrong: they were an exaggeration of the degree to which TIE had managed to bring down the alleged cost Bilfinger were seeking. It was deliberate misrepresentation of the position to the Council and we were not going to let that go. I was very clear that we should challenge a report in the public domain that contained factually inaccurate information and we should make sure that elected members were aware of the accurate position. We were confident the figures we had in our interpretation of the information was correct. I felt it was very important to get that over to the Council and to Councillors that TIE misrepresented the facts.

156. An explanation of the facts was provided by BSC in advance of the council meeting, although I cannot remember the form it took. It was not any different to a lot of the information provided before and I do not know if Donald McGougan made any attempt to reflect it in the Council report. This was TIE presenting lost adjudications as success, which they got away with for a long period of time and I still, for the life of me, cannot understand why that was allowed to happen.
157. A consistent line running through the entire process I was involved in was that TIE was not presenting proper information to the Council and such information that they were presenting was not being robustly challenged and critically analysed.
158. I am aware that on 24 June 2010 the Council were given an update on the tram project by means of a joint report by the Directors of City Development and Finance [CEC02083184]. The report stated that "*The essence of the [Infraco] Agreement was that it provided a lump sum, fixed price for an agreed delivery specification and programme, with appropriate mechanisms, to attribute the financial and time impact of any subsequent changes*" (para 3.3). It was further noted that "*Whilst there have been disputes on design-related matters ... it is normal in any large construction project for the scope of the project to change in material ways, for a variety of technical and commercial reasons*" (para 3.10) and that "*The outcome of the DRPs, [Dispute Resolution Procedures] in terms of legal principles, remains finely balanced and subject*



*to debate between the parties*" (3.12). The Report stated that it was "*prudent*" to plan for a contingency of 10% above the approved funding of £545m because of the current lack of clarity on programme and cost. I do not think this report was factually accurate in a number of respects. My understanding is that it tried to make the point that utility works were substantially complete and I do not accept that that was true. I would have thought for elected members, given the way that the disputes were presented to the Council, the phrase "*in terms of legal principles, it remains finely balanced and subject to debate between the parties*" should be an alarm bell that maybe they were not being told the truth. That is not an unequivocal statement that TIE had won, that is Donald McGougan speaking in far more guarded language because he is writing in an official council report for which he can be held to account.

159. Although it is carefully worded, it still does not portray an accurate position to the Council. I think in that regard that Donald was failing in his duty as Director of Finance to accurately reflect the position for the Councillors and give them the best advice he could. It was not finely balanced; TIE lost. I have read each of those adjudications and it does not take long, it is not complicated, and, I cannot understand why that was not picked up in the Council at all levels.
160. At that time, from my point of view, it would be impossible to say if a contingency of 10% above the approved funding of £545m was prudent. Given how long the project had gone on and given the chaos, I think it would be difficult for anyone at that time to arrive at an accurate assessment of what would be required to deliver the project. There was a dysfunctional contractor in TIE and there was a very difficult relationship between TIE and Bilfinger/Siemens. For the director to say that a contingency of 10% above would be enough is a very bold and brave statement to make based on the information he had at the time. I do not really think that the Director of Finance could have given any accurate advice to the Council on what would have been required to deliver the project at that time; I think there were too many variables and unknowns.

161. I am led to believe that it appears members were given notice of cost overruns and difficulties only after overruns and difficulties had occurred. I do not think members got, or asked for, enough information and key facts about the progress of the project, so it would not surprise me that they were given limited information about these things. I think there was a deliberate approach by TIE to give the Council the information they thought the Council should have, rather than the information that Councillors needed. I think that was a fundamental dereliction of duty on the part of key members of the TIE organisation and a failure to represent the Council's interests by senior Council officers because they did not correct that behaviour.
162. In my view, the dispute would have been resolved far earlier had members been advised at an earlier stage that decisions were being taken as part of the Dispute Resolution Process which showed that significant additional sums were due. In order to take those decisions you really do have to have good advice and you have to have the facts. Elected members were denied the facts for so long it meant they were not able to take the appropriate decisions.
163. I do not blame members per se for not being able to take the right decisions, although I do think they should have been demanding more information and more answers. However, based on the information they received nobody could have taken proper decisions on the tram project. Undoubtedly, the dispute would have been resolved far earlier if the Councillors had been given accurate information and it would have saved the city a very significant sum of money.
164. I am led to believe that by email dated 1 August 2010 [CEC00473789] Nick Smith sent Alastair Maclean a document, "Tram-Potted History" [CEC00473790]. Mr Smith's email noted "*dissemination of the actual history here could cause serious problems and we definitely don't want to set hares running ... be very careful what info you impart to the politicians as the Directors and TIE have kept them on a restricted info flow*". Council officers have an obligation to give honest and faithful advice to elected members and they should not restrict the flow of information to which members are

legitimately entitled. In all organisations there is a need for confidentiality around issues, however to withhold information from elected members in those circumstances is a serious dereliction of their duty. Alastair Maclean would have been the Monitoring Officer at that time with a legal obligation to look after the interests of Council. He should have put steps in place to correct that kind of behaviour in both Council Officers and TIE. I would not have found such behaviour acceptable when I was Council Leader. In this instance, I really do think the last thing you want to add to the mix of the dispute with Bilfinger is serious maladministration of the Council and this, on the face of it, appears to be just that. I would have expected officers who did this kind of thing to be tackled and perhaps even disciplined for doing so. Withholding information is completely indefensible and I cannot think why Council Officers in Edinburgh may have felt that that it was an appropriate way to operate.

165. Whilst you will get the occasional example of that kind of thing in local government, this is not an ordinary example. This was the biggest and most high profile problem that Edinburgh had in the Council since local government reorganisation. Everybody would have understood the stakes were of the highest level and I would be concerned that to withhold information from elected members in those circumstances would not be just a mistake, but could appear to be a deliberate action to deny the legitimate right of elected members to take the decisions they need to take. Jenny Dawe and Gordon Mackenzie lost their seats in the elections and, in large measure that was because of the way they handled the trams. Those officers denied them the opportunity to take the right decisions. Reading that statement took my breath away; I think it that was the attitude of officers they were simply not doing the job for which they were being paid.
166. Elected Members always need to be given appropriate information in order to take decisions and they were denied that opportunity. In this instance neither Jenny Dawe nor elected members of Edinburgh Council were given the facts, which is completely unacceptable. It could be that Council Officers thought that by restricting the information flow they might get a better decisions out of the Council further down the line. I do not know, but they had no right to

withhold information. That was not their decision to take. Decisions should be taken by the elected members. Gordon Mackenzie and Jenny Dawe both paid a high price for being involved in the trams and making bad decisions, but sadly they never got the opportunity to make the right decisions because they never had the appropriate information on which to base those decisions.

167. On the basis of that email, it was shown to be correct that BBS could not get a fair hearing by going through TIE to the Council; it had no option but to go over TIE and directly to the elected members themselves.
168. I am aware that 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's Square and a range of between £75m-£100m from St Andrew's 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. I am not sure I can speak for BSC and Siemens as to their views on TIE's Project Carlisle Counter Offer. At the time, from memory, they felt they had made a lot of progress in Project Carlisle but there was a frustration that every time we got close to getting a resolution, there was a retreat by TIE because it meant additional resources, which just meant the dispute trundled on at £2million per month.
169. I drafted a letter on behalf of BBS that was sent directly to Councillors on 13 October 2010 [TIE00301406] giving their views on the dispute. The letter advised that of the nine formal adjudication decisions issued, BBS had six decisions in its favour, there were two split decisions (with the principle found in favour of BBS) and there was one decision in favour of TIE. The letter also stated that, in the interests of accuracy and transparency, and if TIE agreed, BBS had no objection to the disclosure of the adjudication decisions to elected members in order that they could make their own judgement. We

were simply trying to get the information over to elected members and we were also trying to get elected members to ask to see the adjudication results themselves.

170. I cannot understand why there was this process of denial within TIE and an unwillingness by elected members to ask for information they were legitimately entitled to. Going back to the comment made in an interview by Gordon Mackenzie, "*I am just a social worker, I do not know about these transport things*", any lay person would have arrived at a rational conclusion had they looked at the adjudications: they would have concluded that TIE had lost. The simple fact of the award of costs gives a very clear picture of where the decisions had gone. It beggars belief that information was not just denied to elected members but was briefed against on a continual basis for a prolonged period of time. There was what can only be concluded was deliberate misinformation about the position with the adjudications and their outcome in a way that portrayed Bilfinger wrongly. TIE was in the wrong in relation to fundamental issues regarding the application of the contract and it did nothing at all to try and address that, with tragic consequences.
171. There is no question in my mind that the key people involved in the tram project, Jenny Dawe, Gordon Mackenzie, the opposition transport spokespeople, some of the TIE Board members and others, should all as a matter of course have been given the adjudications so they could read them and make up their own minds. To misrepresent the information in the adjudications is wrong and was counterproductive because it was always going to be found out. Decisions should have been taken on a rational basis rather than an irrational one and the consequences might have been a cost overrun but not to the degree it did. If there is a cost of £2m a month to run the project, adding on abortive costs produces a figure for the dispute of about £100m, I think. That was £100m of public money wasted on the tram dispute. That is probably the largest waste of public funds in Scottish local government history and the reason that happened is because of the behaviour of TIE.

172. My understanding at that time of the outcome of the adjudication decisions was as set out in that letter [**TIE00301406**], which I believe was accurate and honest in contrast to the information being provided by TIE at that stage [see email from Mike Connelly dated 10 October 2010 - **TIE00463778**].
173. I am aware that a report to Council dated 14 October 2010 [**CEC02083124**] noted that at the Council meeting on 24 June 2010 the Council had required a refreshed Business Case, detailing the capital and revenue implications of all the options currently being investigated by TIE and taking into account assumptions contained within the original plan that either no longer applied or whose timescales had now substantially changed. The report noted that the contingency planning work undertaken by the Council and TIE had identified funding options which could address project costs of up to £600m. It was stated, "*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*" (paragraph 3.1). It was, again, noted that "*The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties*" (paragraph 2.50). Termination of the contract was one option. It was noted that extensive legal advice had been taken and continued to be taken. The report did not, however, give an indication of the likely cost, or range of costs, of the different options with the Project Carlisle offers and counter offers, for example, not being referred to. In my view, the report to members did not accurately reflect all the facts. I am not saying that everything in the report was inaccurate but there was clearly important information in there that in my opinion was not true and that should have been presented to elected members at that time.
174. The statement that the outcome of the DRPs remained "*finely balanced*" runs contrary to the letter issued directly to Councillors from BSC on 13 October 2010 [**TIE00301406**]. As I have said, I was angry that Councillors had been given inaccurate and incomplete information as a deliberate ploy by TIE to misrepresent the situation and get the outcome it wanted as opposed to the best outcome, either for the Council, or the City of Edinburgh.

175. I am aware that an email dated 25 October 2010 from Ian Mack to Carol Campbell [CEC00137970] notes that TIE refer to numerous inflated estimates for 'Infraco Notices of TIE Changes' ("INTCs") provided by the Infraco. It also notes that TIE submits that several of these estimates have been challenged and settled through the Dispute Resolution Procedure and that all were consequently substantially reduced in value. The INTCs were not inflated, they were estimates and they were based on the best available information at the time. As I have stated, when entering into a dispute procedure like that you have to put in the maximum scope at the start even though, through discussion of the scoping of the works, that figure may well come down. That is not necessarily something that occurs as a result of the Disputes Resolution Process, that is just part of the normal discussion of delivering a contract like this. To suggest that it was inflated and that TIE somehow negotiated it down is an attempt to give TIE credit for something it did not actually do. It is also an attempt to defend it's position and portray Bilfinger as something that it was not. By that stage I had been through these discussions a number of times with Bilfinger, staff just wanted to get out without losing a huge amount of money on the project and by that stage it was about reputation management as much as anything.

176. On 27 October, by email to Carol Campbell, Susan Clark and Richard Jeffrey of TIE [CEC00018575], Nick Smith notes that Tom Aitchison, Chief Executive of the council requested a summary of the win/lose position regarding DRP to allow him to be satisfied that my assertions (presumably of 11 October CEC00461693) were incorrect. The win/lose position in my view was that TIE lost and it was fairly obvious. The remarkable thing about that is that it took so long to request a summary of the win/lose position. Furthermore, it is not a request to look at the adjudications themselves, which again is remarkable. I do not know if there was anybody in the Council who asked to see the adjudications and I would find it staggering if nobody actually did. I do not care what the legal status of TIE was or what the difficulties and confidentialities of managing a big project like this were. If you are the Leader of the Council, or the Chair of Transport, you are entitled to see that information. If they were hiding that from you, you have needed to ask yourself why? The only

CEC00018575  
should be  
CEC00137970

11 October  
should be 11  
March

conclusion to draw is because there was an intent to mislead, which is I believe what happened. The consequences of that were that we had a project that rolled on for probably two years longer than it should have and which cost members of the public far more than it should have. It was not just that they misled the Council, but they covered their tracks by essentially blackmailing members and portraying any questions against TIE as being in favour of Bilfinger. Their statement "*if you give any information away you will be the person that cost the Council taxpayer money*" is a really insidious and dangerous thing to do as well as being completely unconscionable.

177. I have been advised that Nick Smith was of the view that TIE's views on the outcome of the adjudications should be independently validated as DLA might colour the outcome of the adjudication decisions [email from Nick Smith dated 29 October 2010 - **CEC00018575**]. Subsequently, an email dated 4 November 2010 by the Council Solicitor, Alastair Maclean [**CEC00012984**], stated that CEC were to instruct an independent analysis of TIE's position by CEC's QC and that McGrigors had been appointed to lead that work stream in place of DLA. I have not seen any of the independent analysis and wonder why they would have to commission lawyers to look at TIE's interpretation of the outcome of the adjudications, when they could look at the adjudications themselves. You do not need to be a lawyer to understand what took place in the adjudications. If you read them you would understand what took place.
178. I am aware that the Council tried to check the legal position on the contract and got an independent view from McGrigors, I think. DLA affirmed their position and McGrigors apparently affirmed DLA's position. My understanding is that it was Alastair Maclean who prompted the council to go to Lord Dervaird to get an opinion and it was only at that point there began to be a realisation the TIE interpretation of the contract might be wrong. It is tragic that it took such a lengthy process to establish they had the legal interpretation wrong. For it to happen as late as it did mean there was untold damage done to the project with lengthy delays and additional costs to the taxpayer. The fundamental thing is there should really have been no doubt what was in the adjudications. TIE misrepresented the adjudications and it



should have taken more legal advice on the contractual position more quickly. Maybe that is easy to say with hindsight, I do not know. They went through McGrigors and a QC before they went to Lord Dervaird, but maybe they should have gone to that level much quicker. Indeed, the adjudications going in favour of Bilfinger should have immediately led to a challenge of the legal assumptions on the interpretation of the contract.

179. I am led to believe that in emails dated 22 and 30 November 2010 [CEC00013411 and CEC00014282] Mr Maclean expressed certain concerns about TIE and legal advice they received (see also CEC00012450). In an email dated 30 November 2010 [CEC00013550] Nick Smith listed his personal view on the performance of TIE and DLA. In an email dated 24 November 2010 to Mr Maclean [CEC00013441], Richard Jeffrey stated, "*if the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation*". I do not think we were aware of the detail of these matters at that time and I do not think we got any access to any of the email information. I certainly did not and I think I would have heard if anybody in the team had picked it up. Clearly, the penny was beginning to drop in the Council, and people were beginning to realise that TIE was dysfunctional and that it had not given the Council the proper information. In essence, once a lot of the information had been out in the public domain it was only a matter of time before the TIE case collapsed and it was found out. David Mackay is a good man and was trying to do the right thing but I think he just got completely off on the wrong track with Bilfinger and never changed his view, regardless of the facts. David was, I believe probably misled by senior people in TIE and it became almost like a personal battle between him and Bilfinger, which he could not walk away from, and there was no one in the council to referee the engagement. The really disappointing thing was Richard Jeffrey came in and there was a chance to have a fresh look at things and take action to address the issues. However, Richard did not do that either and I was hugely disappointed he did not grasp the opportunity to challenge some of the assertions that were being put to him. He just accepted the same information and carried on. That caused more delays and more cost to the public.

180. I am aware that following the resignation of David Mackay, the Chairman of TIE, Richard Walker of Bilfinger Berger wrote to Jenny Dawe and other elected members on 5 November 2010 [CEC00013012] stating that the resignation was not conducive to progressing the project and that the comments made by Mr Mackay in the media were sufficiently harmful to BBS's reputation to warrant legal action against him. The letter urged the Council to distance themselves from these comments and to request Mr McKay to make a public apology. Furthermore, I believe that a meeting took place between BSC and John Swinney on 8 November 2010. The Chief Executive of CEC, Tom Aitchison, wrote to BSC on 15 November 2010 [CEC00054284] restating that negotiations in respect of the contract must be carried out between Infracore and TIE, but indicating that the Council would be willing to meet with TIE and Infracore officials on a without prejudice basis. I understand that on 16 November 2010 Jenny Dawe wrote to the Managing Director of BSC to offer a meeting with Council officers and that, later that day, Jenny Dawe and Mr Aitchison met with John Swinney. I also understand that on 18 November 2010 Jenny Dawe tabled an emergency motion proposing mediation as a means of progressing the tram project [TIE00306955]. I think there was a growing realisation there was something seriously wrong with the way TIE operated. I think David Mackay's resignation was TIE acknowledging his view was not going to prevail. His response to that was to resign and get out. I can understand that to a degree.
181. I was not party to the discussions with John Swinney, but I was aware that there was a good relationship between Bilfinger and the minister. Bilfinger was working on the M80 project, which went ahead without any major complications or difficulties, and I gather that it was regarded by Transport Scotland as a good and competent contractor – presumably Transport Scotland can confirm this. My understanding is that John Swinney was very sceptical about the information that had been coming out of TIE for a long period of time, presumably based on advice from Transport Scotland.
182. I think at that time the City of Edinburgh Council, whether willingly or unwillingly, was beginning to realise TIE was the problem. It had to change its

position and was prepared to meet them to talk about the situation. At the same time, I think officers within TIE were beginning to realise that the game was just about up and they could not continue to behave in the way they had been in misleading the Council and other stakeholders about the actual position.

183. I believe the meeting that took place between BSC and John Swinney on 8 November 2010 was fairly straightforward. One of the interesting background points was that John Swinney had previously indicated his concern about the impact the dispute would have on other international companies bidding for contracts in Scotland – presumably against the background of failure to secure a contractor for the Borders Railway. To my knowledge, I do not think there was any feedback that he was at all concerned about Bilfinger's role in the tram project and I do not think he was definitive in what he thought about TIE. I do not think, however, there was any confusion on the Bilfinger side that he had a clearer understanding of the truth and the respective positions of the various parties and their responsibilities in the dispute than figures in the City Council had up until that point.
184. I firmly believe CEC ought to have met with BSC earlier in an attempt to better understand and/or resolve the dispute. If there had been more leadership by senior Council figures in the dispute and it had not been left to TIE a lot of time and a lot of money would have been saved. There would still have been significant challenges, but both the city and its people would have been spared an awful lot of the grief and the hardship that everyone went through unnecessarily.
185. I can only guess, but I think John Swinney probably concluded that CEC needed to get its act together, sort the dispute out and think about an approach to facilitate doing so. I think mediation was seen as the way of doing that and that is why the council leader tabled an emergency motion proposing mediation as a means of progressing.

186. I understand that an email from Alastair Maclean dated 13 November 2010 [CEC00013289] noted that he, Tom Aitchison and Jim Inch were due to meet with the Council Leader and Gordon Mackenzie on 15 November 2010. I am not sure I was particularly clear on all the different options that were open to the Council. I think we were almost in a period of hiatus where Council was having a complete rethink of its own position and the fundamental flaws in the approach taken by TIE and were trying to find ways of dealing with that. I am not sure I (or anyone else) saw terminating the Infraco contract as something that was credible at that time. As far as we saw it, there was clearly a change of music coming from the Council, they were looking at different ways of trying to take the project forward and it looked as though mediation would be the way to do so.
187. The decision that the contract should not be terminated would ultimately have been a collective decision for the Council. In a sense, I can understand where Gordon Mackenzie was coming from because if you are fed all this information by TIE about how terrible Bilfinger is; your instinctive reaction would be to not do business with it. TIE would not necessarily want to press the button on termination but I can see why Gordon might have thought it was the appropriate thing to do. Presumably wiser heads prevailed within the Council, including senior officers and Jenny Dawe, to suggest that the contract should not be terminated and it was better for all concerned to take it forward.
188. I am advised that in his paper entitled Status of tram legal workstream dated 13 November 2010 [CEC00013290] Alastair Maclean noted that he had "*real concerns as to the quality of the factual information coming from TIE*" and, further, that "*CEC has limited factual information*" and was "*solely relying on TIE and TEL for the provision and accuracy of that information*". I was not aware of the concerns Alastair Maclean was expressing, but I am not surprised that those points were being made. It is staggering that the Council were so reliant on TIE and did not actually properly scrutinise its information. Large-scale projects take a long time to deliver and there are going to be personnel changes throughout their course. In most cases, changes in the

elected members should not make a huge amount of difference in the way a project is administered because it would be largely officers of the Council, or in this case officers in TIE, that would be handling the practicalities. I think one of the things that is unfortunate about the way the tram project went is the changes of administration, there were inexperienced politicians coming in and there had also been a change in some of the key personnel. I am not sure if Andrew Holmes was let go early but from my point of view he was the person who had been there at the inception and it would have been appropriate for him to see the project through to the end.

189. I think it probably would have helped if there had been that level of continuity with officers as well. The mood in the Council was changing and there was a realisation that TIE was a failing organisation. We understood there was an increased willingness to recognise that Bilfinger had legitimate concerns about the way the project and the contract were being administered and that it actually had the right interpretation of the contract. I am not sure if CEC had the legal opinion from Lord Dervaird by this time, but the Council realised that what TIE had put so much weight on in the contract for such a long period of time was not actually the case and the council had to address the situation much more urgently.
190. It has been brought to my attention that on 16 November 2010, Richard Jeffrey advised Alastair Maclean of certain serious concerns he had in relation to events at the time the Infracore contract was entered into. On 17 November 2010, Mr Maclean produced a Note [CEC00013342] for the Council's Monitoring Officer setting out Mr Jeffrey's concerns. This was a remarkable revelation: that a payment had been made to an individual's bank account, without the knowledge of his employer. That is something I would have thought should be reported to the council and perhaps even the police. I do not necessarily think this was conclusive evidence of corruption, but I think it was such a serious issue that you would want to make sure that elected members and the police had early knowledge of. There is possibly potential criminal behaviour as it is self-evidently not appropriate for a legal advisor to

be paid a bonus into their personal account without the knowledge of their employer.

191. The incentivisation to negotiate and conclude a deal is a concern as well. I can understand why TIE at the time would want to get the contract signed off and I think the issue of being worried about the project not going ahead was a huge pressure on TIE. I think there were lots of things that were awful about the way TIE behaved and what it did, but it was under an awful lot of pressure. I think TIE may have rushed into signing the contract to try and get the project going, rather than to take the time to make the right decisions for its delivery. Presumably the inquiry will be able to establish this.
192. There is nothing wrong with having bonus systems or incentives for achieving measurable targets, but they have got to be done in the context of proper and appropriate behaviour. The contract was defective in a number of respects and if the legal advisors were advising the Council to sign off on it whilst they harboured doubts, or where fuller advice might have caused TIE or the council to reconsider their positions, I would have thought that they should have said so.
193. The implications of this may appear to many people like Andrew Fitchie was happy to get a contract signed off that was defective because he had received an incentive. In such a position, the Council has to protect its interests and its reputation by acting quickly. I do not know what the status of Andrew Fitchie is now with DLA Piper, but I would have thought it should have acted as well. I think the issues in that note raises are deeply concerning both for the project and for the individuals involved in key aspects of the delivery of it.
194. The monitoring Officer at that time would have a very clear legal responsibility to act in the Council's interests and uphold the law in all circumstances. If he did not fulfil that responsibility, he was breaking the law in his role as monitoring officer. I think his responsibility in this case would have been to bring the matter to the attention of the relevant members of the Council and the Council body itself. I believe there should have been a report submitted to

the Council, either as a public document or as a 'B' agenda item to privately advise elected members there was a serious issue to be addressed. The council needs to defend itself from charges of corruption, and must act with probity at all times. This does not appear to have been achieved in this instance. I am not sure I know what the consequences are for the Monitoring Officer would be for breaking the law in that regard. I doubt it has ever been tested in Scotland, but there is a very clear legal responsibility there.

195. I am aware that this appears to contrast with Richard Jeffrey's earlier email to Party leaders dated 19 April 2010 [**TRS00010706**]. I unquestionably think that a solution to the dispute could have been found sooner and public money saved, had TIE accepted that the Contract Price was subject to additional payment for pricing assumptions and notified departures earlier than they did. [see emails from Richard Jeffrey December 2010 - **TIE00305139**]. I think a whole lot of grief and extra cost could have been avoided. I was very disappointed that Richard Jeffrey did not take a deeper look at the issues, but rather that he just got on board and kept going in the direction of travel TIE had already embarked upon. That was a huge error and I am sure Richard must regret that; He is basically a good man and I am sure he will be deeply disturbed that he got that so wrong.
196. As I have mentioned, I think the Council's Monitoring Officer should have brought Richard's concerns to the attention of the Council and the Leader should have been briefed on it right away. There should have been a report prepared to go to the Council to explain the circumstances and note the action the Monitoring Officer had taken. I would also have thought he should have contacted the police and reported the matter at the time. It is important to get these issues into the public domain quickly in order that they are dealt with - and seen to be dealt with.
197. I am aware that a 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 and 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. I assume these estimates were produced by TIE in conjunction with Council Officers although I am not sure I was aware of that report and the details of it.

198. I am not sure I can say whether BSC's estimate of £821.1m represented value for money for the taxpayer. What would have been value for the taxpayer is if a lot of the problems had been fixed earlier. By that stage it was about making sure a credible tram project could be delivered at an appropriate and affordable price and I presume that is what BSC's estimate was for. That would presumably still have been subject to the scope of the works being agreed by the Council and there were opportunities in some aspects of the work to take value out of the contract, which is not unusual in a contract of that scale. Presumably that was BSC's best estimate of what it would take to deliver what the Council wanted at that point in time.
199. It has been brought to my attention that on 2 December 2010 Richard Jeffrey sent an email [TIE00305064] to Alastair MacLean, Donald McGougan and Tom Aitchison setting out his thoughts on the planned meeting with BSC on the 3rd of December 2010. I thought this a very strange email. This issue about dealing with Germans is a consistent theme that was deeply regrettable and unworthy of him. The aspect that somehow the facts changed because you are dealing with Germans is bizarre; he does not focus on the facts of the issues very much at all. I have no idea what he is referring to with regard to a secret agreement between Bilfinger and SDS. All we tried to do with the adjudications was get the facts understood and that was being regarded as a smear campaign. I can maybe understand why Richard is seeking to defend his historical position on the project, but it is a weak defence to rely on innuendo rather than facts.
200. The suggestion that Richard Walker was somehow afraid of me is just laughable, he was a client, he directed me what to do. However, I do not think the personalities helped with regard to the contractual dispute. If the parties



involved are working together cooperatively, then even a contract with flaws will deliver a fair result. If there are people at loggerheads over such a long period of time, it does not matter what the legalities of the contract are, it will not work. That is pretty much my view of what happened here.

201. I am not a lawyer, but my understanding is that such a contract for an infrastructure project like this had not been agreed before and it was based on English models rather than Scottish procurement processes – I may be wrong. However, the reason there was such a catastrophe was because of the behaviour of TIE and the way TIE tried to implement the project. I think Richard Jeffrey for whatever reason, was completely out of his depth.
202. He asks what might be BSC's objectives for meetings and whether it would be to soften up CEC and convince CEC of the weakness of its position and I think that is accurate. Tactically these would have been issues Bilfinger would have wanted to present at the meeting, given the circumstances that BSC found themselves in. They were surprised the Council report talked of 95% fixed price as it absolutely never believed or accepted that the contract offered that level of price certainty. It is not easy to get a fixed price contract on a major piece of engineering work like this because there are so many variables.
203. TIE failed to understand or accept the basic principles of the contract in the DRP findings, because it got it wrong. What is absent from this email is any sense that we are right because of X, Y and Z and they are wrong because of X, Y and Z, which for me is the biggest revelation and just shows how badly wrong Richard and TIE were. Our work with the press was basically to counter misinformation about Bilfinger Berger, which we did robustly. We (BB) were very careful and only responded appropriately to issues that were raised. To try and interpret that as a smear campaign just gives away the psychology of Richard Jeffrey and those in TIE who, by that stage, had a bunker mentality.

204. I am aware that Anthony Rush noted his thoughts with Richard Jeffrey in advance of the meeting [see email dated 12 December 2010 - **TIE00305139**]. I can only say that I never heard Richard Walker claiming there was a gentleman's agreement pre-contract but what I do remember was that he felt that when Willie Gallagher was there he had an understanding about the interpretation of the contract that did not persist when Willie left. Indeed, my recollection was that there was a view that Willie did not follow through on the commitments he gave to Bilfinger, but I do not know the detail of that. I think his comments about Walker's introduction being plainly an attempt to form an alliance with CEC is absolutely right, because that was the position we were trying to argue. TIE so substantially misled the Council making it impossible for them (CEC) to take rational and logical decisions. It was our view, on the contractor's side, that this was what they had done and we were going to point that out to the Council at every opportunity.

205. I am led to believe that on 16 December 2010 Tom Aitchison provided the Council with an update on the refreshed Business Case [**CEC01891570**] and that the report noted a line from the Airport to St Andrew Square was capable of being delivered within the current funding commitment of £545m. It was noted that mediation discussions involving the Council and BSC would commence early in the New Year. Mediation discussions had to be conducted on a confidential basis and it would not be possible to report in detail on the mediation process until it was completed or decisions emerged. I believe also that at the meeting an amendment was passed by members to request a review of the Business Case by a specialist public transport consultancy that had no previous involvement with the Edinburgh tram project (see Minutes [**CEC02083128**], page 22). I couldn't form an accurate assessment of what it would have required to build a line to St Andrew Square for £545m. That figure would be guided on a combination of the assessments by Bilfinger and Council officers at the time. The project had gone so far askew at that point in time that I think it was very difficult to get accurate information on what the costs would have been to finish the tram to St Andrew Square. I am not saying I would be surprised they would be able to deliver it for £545m, but I

would not be surprised if this would not have been possible. I am not sure I could comment on the veracity of Tom's assessment at that point in time.

206. I can understand why members wanted a review carried out because they had been misled and I think that, quite understandably, members would doubt to check the advice they have been given from Council Officers and from TIE. They wanted some form of independent, robust assessment of the situation and that would lead you to believe you had to get somebody that had not been previously involved in the project. However, I am not sure I have seen any review published or referred to in any of the public documentation. I think what could have been helpful for the project, and in theory could have been provided by Transport Scotland. I believe it was as a direct consequence of the Scottish Government not continuing to participate, that there was no separate organisation or source of professional information and advice to the Council beyond TIE and the Council's own officers. If Transport Scotland had been involved, I think they would have challenged and raised concerns about much of the behaviour and assertions TIE were making much earlier and would have avoided a lot of the delays and extra costs.
207. I understand perfectly well why, at a political level, the SNP would choose not to participate in the delivery of the trams, but the unfortunate consequence of taking Transport Scotland off the stage though was that TIE was left to its own devices to an extent and was only controlled by the actions of the Council officers and the elected members. Unfortunately, Council officers and elected members, for whatever reasons, had the wool pulled over their eyes and were not able to realise that TIE was a delinquent vehicle for delivering the trams.

## 2011

208. I believe that the Highlight Report for the meeting of the IPG on 21 January 2011 [**CEC01715625**] noted that both Nicholas Dennys QC (instructed by CEC) and Richard Keen QC (instructed by TIE) had advised that the best option was to seek to enforce the contract until grounds of termination could

be established as a result of a failure to perform the works, which option would also place TIE in the strongest position with regard to any mediation/negotiated settlement. It was unclear to what extent there had been a rigorous approach by TIE to enforcement of the contract pending the Carlisle negotiations and the focus on the termination option. The report noted that, "*TIE Ltd presently appear to be in a weak position legally and tactically, as a result of the successive losses in adjudications and service of remediable termination notices [RTNs] which do not set out valid and specific grounds for termination*" (page 7). The consortium was noted to be extremely well prepared. I also believe it was further noted "*However, there was a desire commercially and politically to move towards mediation notwithstanding TIE Ltd's (apparently) relatively weak tactical and legal position. That is likely to have a financial implication with the Infracore as the party in the stronger position faring rather better out of it than might otherwise have been the case. Against that there are financial and other costs involved in allowing matters to continue*". This reads to me like a pretty accurate reflection of TIE and Bilfinger's positions going into mediation. TIE lost the adjudications and then tried to present the adjudications as having been won. It presented the contract in a way that was not accurate and by that stage Bilfinger was fully aware TIE was completely undermined because the facts had emerged.

209. To a degree TIE were in a much weaker negotiating position than Bilfinger by this stage. It would not have had appropriate grounds to terminate the contract and I think that is made clear as well. Even if it had been a sensible decision to terminate the contract, although I do not think it would have been, they would not have had the legal means to do so. Having said that, although Bilfinger was in a stronger negotiating position, the resources available to the Council are not limitless so there was a high degree to which, regardless of anything else, Bilfinger would need to be completely realistic in the costs it would take to complete the works. As I have said, Bilfinger wanted to get out of the project, not lose any money and maintain its reputation as an international construction company.

210. In relation to the mediation talks at Mar Hall in March 2011, I think we had some discussions and Richard Walker ran through a presentation with me, however other than that I was not involved to any great extent. His presentation was about the problems in carrying out works because of the lack of utility diversions and the fact that TIE, for example, wanted it to just carry on working in Shandwick Place. Richard established, using graphical means, that it would only get a few yards before it came across a utility issue; it would then have to stop and get a resolution to that problem from TIE. It would then continue and might hit another problem within a few inches. Therefore, over a two or a three-hundred-yard stretch, it would be hitting utility problems all the way, which made it absurd to carry on without firstly resolving the utility issues. I remember he got us to give him advice on the presentation but we didn't need to add anything of substance as the technical issues were well communicated. .
211. I would find it difficult to say whether, as a former Councillor, my impression was that elected members were provided with adequate briefing in relation to the mediation. I would also find it difficult to say whether I consider elected members were provided with an adequate opportunity to express their views before, during and after the mediation. I am not sure how much elected members could have influenced the mediation process. By its definition, you are taking two parties out of the day-to-day and asking them to come up with potential solutions to a problem. In essence therefore, an elected member is not an active participant and has to trust the people doing the negotiations and then make a judgement on the outcome based on the results.
212. I do not know what briefing information elected members got about the mediation process before, during or after, but I would have hoped Council officers would have kept elected members fully informed going through the process. Mediation has to take place between the key parties on both sides and they have to be given the authority to negotiate a deal they can take back to their respective bodies and get approval for. However, at the point that deal came back, elected members should get as much information as possible on

the deal achieved and should have the opportunity to either accept it or reject it.

213. From my point of view and from my memory, the mediation set out a mechanism for taking the project forward, although it did not resolve all the costs issues and I cannot say whether mediation finalised the Carlisle scope [see email from Tony Rush dated 12 December 2010 - **TIE00305139**]. We did not get briefed on every aspect that came out of the mediation process; there was no need as we were not advising on the technical or financial aspects of the project. I think there was a satisfaction that the mediation went a long way toward resolving the issues and taking the project forward. I think Richard Walker felt he was listened to respectfully and the city side understood the nature of the problems a lot better at the end of the mediation process than they did at the start.
214. I am aware that on 30 June 2011 the Council was advised of the options for the tram project in a report by Dave Anderson, Director of City Development, [**CEC02044271**]. It was recommended that the Council complete the line from the Airport to St Andrew Square/York Place, at an estimated cost of between £725m and £773m, depending on the risk allowance. The report stated that in the 12 months between preferred bidder stage and Financial Close of the contract there were significant negotiations on commercial matters including management of risk arising from incomplete design work. It noted that claims related disputes were apparent from an early stage and tested the parties' respective understanding of the contract. Difficulties were exacerbated by delays with utility diversion works; slow progress in clearing design related activities; and problems with sub-ground conditions during utility diversion works. I thought it was a fairly pragmatic report in respect of the position the Council were then in. It set out, almost for the first time, the actual issues for elected members and gave them an honest assessment of where the project was. Accepting there were significant issues with utility diversion delays and the lack of progress on design work was something TIE had not done either in discussions with Bilfinger or, I think, with the Council. These were legitimate issues and legitimate problems with the project; therefore I think the report

was perhaps the most accurate assessment the council had received of where the project was up to that point.

215. The figures are very substantial and I am not surprised at their scale, nor that the project went substantially over given there was so much misinformation by TIE and such a failure to take the project forward in any meaningful way for more than two years. Leaving aside the utility and the design work issues, there were still some huge problems to overcome and there were a lot of issues that, even by that stage, were not resolved. I think there were aspects of the works that were probably over-scoped and I do not know how much opportunity there was to change any of that by that stage. Personally, I was angry that we were only going to get a shorter tram line for Edinburgh at a substantially greater cost, however it was about damage limitation at that time and making sure the tram was delivered in a way that could be expanded in future. If the dispute had just carried on or if Bilfinger had been sacked, we would have had a catastrophic failure that would have set back the city for probably 10 or 15 years. I was not involved in the detailed discussions about the costs, but I assume estimates had been arrived at by both Council officers and Bilfinger. I do not remember Richard Walker presenting a price as part of his presentation. I think his presentation was trying to explain the difficulties and the issues in a way that the Council side could understand.
216. I am not sure I understand completely the jump in the cost of completing the line from the Airport to St Andrew Square/York Place from the estimate of £545m refreshed Business Case [CEC01891570] to the estimate of £725m. My guess would be that it was Tom Aitchison that put that £545m figure in the report and I do not think it can have taken account of all the issues that needed to be resolved or was an accurate assessment of what needed to be delivered. It may be that the £545m figure was more informed by the advice that Council were getting from TIE, whereas the £725m figure was probably more informed by those involved in both the mediation and the aftermath.
217. This Report to CEC on 30 June 2011 [CEC02044271] was a world apart from the position presented to Council at the time I was a Councillor. There was no

similarity and the reason for that was the early practical problem, complicated further by the contractual dispute with Bilfinger. That meant that either inappropriate works were carried out that would have to be repeated, or works were not properly carried out.

218. I would assume consideration was given to the interest that would accrue on the large sums the City of Edinburgh Council was borrowing, although I am not sure I am in a position to say. When these decisions were taken, interest rates were coming down so it would be more affordable to borrow large amounts of money at that time. The Council would be re-scheduling other debts it had to give headroom for the extra costs of the tram project. These are eye watering sums of money however and the implications of the overspend for the Council are huge and hugely damaging. It is not a decision the Council would have taken lightly and obviously it is not good for the reputation of the Council or the city, but by that stage it was all about damage limitation.
219. I did not look in depth at the advice given to the Council in that period and I am not sure I could get my head round the logic of seeking to work out whether the cost of terminating the contract would in fact have been more expensive than continuing the line to St Andrew Square [see email dated 16 May 2011 - **TIE00687940**]. I could understand the logic of not cancelling the project and therefore having all the abortive expenditure, but I am not sure I understood the rationale that said that was more expensive than actually cancelling the project. At face value it seems a bit odd that it would cost more to cancel the project than it would to build it. I am not sure why elected members ultimately decided to take the actions they took. I assume they took those actions on the basis that having come this far they really wanted to make sure there was a tram.
220. I am aware that on 25 August 2011 the Council were given a further update by way of a report by the Director of City Development [**TRS00011725**]. The report noted that Faithful and Gould had worked with Council officers in validating the base budget for the proposed works. There was a requirement



for funding of up to £776m for a line from St Andrew Square/York Place, comprising a base budget allowance of £742m plus a provision for risk and contingency of £34m. Additional funding of £231m was required, which would require to be met from Prudential borrowing, at an estimated annual revenue charge of £15.3m over 30 years. Applying a discount rate, this resulted in a present day value of the additional borrowing of £291m. At the Council meeting, members voted in favour of an amendment that a line should be built from the Airport to Haymarket. At a Meeting of the Council dated 2 September 2011 however, the Council overturned the decision to go only to Haymarket (the report for this meeting, by Sue Bruce, is [CEC01891495]). This appears to have been in response to a letter from Transport Scotland stating there would be no further payment of grant if the line stopped there. I thought the Council's initial decision to build a line to Haymarket was bonkers. It was a result of pure party politics and my ex-Labour colleagues will probably admit this. They did not want to support the administration so they thought by putting up a different position, the administration would carry the day and they would lose and be able to escape any political consequences. In politics, you should try and take the right decisions for the right reasons. There are times you get it wrong, but at least people will understand you were trying to do the right thing. I seriously doubt anyone thought they were trying to do the right thing in taking the tram to Haymarket. To have a tram that would not even reach the city centre was frankly indefensible. What the Labour Group had not considered was that the Conservatives were so disenchanted with receiving inadequate information that they would be prepared to vote the Haymarket option through the Council.

221. It blew up in everyone's face and I think Transport Scotland took an entirely appropriate decision in telling the Council they would get no more cash. I understand politics as much as anybody and I realise that it is difficult sometimes to take decisions where you see an administration doing the right thing but because you are in opposition you want to cause them problems. However, this was a huge project for the city that had been hugely embarrassing and to add another crazy decision on top of all the other crazy decisions was a serious miscalculation by the Labour Group.

222. I understand that the report to Council in August included a confidential summary of a report dated 19 August 2011 by Faithful and Gould [CEC01727000]. The full report by Faithful and Gould noted, in the Executive Summary, that the current costs for the on-street works for Siemens were “*extremely high and not value for money*” and that the cost of the other on-street works was “*grossly inflated*”. I have no idea why the Council nonetheless agreed to instruct these works. Although we were appointed to work for both Siemens and Bilfinger, the working arrangements were much closer with Bilfinger because it was more closely involved in the contractual dispute. In essence, Siemens was there to try and facilitate a solution to that dispute; we were not actively working on Siemens issues per se.
223. I am aware that a Settlement Agreement was entered into on 16 September 2011 between the Council and BSC which, ultimately, resulted in a reduced tram line from the Airport to York Place being built for a total capital cost of approximately £776m. I was not really involved by that stage in an active sense, although we were still keeping an eye on the project. We stopped working for Bilfinger and Siemens in either October or November 2011 and, by that stage, it was moving forward to a conclusion.
224. I am led to believe that the main features of the contractual arrangements were set out in a confidential appendix to the 30 June 2011 Council report [CEC01914665] and included a lump sum price for the off-street section between the Airport and Haymarket subject to certain exceptions and a measurement contract basis for the on-street section which included the Council carrying certain risks, including those risks associated with utility diversions. I was not aware of the contractual arrangements in detail at that time and I am not sure I feel qualified to comment on contractual arrangements. I assume the reason the Council carried the risks for the utility works was because they had not been administered properly by TIE, but I have no detailed knowledge of the discussions.
225. I do not see how there could have been a realistic alternative to the Settlement Agreement. By that stage the Council did not have any practical

mechanism for taking Bilfinger off the project and contracting another company to deliver the work. There had to be a negotiated settlement and the question was what that negotiation produced.

226. I believe the additional funding of £231 m, which is a very significant figure, came from additional Council borrowing. When I was Council Leader, I took the decision to go ahead with two phases of PPP for Edinburgh schools. The revenue consequences of that were something in the region of £40m for 30 years and my view was that was good value for money for the Council. Edinburgh would get half the high schools, a third of the primary schools and a whole host of other facilities delivered for something like 2% of the Council's annual revenue budget. This would be a very difficult decision to take for the tram project but, in the circumstances, I think it was imperative to finish the project. It was not only because of the need to improve Edinburgh's transport infrastructure, but also to enable the city to move on from the catastrophe that was the trams. The city became a laughing stock; at the time you could not go to a performance in the Edinburgh Festival Fringe without somebody making a joke about the trams. Edinburgh's reputation was very seriously damaged as a consequence of the tram project. That has not quite gone away yet but, in large measure, it has been massively reduced because the tram is now running. It has become a successful project for the city and the patronage figures are pretty healthy. My view would have been that, given the circumstances, it was justified to carry on with the project and make sure it was delivered.

227. I do not think there is any practical way the residents of Edinburgh could have been consulted. The city was seriously divided about the tram project: there are people who loved the trams and there are tram-haters. I saw it as an investment in the infrastructure of the city that helped to attract inward investment and development to Edinburgh as well as tackle congestion along the busiest transport corridor we had, so it was a project that was well worth delivering. In that instance, going ahead and facing the consequences was the logical thing to do, albeit for some people involved in the project, the consequences were that their local government careers were over. I think, by

that stage, it was the right decision for the right reasons, albeit the Council had been forced into that position because of the behaviour of TIE.

228. I believe that at a meeting of City of Edinburgh Council on 24 November 2011 [CEC01891428] Lesley Hinds noted that Council Leader Jenny Dawe had requested an inquiry into the Edinburgh tram project. I also believe that a letter from the First Minister confirmed that the Scottish Government would be delighted to have an inquiry into the problems surrounding this project. I too thought that an inquiry was necessary and I thought there was inevitability about it. Rightly or wrongly, my preference for an inquiry into the tram project would have been a higher-level look, more along the lines of the inquiry that took place into the Scottish Parliament, because I think a lot of the lessons in the tram project are fairly self-evident. I think it is important that we learn the lessons involved in such a catastrophic failure of governance and substantial waste of taxpayers' money. From that point of view, I think there is important work to be done getting to the root cause of those issues. I think there are issues of probity and potentially criminal behaviour that need to be resolved.
229. Where Council's come across these kinds of issues it needs to have a much clearer understanding than it apparently had about payments being made into peoples' personal bank accounts without the knowledge of their employer. There were situations where Council officers, who had legal responsibilities to the Council, were apparently not reporting the facts and the information they should to elected members. It is important that information is recorded and lessons are learned from that. There are other lessons which should be learned as well: we do not train our local government politicians enough. It is difficult, but maybe there should be mechanisms for providing support and advice to elected members who are taking these difficult decisions. I think there is a need to try and understand exactly what went wrong so that the city and the country can move on from this horrible sorry episode.
230. I do not think it mattered whether an inquiry waited until the project was complete or not. I have no doubt Council officers involved in the project would be distracted by being pulled in and called to account, but it would not have

stopped the Council doing what it does and the tram project from being completed. My view is that the sooner an inquiry was conducted, the fresher it would be in the minds of the people involved. It is difficult for me to remember a lot of the issues which are now nearly ten years ago. The closer to it, the easier it would have been to gather the information and the more accurate the information would probably have been.

231. I am aware that following the Mar Hall mediation and the Settlement Agreement, works progressed to complete a tram line from the Airport to York Place, which opened for revenue service on 31 May 2014. The main change as a result of the Agreement was that they got a mechanism for taking the project forward.

I think, generally speaking, you would have to conclude that the project appeared to run reasonably smoothly after these agreements. I am not aware of any major issues that arose, although we were not in touch with Bilfinger on a regular basis to find out how it was going. I read the papers as much as anybody else and it did seem to go relatively smoothly. I think, fundamentally, the reason for that was that TIE were out the way. I think Sue Bruce quickly realised that TIE was not adding any value to the delivery of the tram project, so TIE was dismantled fairly rapidly.

## **Project Management and Governance**

232. In general, my understanding was that it was the Council's project as the Council brought forward the proposal. It was being funded in large measure by the Scottish Government, but it was the Council's project and it had the responsibility to oversee and drive forward the project. It was the Council's responsibility to make sure the project management arrangements were working properly, to ensure that the finances were kept in good order, to tackle any problems that arose, to communicate the issues to the general public in partnership with TIE and to make sure, in general terms, that the

project was seen through to a conclusion and take action as necessary to achieve that objective.

233. TIE, Transport for Edinburgh Ltd (“TEL”) and the TPB were effectively delivery mechanisms for the tram project and their responsibility was to deliver the Council’s project. They had freedom in order to do that because they were separate organisations, but they were effectively the contractor. The Council was the client. TIE was therefore accountable to the City Council for its actions and should have worked very closely with, for and on behalf of the City Council in following its objectives and guidance. Obviously, there were other responsibilities TIE had regarding proper use of public money and proper standards, as you would have in any organisation in the public or private sector, but their role was principally as the delivery mechanism.
234. Transport Scotland was the funding body and unfortunately, because it was withdrawn from the process, it did not take an active role in managing or overseeing the project. I think that was a mistake because as Transport Scotland was the provider of funding, it had a responsibility to ensure the funds were spent properly. It also developed huge transportation expertise and if Transport Scotland had existed at the start of our consideration of the tram project, we would not have set up TIE. Indeed, my own view is that when it came to the point when TIE was the delivery mechanism with only one project, questions should have been asked whether TIE should have been subsumed into Transport Scotland. The Borders Railway, for example, was taken over by Transport Scotland. Transport Scotland had an expertise, a critical mass and a continuity that any organisation set up by a Council, or a group of Councils, could not easily replicate.
235. That became impossible, however, because of the stance of the Scottish Government and because they withdrew Transport Scotland from the field. I do not understand why the Scottish Government could not have put Transport Scotland in there to represent their views and make sure it was delivered properly, despite the fact that they disapproved of the project, which were perfectly legitimate. They clearly had views about the behaviour of TIE and

about the way the project was going and I think it would have helped immensely if the expertise of Transport Scotland had been available.

236. What happened effectively was that TIE became an organisation with a life of its own. I think TIE wanted, as its primary function, to preserve and prolong that life, rather than necessarily deliver the project as its principal aim. It was not 'against' delivering the project, rather I think TIE lost sight of its responsibility to deliver the project as quickly as possible. Had Transport Scotland been more involved in those discussions, had it been reporting back to the Council and back to Ministers, a lot of the problems that arose during the construction of the trams would have been avoided.
237. As I have mentioned, I had concerns about TIE, although that is not to say TIE was fundamentally different to any other organisation we were involved with. We worked with EDI and at times that was a very difficult relationship. There were also some huge tensions between myself and Scottish Enterprise and amongst the stakeholders of the EICC for a period: we had strongly divergent views about its role and its future. It is not unusual to have concerns, and there were many in the period that Michael Howell was Chief executive. I think there were tensions with Ewan Brown as well at times although Ewan was, in my opinion, more capable than Michael. I was generally positive at the time about Willie Gallagher as an individual but, by looking back some of his behaviour was inexplicable. Actually, Willie was seen as a mechanism for calming down the difficulties and providing a degree of knowledge and authority on the issues that would give the organisation stability.
238. I was also concerned about the way in which some individuals from the City Development Department ended up working in TIE. As a professional, I did have a very difficult relationship with Alex Macaulay, for example. I cannot remember what stage he ended up in TIE, but I was not consulted about it and was not made aware of it in advance. Andrew Holmes and I had a lot of arguments and discussions about the abilities of some of the senior managers in the City Development Department. I had confidence in Andrew Holmes'

intellectual ability, abilities as a manager and abilities to run the Department; his technical knowledge and his knowledge of Edinburgh was extensive. However Andrew facilitated what became an unhealthy situation whereby many senior officers moved across to TIE. I have serious concerns about what took place. There were discussions and tensions, which I discussed with Tom Aitchison and Andrew Holmes while I was heading out of the Council.

239. I think it was a mistake to move so many people over into TIE from City Development. I'm not sure that created the right relationship between TIE and the council.
240. As an elected member, it was never my role to fulfil the HR function in the Council. I can express a view and push it as hard as I could, but there are some limitations on what you can direct an officer to do. It is their role to staff the Department and there were times when I pushed the boundaries on things like that. There were tensions in relation to the staffing of City Development and of TIE and I had significant concerns about the capabilities of some of the people who moved over to TIE.
241. I also heard after I left, because I was still in touch with people, that people in TIE would tell the Council officers what to do because they were formally senior officers, on higher salaries and felt they knew best. If that is true it is a major and fundamental failure of administration.
242. I was not intimately involved in, or aware of, the activities of the Tram Project Board. It was a supportive organisation for the delivery of the project with the principle responsibility being with TIE and I cannot comment on the TPB's performance.
243. I have spoken already about Transport Scotland. At the time we moved forward with the project, Transport Scotland was just being set up and at that stage it was not clear how extensive the role of Transport Scotland was going



to be, or indeed if it would be successful. David Middleton became the Chief Executive of TS and did an excellent job and I think he made a tremendous success of Transport Scotland. I am sure there are issues and problems, but if you look at the projects they deliver, by and large they have been delivered to a high standard.

244. There is a compelling logic that people, both in Government and in the Council, should think which is the best organisation to deliver a project. To have the overheads of an organisation like TIE for one project, as opposed to a range of projects, does not make sense because you lose the critical mass of a larger organisation and put disproportionate overheads on that individual project. TIE were meant to be delivering EARL and other transport projects, which, over a period of time, did not happen and that should have caused people in the Council to re-think their approach. Of course, the tram project was caught up in a 'perfect storm' when delivering the trams and I do not wish to under-estimate the difficulties for the individuals involved. Almost everything they did was under the full glare of public scrutiny and many things leaked in relation to the project, so there were huge difficulties. However, by the same token, Transport Scotland, the Scottish Government and the Council had responsibilities to ensure that taxpayers' money was well spent.
245. I think the governance arrangements for the tram project were generally fine, but that it was the execution that fell down. You can have any structure you want around a project, but you need to have the key individuals closely involved in looking after it and monitoring it and making sure that they problem solve along the way. Almost any structure you put in place can be made to work; I think the problem was not so much the structures that were there, it was the unchallenged behaviour of the individuals. In particular, the inability of Council officers and elected members to direct and lead TIE and TIE's apparent ability to bamboozle, confuse and misdirect. A different set of individuals involved in some key positions would actually have made a huge difference.

246. As far as I am concerned, the roles and responsibilities of each of the bodies involved in the delivery and governance of the project was pretty clear, although I am not sure everybody understood those roles and responsibilities as well as they should have. In particular, I think elected members were too deferential to Council officers and TIE officers and I think Council officers were too deferential to TIE officers. I think TIE, by contrast, was given too much authority and too much room for manoeuvre.
247. An arms-length organisation delivering a project is, generally speaking, a useful thing for Councils: it gives it a freedom to operate that the Council sometimes does not have and it gives more flexibility. However, the arms cannot be too long and in the case of TIE the arms were so long they were almost infinite. There was no coherent strategic direction or control over TIE from within the Council that I could see.
248. I think the number of organisations involved in delivering the project could have been slimmed down but the real problem was a dysfunctional organisation in TIE. I think a question asked in the Council, particularly when Sue Bruce came in as the new Chief Executive, was what added value TIE gave. That question should have been asked several years before because there was by then no added value from TIE. If there had been a mechanism for having Transport Scotland more involved a lot of the problems would have been solved.
249. I consider the Council was the organisation responsible for ensuring that the tram project was delivered on time and within budget.
250. I believe that the report to Council on 25 August 2011 [TR00011725] noted that "*The existing governance arrangements for the tram project are complex and have not been effective*", the governance arrangements had had to take account of the complexity of the arms-length bodies that were proposed to deliver an integrated transport service once trams had become operational and that there was a need to revise the overall arrangements "*to ensure effectiveness, accountability, probity and integrity going forward*". I think by

that time there was a case for reducing the organisations that were involved in the tram project. There are two separate discussions regarding the way the organisations worked together. One was the delivery of the project and I think the people who were involved made huge numbers of mistakes and almost any structure could have delivered it. The other thing was preparing for the trams operating successfully and one of the key issues was making sure the trams and the bus company did not compete with each other. There were huge sums of money being lost by public transport in other cities because tram services were being undercut by buses. It was not an efficient use of resources and it undermined the viability of the tram project. We were very clear, from the early stages, that whatever else should come out of the tram project there needed to be a mechanism and a structure that built Lothian Buses into the decision-making process and avoided any competition between the trams and the buses.

251. One of the reasons for putting Neil Renilson in was that he was a hugely talented Chief Executive of Lothian Buses and, in a way, a critical friend of the trams. A lot of people involved in the tram project were negative about Neil because they felt he was not supportive, but I really did not understand that because my experience of Neil was as a fantastic professional. Neil operated and grew Lothian Buses in a way that almost nobody else could have, to the extent that we have the best urban bus service outside London. I regarded Neil as a critical friend and I thought it was very important that we had Neil at the table in all the discussions to make sure it all operated effectively together. Whilst the delivery of the project became dysfunctional and the organisations within it failed to deliver, we have not had a situation where the trams and the buses were competing. That has not emerged by accident that was by deliberate design from the very earliest stages and was one thing about the trams that worked really well. There were conflicts on a smaller scale and there were issues with the intentions of the two organisations, but that fundamental conflict never took place and we still have a fantastic bus service and a great tram from the Airport to Princes Street.

252. I am not sure I can say why effective governance arrangements had not been introduced at an earlier stage, particularly at the time of Jim Inch's Briefing Paper on Governance dated 20 July 2007 [CEC01566497] which had noted that it was "*vital that more rigorous financial and governance controls are put in place by the Council*". I cannot say that anybody felt that it was not the Council's role to supervise and scrutinise TIE and make sure that tight controls were kept on the organisation.
253. I cannot say why there were not more vigorous financial and governance controls over TIE. I think it was evolving as an organisation and there were a number of issues in relation to its operation that were unsatisfactory. As I mentioned, we did not renew Michael Howell's contract because of the difficulties we were experiencing with him. Willie Gallagher was brought in to provide stability and a degree of expertise on transport issues that we did not feel Michael Howell had. By the time I stood down as Leader, Willie Gallagher had been there for a while and David Mackay had come in as Chair of the organisation as well. David, I think, was a relatively capable and experienced business person but, for whatever reason, the chemistry just did not work. Officers and elected members sat back and were not as involved as they should have been in giving direction to the project and I am not sure why. The lack of appropriate advice to elected members may have been one of the issues, but that does not explain why Council officers went along with it. It is a completely irrational situation to get in where council and TIE officers restrict the flow of information to elected members but also for elected members not to take robust action over TIE themselves.
254. Ultimately, it was the Council's responsibility to ensure that effective governance arrangements were in place. Collectively, the senior management team of the Council, the Chief Executive, Head of Corporate Services, Director of Finance and also the elected members: the Council Leader, the Finance Executive and the Transport Executive. TIE clearly had responsibility in delivering the Council's objectives in line with that, but setting out those responsibilities and making sure they operated was with the Council.

255. I am led to believe that a paper [TRS00014775] as agreed by Council on 25 August 2011 and 2 September 2011, set out the new Governance Structures. Delivering a large project like this is a complicated business and you need structures that reflect that. However, you also need mechanisms that can cut through all the structures when there is a problem or an issue. That is something that both senior officers and elected members should be able to do freely. I can understand why the Council felt the improvements were necessary because, by that time, TIE had lost direction. TIE had been misleading and misguiding the Council and I imagine officers and members felt there was a need to curtail its activities.

## TIE

256. In establishing TIE, CEC appointed people to the Board to work alongside other appointed people, which is a fairly traditional and often used in outside organisations. There are Council representatives on the Board of the EICC as the Council is the principal funder of it. Although the Council does not take all the decisions directly itself, there is a Board there that does. There were two differences with TIE: one is that the political controversy around about the project was very difficult to manage; and the other was that, whatever the structures and the lines of authority were, it all seemed to break down over time and the relationship became dysfunctional.

257. There was a lack of political awareness in TIE and in Michael Howell in particular and these issues were dealt with. Where there was a problem, we gave direction. Ultimately, it was the Council's project and so the politicians in the Council are the ones who are always going to be held accountable for the decisions. They have to give direction, they have to give leadership to the project and they have to troubleshoot where there are difficulties. That should not be something that there is any confusion about. Whatever the formal mechanisms and structures for overseeing the project, if the Council wanted something in relation to the tram project or TIE, it should have been able to get it.

258. I cannot remember how long Michael Howell, but a Chief Executive has a critical role in driving an organisation forward and I had my concerns about his role. I felt more comfortable we had somebody that better understood the nature of delivering a large project with Willie Gallagher because of his experience in the railway industry. We spent a lot of time trying to make sure Willie had the support he felt he needed to get on with the job. I was involved in fairly regular meetings with the senior management of the Council and with TIE officials throughout the period we were setting it up for delivery. I do not think I had particular concerns about any individual Board members that I can remember.
259. There were a whole host of ways in which Council's senior officers and members would receive information from TIE. We would have regular meetings with the senior officers directly involved in managing the project and I was involved from time to time in the meetings. Andrew Burns was the Executive member for transport who would receive information by email and written briefings. We would seek meetings and at times they would ask to come and see us to update us on issues. I do not think there was ever any difficulty having discussions with TIE to address particular issues. If there was a request for a meeting we would make time and make sure we had that meeting. If there was a need for us to give guidance or direction to TIE on particular issues, we did that. Around the run up to the 2003 elections, there was a view from TIE and Michael Howell in particular that we should be pressing on with the tram project regardless of the political situation, but we did not think it appropriate and had to tell them so. I do not think there were any issues in relation to the exchange of information that we would have described as unusual or dysfunctional.
260. During the time I was in the Council I cannot say I had any serious concerns about TIE's reporting to the Council. If we ever had any difficulties with TIE we would address them directly. One of the things you have to be careful of when you put elected members on to the Boards of external organisations is, although they are the Council's representative on the Board, they can sometimes become the organisation's representative on the Council. It is

perfectly understandable, psychologically, that when people join an organisation and spend a lot of time with them, they identify with them. You can get situations in which the members of the Board of an organisation are more concerned about that organisation than they are about their corporate responsibility to the Council. That is why you need people who have the strength at the centre of the administration of Council to stand up for the Council's role and responsibilities in overseeing the project or the organisation. Some elected members can, from time to time, get confused about their roles and responsibilities in that regard.

261. I do not know the extent to which that was a factor in the problems with TIE, but looking in from the outside I think members were too deferential to TIE officers. Whether Jenny Dawe, Gordon Mackenzie latterly and Tom Aitchison were strong enough to resist those pressures is difficult for me to say, but it did not look that way to me. Jenny and Gordon are good decent people and were not trying to do anything other than fulfilling their own roles and responsibilities, but I have doubts that they were strong and demanding enough to stand up to some of these issues.
262. I think largely, at the time that I was in the Council, I would have said TIE had sufficient experience and expertise to project manage the Edinburgh tram project. It was a practical project and CEC was involved in many complicated issues through our management of the Council's revenue budget in other complex decisions and also through the Council's capital budget. We had lots of experience taking large-scale construction projects forward. In my experience, the Council had deficiencies in project management experience and abilities and we addressed that during my period as Council Leader. I remember having lots of discussions with Andrew Holmes about it and I think we both shared the view that the private sector was generally better at project management than the Council. There were lots of deficiencies within the Council and we improved that over a period of time, but on some of the big developments I was involved in, like the EICC, we relied disproportionately on the project management experience of Scottish Enterprise. Effectively, we were happy for Scottish Enterprise to take the lead delivering aspects of the

EICC capital programme because they were better at it. You have to be aware of, and pragmatic in handling such issues.

263. That is one of the things you have to recognise when you run a large and complex organisation, you have to recognise your strengths, but you also have to recognise your weaknesses. We, as a Council, did not have the experience and expertise so that was being brought in over a period of time in TIE. When Willie Gallagher was brought in there was a high degree of confidence as he well understood the aspects of project delivery that would be required for something on the scale of the tram. However, it was a practical project which had to be budgeted for and for which there would obviously be a contract to deliver it. There should have been enough experience and expertise to manage that process within the council and TIE and for a whole variety of reasons it went horribly wrong.
264. There were times we used civil engineering firms to deliver projects and I think that harks back to a weakness in project management in the public sector. People who handle these big development projects are few and far between and there are not many people with the multi-disciplinary skills to take these projects forward; it can be quite a challenge to find them. I am not aware we spent a huge amount of time looking at the possibility of appointing a firm of civil engineers to take the projects forward but then there was a basket of transport projects we were looking at TIE to do. That was established in the debate about the congestion charge because we were hopeful that, at the time TIE was set up, there would be a funding mechanism to take forward a whole range of transport projects across the city.
265. With hindsight, maybe you could argue that we should have reduced the scope of TIE and looked at other mechanisms for delivering the trams, but at the time I left the Council we still had the prospect of TIE delivering the tram project, the Edinburgh Airport Rail Link and a range of other transport projects in East Central Scotland. I think it would have been a big step to give that to one individual civil engineering company. We felt, on balance, the way to



bring in expertise was to have a bespoke vehicle for taking these projects forward as we had many times before.

266. I am led to believe that a TIE report on Ingliston Park and Ride One dated 14 September 2007 [**CEC01465362**] noted the following “lessons learned”:
- No clear definition of roles and responsibilities between TIE and CEC.
  - No check processes in place for design.
  - Responsibility was given to Halcrow for the day to day management of the process and light touch management employed by TIE.
  - Extension of existing consultancy contracts for new commissions needs to be properly evaluated to ensure that this is appropriate.

I am not aware that this was brought to my attention: I had stepped down as Council Leader by October so I am not sure I ever saw this report. This is another example of the Council not putting in place appropriate mechanisms because, although the failures here were clearly in the way TIE delivered the Park and Ride project, it was still the Council’s responsibility to make sure those mechanisms were in place.

267. This reads to me like it is about some of those issues I was describing regarding the Council’s failure to manage projects properly. Had I been involved in a discussion about that, I would have been asking questions of Andrew Holmes and the oversight of TIE and I would have taken TIE to task about the lack of proper checks and balances for the project. Whether those are mistakes that were repeated in the tram project is difficult for me to say without knowing all the information. Such reports are very important in ensuring that the council learns lessons. Too often organisations are too defensive about such cases. They are as much an opportunity as a challenge, and it is from such cases that important lessons can be learned. No system or organisation is perfect and it’s important to have the capacity to manage past failure to help achieve future success.

268. I am aware that a report to Council on 26 June 2003 [**CEC02083550**] noted that a performance related bonus scheme had been introduced for TIE staff.

We had operated bonus schemes at other organisations like EDI and the EICC over many years and it was a successful incentive mechanism to improve the efficiency and operation of the organisation. We were, to a degree, competing with private sector payment rates so it was appropriate when setting up an arms-length organisation to reflect that in a bonus scheme. Obviously you have to make sure that the bonus scheme is for relevant achievement and not simply a reward for carrying out the day-to-day work of the organisation. Deciding those details would be part of individual discussions within the Board of the organisation to resolve those issues. A bonus scheme was seen as part and parcel of having an arms-length organisation, operating it effectively and being able to attract the talent needed.

269. I was never involved directly on the Board of TIE so I do not know how the bonus scheme operated in practice within the Board. The Board had a responsibility though to make sure the bonus scheme was relevant and meaningful in relation to the operation of the senior officers within TIE. The Director of Finance, when I was involved in EDI and the EICC, was always involved to a degree in approving any bonus payment. The Council either performed the company secretary role within those organisations or there was a senior finance officer at all of the meetings who played a part in the discussions. If there was any feeling that either a bonus was not justified or that there was a need to amend any of the recommendations from a remuneration committee, finance officers would be encouraged to speak out in that regard. We had tensions at times in other organisations about such things because obviously staff like to get a bonus, but there must be appropriate justification for its award. I would imagine the arrangement should have been the same within TIE.
270. In practice, Council officers and members exercised supervision and control over TIE bonus payments through the decision-making structures of the organisation. You have to remember the corporate responsibilities of the Council in that regard because there can be, as I have said, a degree of going native on these organisations. That is a constant challenge you have to be

aware of in your responsibilities as a Board appointee and as a senior elected member of the Council or as a Council Officer.

271. Council members involved in the organisation would be aware of the sums paid in bonuses to TIE staff each year and the criteria in respect of which those bonuses were paid. If there were any concerns about the level of bonuses being paid they should have been reported back by the Council officers involved in monitoring each of the projects. This was not publicly available information; you would not normally publish information about peoples' remuneration in an arms-length organisation, although perhaps you should.
272. As far as I was aware, during the period I was involved in the Council, CEC exercised sufficient and effective control over these bonus payments. I am not aware, however, how much influence and control it exercised after I left. The bonus is only part of the oversight of the operation of an organisation. If an organisation is operating successfully (and that's not just a financial issue), the degree of scrutiny might be less intense. If an organisation was perceived to be problematic, more issues regarding decision-making processes and the people would be discussed at the centre of the Council.
273. There are times when an elected member has to take action with senior managers who are not performing properly. It was never easy but taking action was part of the corporate responsibilities to the Council and the need to deliver value for money for the taxpayer..
274. The post of Chief Executive of TIE became vacant around June 2006 and Willie Gallagher acted as both Chairman and Chief Executive of TIE between around June 2006 and November 2008. I was not involved directly in the appointment because I was not on the organisation, but I do remember having a discussion with Tom Aitchison who was the Chief Executive of CEC. Willie Gallagher was a person who had appropriate experience and expertise in transportation issues to take on the role. I think, from memory, he was on the

Board of Lothian Buses and had contributed positively in that role so, at the time he was appointed, I was comfortable with that.

275. I cannot remember any specific advice on good corporate governance from Council officers about Willie Gallagher being both Chair and Chief Executive, although it was obviously discussed. This was seen as a temporary arrangement and not something we wanted to run with over a period of time; in due course, David Mackay was brought in as Chair of TIE. It was not something we would want to have in place for a prolonged period of time but, because of the circumstances at the time and because of a need to tackle some of the issues in TIE, we felt it was appropriate for him to be in both in roles for a period of time. During that period TIE was preparing for the delivery of projects and not actually delivering projects so it was not seen as a critical issue in relation to its performance. There were smaller scale projects TIE was involved in delivering, but the major projects such as the Edinburgh Airport Rail Link and the Trams were not at delivery stage. It was not seen as time critical to bring in a Chairman much quicker. The issues that arose with TIE and the delivery of the tram project were nothing to do with Willie Gallagher being Chair and Chief Executive for a period of time.

## **The City of Edinburgh Council**

276. I think CEC officers exercised oversight and control over the tram project in the same way they would over any other major project. They would receive regular reports and information from the organisation, they would be involved in the key decisions and they would have a direct line into the decision-making structures within TIE. They were the principal people responsible for the delivery of the projects at Council level. Therefore, you would expect them to be involved in both the general direction of the strategic decisions involving the project and also, where necessary, any detailed decisions when there were problems or issues.

277. Similarly, elected members on the TIE Board and specifically Andrew Burns would be involved in all the key decisions the organisation was making. Andrew would also have a corporate responsibility to oversee the project on behalf of the Council, as did I. I would get involved where there were specific issues or problems that needed intervention. This happened from time to time with all the arms-length organisations the Council was involved in and also with projects the Council was involved in delivering itself.
278. The Council is a big organisation of 20,000 staff, with a revenue and capital budget of over £1b and is therefore a big and complicated organisation, delivering lots of projects. There were concerns from time to time and there were issues with the oversight of the organisation, although I would not say there were any issues I felt were fundamental to progress. There were things that I found irritating, particularly the lack of political awareness at times. TIE seemed to have an academic atmosphere during that period, rather than one that was focussed on practicalities. We were trying to get them to focus on actually delivering the job and leaving the politics of the situation to us. There were lots of discussions at the time with Michael Howell and members of TIE that I found very frustrating.
279. CEC officers were certainly able to exercise effective oversight and control over the tram project, there is no question about that. Officers have a responsibility to the Council on behalf of the taxpayer to diligently exercise control over projects. This is particularly the case where they feel there are issues and inefficiencies within an organisation or any issues that might affect the ability to deliver a project in a timeous and efficient manner. On projects I was involved in, I remember getting generally good advice from officers about dealing with particular problems within individual organisations, they also brought matters to my attention and sought to resolve those matters. In my period in the Council, I cannot remember a situation where I was concerned officers were not intervening sufficiently with TIE. I was concerned that Andrew Holmes was too defensive of Michael Howell, but he was defensive of his own officers as well and that was an issue between us for a considerable period of time

280. I was never reluctant to intervene where I felt it was appropriate to do so and I was happy to justify my intervention to anybody that cared to ask about, or challenge it. We would always try to get opposition members of the Council involved in key decisions in some of these arms-length organisations because, generally, they could be more critical than some of the members of the administration and that's a good thing. Opposition members also have a separate political agenda and it is actually a good thing to have people who, if you like, are playing the role of critical friends in an organisation. I remember when we were involved in EDI; we used to have Jim Gilchrist, a Conservative Councillor, as Chair of the Audit Committee. We felt that was a good way of protecting ourselves against too cosy a relationship in the operation of the organisation. Similarly, with TIE, we were always keen to make sure key opposition members were put into the organisation who would be able to contribute and who would have a view about it. There was never any feeling on the part of the Council that we should try and get people who were simply compliant onto an outside organisation, because that is completely counter-productive and creates an unhealthy atmosphere in the organisation.
281. Members who sat on the TPB and the Boards of TIE and TEL were elected and were there for their experience and their expertise. The quality of elected members varies: some people are very bright and able and others are less so. There is always a challenge in the Council to make sure you have the right mix of people involved in an organisation. In relation to TIE, TEL and organisations like that, we would try and get the right blend in all of the projects. There were times when you did not succeed in that regard, but it was always about trying to get the best blend of skills. Andrew Burns would have a much greater role and responsibility for delivering the tram project than an opposition member or a backbencher involved in TIE or TEL. It was not that their voices were not important; it was just that his responsibility for driving the project forward was greater.
282. I am not sure if elected members who sat on the TIE Board got bespoke training regarding their responsibilities in their roles, but it probably would

have been helpful. As I mentioned previously, it is not always easy to get money set aside to train elected members. Any expenditure can come under a political and media spotlight, which makes it challenging and difficult to set-aside resources for. I think it would have been helpful for Councillors to have a range of training and I think it would be helpful for senior politicians to have mentors they could link up with.

283. If you are a Council Leader the buck stops with you and you have to take the decisions. You can rely on the senior officers, and I think a lot of elected members do rely heavily on senior officers to a degree, which I think is not always healthy. I was always conscious of the fact that I needed independent sources of information from the officer cohorts so that I could take the decisions I was comfortable without an undue influence and reliance on them. You need a distance and respect between you and the officers you work with, it can't be too chummy.
284. The responsibilities of an elected member are complicated. There is a huge array of responsibilities elected members have. They do not always get appropriate training for those responsibilities and it would make a difference for some of them but, because you have a variety of skills in elected members, it may not always make any difference to the way they exercise their functions. That is not to say it should not be available, it is just that I do not think it would necessarily be the case that there's a silver bullet that avoids such problems recurring. Child protection is an area of public services where there is a high degree of training and oversight, but problems still occur from time to time.
285. The people employed by TIE were probably well trained in their roles and responsibilities but it went horribly wrong because they lost sight of what they were there to deliver. That was not specifically an issue about training, that's about their whole approach to their employment and their involvement in the delivery of the tram project. People need to be able to work on delivering the detail and they need to have the expertise to be able to do so. People also need to be able to step back and look strategically at projects too and they

need to be able to intervene when things go wrong. That did not happen in the tram project.

286. I do not think any amount of training for an elected member would teach them when to jump in to try and get issues resolved that are life critical for the project. It might help, but in itself I do not believe it would be the defining issue that would make a difference. Within TIE people lost track of what their role was and elected members misunderstood their ability to intervene and direct officers and officials.
287. I do not underestimate the difficulties delivering the tram project because it was at the eye of a huge political storm and in the media spotlight. However, notwithstanding that, the fact that the dispute dragged on for the period of time it did should have sent alarm bells ringing with senior officers and senior elected members that it was going horribly wrong. They should have realised the consequences were potentially catastrophic both for the delivery of the project itself and for the reputation of the city and the Council. I think major construction companies looked askance at Scotland with the difficulties that were faced on some of these big projects, trams in particular.
288. There is not so much a potential for a conflict of interest for elected members being members of both the Council and organisations with responsibilities for delivering projects, but I think the syndrome I described previously exists: when elected members become more influenced by the officials around them. There is a risk an elected member on a Board becomes influenced more by the officials and the discussions around them than their corporate responsibility as elected members of the Council, which is their first and foremost responsibility. They are only on that organisation because they are elected members so they have to bear their role and responsibility in mind in every decision they take. At times members can lose sight of that. I am not sure I could definitively say I was never influenced by the organisations I was involved in, because we are all human and we are all influenced by things around us.



## Tram Project Board

289. I think the rationale for creating a Tram Project Board was to provide more of a focus for the delivery of the project because it was beginning to move towards a delivery phase. It was to make sure key individuals were round a table to take all relevant decisions in the practical delivery of the project and to give a focus to that. It would operate as a helpful mechanism in taking the practical aspects of the tram project forward and was not seen as a substitute for proper decision-making in any other forum.
290. I cannot give an encyclopaedic description of the role, remit and responsibilities of the Tram Project Board [see email **CEC00475228** and attachment - Corporate and Governance Model - **CEC00475229**] but, as I say, it was about trying to focus on the practical aspects of delivery.
291. I am not sure I can, after all this time, remember the range of powers that were formally delegated to the Tram Project Board.
292. The TPB would formally report to the TIE Board and also to City Development officers and the Chief Executive of the Council. I do not think they would be in day-to-day control of the agenda at the Tram Project Board but they would certainly be aware of the issues that were being raised, discussed and addressed in Board meetings.
293. I am not sure I was close enough to the discussions and deliberations of the Tram Project Board to say how this changed over time.
294. I would hope that elected members on any external or arms-length organisation appointed by the Council would act as the eyes and ears of the Council and their respective political groups. We had strong cross-party support for the project and we would try and make sure we had fair representation of the political groups on these organisations. With the many political issues associated with the trams, it was more difficult so we wanted to

try and be as inclusive as possible. Part of the function of having elected members involved is to make sure they oversee what was going on and, where necessary, raise any concerns. In my experience as Council Leader I was approached from time to time by people involved in external organisations raising concerns and I got involved in trying to tackle and resolve those issues. The opportunity was always available for elected members to raise the alarm; they were free to do so and quite often would do so in a public forum at Council meetings. That was probably not the appropriate way to do it, however in essence it did not really matter. If there was a problem with something it is better to know and deal with it than have that problem go unchallenged.

295. I cannot remember exactly, but I think there was representation of all parties on the TPB. The SNP were probably not involved because they were not on the Council initially, but the Liberal Democrats and Conservatives would be involved in all the decisions that were being taken.

296. I cannot remember having any specific concerns, at any time, in relation to the TPB as an organisation or in relation to individual members of the TPB. I cannot remember being involved in any lengthy discussions about the Tram Project Board or the work that was going on there.

## **TEL**

297. As I have said earlier, one of the key things we learned about tram projects is that if the tram operated in competition with the bus service of an area, there were potentially catastrophic consequences both financially and for patronage. It was not best practice to put in a tram that immediately got into conflict with the bus service because there were then two separate organisations competing for passengers, costing each other money and not using the infrastructure efficiently and effectively. We were determined to ensure we had a complementary operation of the tram and the bus service and the creation of TEL was the formal mechanism for recognising that.

298. There were lots of tensions and one of the individuals involved in these discussions at an early stage was Neil Renilson, for whom, I had a huge regard. He had understandable concerns about the impact on the bus service and we were trying to make sure we managed those concerns in a way that enabled Lothian Buses to continue as a successful and viable organisation and that also enabled the tram to operate successfully. The whole idea was about travel and shifting more passengers, more efficiently around the city in a way that could not really be achieved by an enhanced bus service. You could not get the patronage and the through flow on a bus service you can get with trams, that was the whole rationale for delivering the tram project.
299. I cannot, from memory, set out the detail of the whole remit and responsibilities of TEL [see email **CEC00475228** and attachment - Corporate and Governance Model - **CEC00475229**] but it was meant to provide a mechanism whereby the potentially competing interests of the various stakeholders involved in the delivery of the tram could be managed in a successful way to avoid undue conflict.
300. Again, I am not sure I could set out the powers that were formally delegated to TEL. It was really about trying to get Lothian Buses actively involved in the discussion and debate about the way in which the tram project was delivered.
301. TEL would have been reporting back into the Council and to their respective organisations, TIE and Lothian Buses. Principally, the formal reporting mechanism was that it would have been overseen by Andrew Holmes and the City Development Department officers. If any issues arose as a consequence of that, it would be their responsibility to pick them up and deal with them or report them further up the tree.
302. There were lots of tensions around at the time. I know that there were some people within TIE and the City Development Department who felt that Neil Renilson was unduly critical of the tram project. We had taken a decision that we wanted to build a tram and that was not for negotiation. Neil understood that and, whilst he might have been uncomfortable with aspects of the

delivery of the tram project, he was always very professional and supportive of the delivery of the tram itself. What he was concerned about was making sure it worked as efficiently and effectively as possible and worked in a way that did not compromise the operation of Lothian Buses. I think having that mechanism and input was helpful in trying to resolve some of the potentially difficult and catastrophic issues that might affect the operation of the tram and Lothian Buses.

303. This is a project that went horribly wrong, but there are aspects of the tram that are very good and the way that it operates successfully with the bus company is one. One of the significant earners for Lothian Buses is the Airport bus link and, despite all the concerns, it has continued to thrive. We had an overall responsibility for the good of the city and we saw the benefits of delivering the trams. Yes, Lothian Buses raised issues and was a critical friend, but it was not there to try and scupper the project, it was there to help deliver it in a way that was complementary to the operation of the buses.
304. I am not sure Andrew Holmes and Neil Renilson always saw eye to eye regarding the development of public transport in Edinburgh and there were times I had to adjudicate in some of those issues. Lots of people didn't see eye to eye all the time, such is life. I do not think I had any concerns about the way that it operated as I considered there was healthy debate about the issues and there was a mechanism there for taking those issues forward. Ultimately, I think what has happened is that the solution to the challenges was successful.
305. I believe the minutes of the TIE Board meeting dated 23 August 2004 [TRS00001899] provided a progress update on the integration of the trams and Lothian Buses noting that while some progress had been made on integration, governance issues for Transport Edinburgh Limited remain to be resolved. It had been agreed at a meeting of TEL on 2 July that all parties would strive to agree, by 30 September 2004, a detailed programme to address the principal work streams identified so far, and that I was to attend a meeting with the Chairman of Transdev on 5 October, when a joint

programme of activity for the month ahead would be presented. I cannot remember the meeting but I cannot think why it would not have gone ahead. Resolving the governance issues for TEL was one of the challenging issues we had to make progress on and there were lots of tensions around that, particularly between senior officers in City Development and senior officers in Lothian Buses.

306. I do not have access to my diary of old and therefore I cannot remember if I met with the Chairman of Transdev as scheduled and I cannot remember what the outcome of that meeting was.
307. Transport was a huge part of our political agenda for Edinburgh. We had sought to deliver a congestion charge for the city, which would have given us an opportunity to really transform transport infrastructure and deliver 30 years of investment within a five to ten year period. Unfortunately, that did not happen but it was a big part of the political agenda of the administration and I was directly involved in many of the issues. Delivery of transport during that period was impressive and I was very proud of the fact that we had managed to deliver lots of projects. We made a significant difference in public transport patronage figures and had a strong, thriving and growing bus company that was providing an excellent service at nil cost to the council and a very reasonable cost to the consumer. We were also implementing a Park and Ride network for the city and developing improved railway connections for Edinburgh as well. Implementation of the trams was one of the key things we wanted to take the city's transport infrastructure forward and I make no apology for being passionate about that.
308. I assume I was asked to go along to the media launch on 30 August 2004 of "Transport Edinburgh", the brand under which all Edinburgh's transport improvements were to fall, because they wanted my authority as Council Leader and my input into the event. There were lots of tensions between City Development officers and Lothian Buses and part of my role was to manage and resolve those issues, which I think we did pretty successfully over the period.

309. Lothian Buses expressed certain concerns in relation to which body would be responsible for ensuring integration of the tram and bus services. I do not think anybody in Lothian Buses ever sought to undermine the tram project but they did, understandably, stand up for their interests. That was an issue we had to respond to positively and it was not easy: there were legitimate interests on both sides that had to be resolved. We were not for compromising on the delivery of the trams; we saw them as a game changer for Edinburgh's transport system. However, we wanted them implemented in a way that was complementary to Lothian Buses and which enabled Lothian Buses to continue to survive and thrive, providing an excellent service to the citizens of Edinburgh and beyond. That was the key reason TEL was created and it has been successful so far.
310. I am aware of the Minutes of first Service Integration meeting which took place on 2 July 2004 [**CEC01875550**] and I was involved in finalising and agreeing the Director appointments and alternate Director arrangements. The reason I was involved in that was because of the tensions that were around. We were managing some difficult relationships and we wanted to make sure we got a balance between the legitimate interests of Lothian Buses and the interests of the Council as the promoter and developer of the tram project. I wanted to make sure both were heard in a fair and even-handed way, that we did not ride roughshod over concerns raised by Lothian Buses and that we tried to respond to those issues in a positive and mutually beneficial way.
311. I believe that in October 2004 DLA provided legal advice on the integration of the trams and Lothian buses and the formation of "*Transport Edinburgh Limited*" [**CEC01887027**]. I cannot remember specifically if I saw that document but I would have been fully briefed on the issues. The operation of the trams and the operation of the bus service were separate legal entities and we had to find a way of managing those relationships that did not conflict with competition rules. That was something we spent a considerable period of time addressing, however we found a solution and I think the arrangements that are in place have achieved a balance. Making sure that the tram and

Lothian Buses operated in a complementary way without competing for the same passengers was one of the most fundamental problems we had to resolve. The Business Case would not have made sense if there was competition and the tram would have been undermined from day one.

312. A prospectus was circulated on 4 September 2004 the purpose of which was to provide information on TEL to any party with a genuine interest, including potential commercial partners and new directors. When finalised, it was to be regarded as a publically-available document, though subject to future iteration as TEL evolved. The prospectus was to include a Foreword by myself and Andrew Burns on matters such as the wider economic considerations, achievements to date, a vision of the future and the role of TEL in delivering that vision. TEL was about providing a focus for the overall promotion of public transport in Edinburgh. We wanted to make sure we did not miss any opportunities to get the message out there that public transport was a positive, high quality choice for people to take and use for travel to work or to visit the city centre.
313. TEL was a focus for bringing the bodies together, receiving input from them and addressing issues. It was a mechanism for getting input from the organisations involved, having positive debate and moving forward. This did not change at any point to my knowledge. I am sure there were difficult conversations involving TEL, there were certainly difficult conversations before TEL was set up. The bus company is a superb organisation that has a strong track record in delivering public transport in Edinburgh. There were lots of people who felt any money should just be invested in Lothian Buses. However, we consciously took the decision that the tram could transform the operation of public transport, journey times and the engagement of members of the public who would use it as a mode of transport rather than taking their car. We knew from all the evidence we had that, no matter how good you made the buses, there was still reluctance on the part of the consumer to board a bus. The tram was able to secure higher penetration amongst affluent people and Edinburgh is a relatively affluent city. I think car use in the city centre has actually gone down since that period, which is surprising but may

be a symptom of the fact that people realise public transport is an increasingly attractive option. I think that was successfully achieved, albeit we have still not got the tram network that was planned.

## DLA

314. My understanding is that DLA were appointed as the legal advisors for the project and provided that support and information to TIE and to the Council. In a sense, DLA had a responsibility to the Council as much as to TIE because the Council was the client in that relationship. There should have been an understanding that, whilst DLA had obligations to report and provide information to TIE, it also had responsibilities in its corporate role to the Council. It should flag up issues to TIE that the Council should be aware of or, in certain circumstances, perhaps even raise those issues directly with the Council itself.
315. I am led to believe that, following my departure, in a letter dated 12 March 2008 [CEC01347797] DLA advised CEC on the Draft Contract Suite. Graeme Bissett, TIE, appears to have had an input into the drafting of that letter. I was not aware that individuals from TIE had an input into the drafting of letters from DLA to CEC.
316. As I have said, my view is that DLA had an obligation to provide information both to TIE and to CEC. If TIE chose to express a view about that information, they should have done so as a supplementary note attached to the legal advice. TIE was not in a position to provide legal advice to the Council and I do not think it was appropriate, nor was it its role or responsibility to interpret and influence the advice coming from DLA. We very often received legal opinions that we would get directly from source to help us take decisions on complex and challenging issues if there were particular legal concerns. That is routine for the Council decision-making process and I would not expect either officers of the Council or officers in TIE to interfere with the integrity of that process.



317. I believe that deputy officers at CEC had previously recommended (around August 2007) that the Council seek independent legal advice on the risks arising to the Council in respect of the infrastructure contract (emails from Colin McKenzie dated August 2007 - **CEC01567522** and from Rebecca Andrew dated August 2007 - **CEC01560815**). The Council has a responsibility to seek the advice it thinks it needs to take forward a project. Whether that advice came from DLA in their role as legal advisor to TIE and to the Council is one issue. The Council has a responsibility to take the best advice it can and if it feels it should get independent legal advice then it should get that advice. That decision would either be a matter for senior officers of the Council or elected members.

## Transport Scotland

318. I am aware that, following debate and a vote in the Scottish Parliament in June 2007, Transport Scotland's role in the governance of the project changed. As I have already said, this meant that the project was effectively orphaned by the Scottish Government for political reasons. I understand the politics of that, the SNP were not in favour of the tram project and did not view it as the best way forward for transport. They had campaigned vigorously in that regard in the Council and the Scottish Parliament elections. Those are legitimate views; however, in terms of good governance for a project like this, to take Transport Scotland out of the management was not a wise decision. It meant the Council was less able to access the expertise that Transport Scotland had.
319. I also think it was a mistake in regard to the Scottish Government's role and responsibility in protecting the public purse, because Transport Scotland were handing out half a billion pounds of public money. I thought it was irrational and unnecessary. Once it got to the stage the tram was the only project TIE had, there should have been discussion about whether or not TIE was the right organisation to take it forward. Even if it was the right organisation, there

should have been discussion of whether its existing structure and staffing levels were the most appropriate mechanism for supporting the development of the project. Transport Scotland could have become more interventional in the administration and the management of the project.

320. I am not sure what reporting to TS took place after they were taken out of the project. I was not involved in the project by that stage and I am really not sure what level of oversight they provided, but there is no question that had Transport Scotland been more involved, the at times perverse behaviour of TIE would not have persisted in the way it did. It would have been challenged at a much earlier stage. Undoubtedly, the Council should have stepped in and ensured that it did not happen, but had Transport Scotland been involved that it would have been a lot easier.

321. The changed role of TS led to less scrutiny of the information and the estimates provided by TIE, less scrutiny of the decision-making processes within TIE and less scrutiny of the senior officers within TIE. There is a compelling logic that, whilst Transport Scotland did not exist when TIE was set up (TS came into being in 2006) by the time the decision was being made to implement the trams, TS was operational and was increasingly taking over responsibility for delivering transport infrastructure projects in Scotland. I am surprised nobody thought about using Transport Scotland as a delivery mechanism for the tram. It would have been easy to blend the expertise of Transport Scotland with the experience and expertise you wanted to retain from TIE. TIE officers could have moved over into Transport Scotland, such as were needed, to deliver the tram project in a way that reduced overheads, saving money for the taxpayer.

## **Audit Scotland**

322. I read both reports that Audit Scotland produced on the tram project in June 2007 [**CEC00785541**] and February 2011 [**ADS00046**].

323. As I recall, Audit Scotland produced reports on both the tram project and EARL in June 2007 and I was reassured by them in a number of respects. I was reassured that my views on EARL were correct: I was very concerned about the risks associated with the EARL project because of the extensive tunnelling that was going to be required. The report on the tram project gave me comfort that, in general terms, the rationale for delivering it was sound. I believe some people saw it as Audit Scotland giving a thumbs up to the tram project, but I am not sure it was quite that simplistic. Audit Scotland looked at what informed the decisions to go ahead with the tram project and felt that information was relatively sound. I found it very reassuring and it meant that the likelihood was that the tram project would go ahead and would be delivered.
324. I was not aware of the depth of their review in 2007 in any detail. I was not on the Council after May 2007 so I was reading about the trams in the press much the same as anybody else.
325. I would imagine the AS report would be a very significant factor in reassuring elected members that the decision was sound to go ahead with the tram, in line with the proposals the Council had taken forward. The report did not state it would be problem or risk free, but generally speaking there was a strong rationale for taking the project forward. I can understand people criticising the tram, arguing that the tram was not good value for money and that there was not a sound enough Business Case, but what I cannot understand or accept, is people criticising the tram but supporting the Borders rail link and the Government did both. That is illogical because if the arguments they applied to the tram were applied to the Borders railway, the Borders railway would never have happened. I think from an economic development point of view, the Borders railway was sound. The trams were an economic development project too, but trams also provided more significant transport benefits. There is illogicality in the Scottish Government's support for the Borders railway, which provided modest transport benefits, and their opposition to the tram, which was potentially a transformational project for Edinburgh.

## OGC Reviews

326. I am aware that in May 2006 an Office of Government Gateway (“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”, meaning “*To achieve success the project should take action immediately*”. I cannot specifically remember, but I would either have seen a copy of the report or I would have been briefed on the contents of it.
327. I cannot remember specific concerns or specific actions afterwards, but there would have been a response in trying to address the issues that were raised in the Gateway Review and to make sure they were put in place before the tram project moved to the delivery phase.
328. I am not sure I saw a copy of the second OGC review that was carried out in September 2006 [CEC01629382], which resulted in an “Amber” rating. I think it was less likely I would have seen it, given I was stepping down as Council Leader at that period of time. There would have been steps taken as a result of the initial review that improved the project to an Amber rating. Amber, whilst satisfactory to a degree, still means there are significant issues with the project and I would have expected further actions to resolve the issues raised at that stage.
329. I cannot comment on any concerns I had about the report as I was stepping down.

## Public Relations and Communications

330. There were a whole variety of means in which information was provided to the public on the tram project. Practically, delivering the tram network meant going through a legal and public consultation exercise on the route and the issues associated with the route. There was a huge amount of public

information delivered directly to residents and also put out through Council information sources and through the press. Over the duration of the project it was a major logistical exercise to handle the communications for the tram project because it was this perfect storm of issues: there was a Government that did not want the project to go ahead and a Council pressing ahead anyway. Even without that, delivering the trams was a huge communications challenge. I understood that when I was Council Leader and I made it very clear to officers in the Council that they had to have significant capacity to handle the communication issues that arose from the tram, not least when it came to individual sections in areas where there were a large number of shops, like Leith Walk and Haymarket. There were very serious communications issues with stakeholders, residents and businesses along the tram route. It was a huge undertaking and a huge challenge doing that under the spotlight of the political controversy there was, which made it even more difficult and challenging.

331. Queries or representations by members of the public were addressed in a variety of different means. People had the opportunity to email or write to officers and elected members of the Council. They could go and see elected members at their surgeries and there was a large and very significant effort put into responding to the representations we had throughout the period of the consideration of the trams. I was involved at various different levels in providing information and getting the messages joined up in a way that could communicate, at times, complex information in an understandable way to members of the public. We were required to pick up legitimate issues of concern and separate those from straightforward political opposition so we could respond and address the matters raised.
332. I think the public were kept fully informed of developments relating to the tram project. There was no shortage of press coverage, although they were not kept informed of some of the key developments within TIE or in the administration of the contract during the dispute. However, in the overall delivery, there was a huge logistical exercise undertaken by TIE to try and manage the issues with varying degrees of success. There were situations,

for example, where they put up signs for the West End in Leith Walk creating confusion, however, I think it improved and the on-site communications issues were better handled. How successful they were at managing the issues in the press in relation to the trams is a debateable point.

333. I think what is clear is that many of the difficulties and issues with the tram project were hidden to the extent that they were not actually addressed. Although there was a huge controversy about the delivery of the tram project and individual aspects of it, most of the debate and discussion about the real problems took place in private. In a sense, that was not helpful as nothing helps focus minds to get a decision taken more quickly than shining a bit of light on the issues. I think the culture of secrecy that existed within TIE and within the Council at the time was not conducive to having a healthy debate about the issues. I remember someone, who was advising on the tram project, handed his business card to someone and made the point that his email address was not subject to Freedom of Information legislation. That had obviously been the culture within TIE and I heard similar stories when senior officers and members were meeting in the Council Chamber, they would not take minutes because they did not want anything recorded. I felt this was wholly inappropriate and I would have gone in the other direction. If I had a big problem on a major project like that, I would have wanted every action I took detailed and recorded so that there would be a record of what I had done. It was not just that it was wrong; it was stupid and counterproductive because it did not help anyone make better decisions.
334. Communications is a big part of the reason why the problems at TIE were allowed to persist: there was a robust approach taken to communications on the tram project that masked many of the most serious problems. I think this was partly deliberate and partly by accident.
335. There were communication issues with elected members themselves, in particular the point I made previously about elected members being told that if they gave out information, if they were the person who leaked information, they would be responsible for costing the Council taxpayer. That was a very

specific threat designed to engineer silence and a lack of analysis and critique of the decisions being taken. That was deliberate and, I think, unethical behaviour on the part of those in TIE who used that approach. It did not enable elected members to take the right decisions for the right reasons. The fact that a large amount of effort was put into communications issues around the tram project was one of the things that enabled a lot of those difficulties to go unchallenged.

336. Additionally, for example, TIE sponsored the Chamber of Commerce who were one of the organisations that commented on the tram project. What were they going to say about the delivery of the tram project when they were getting sponsorship from TIE? Richard Jeffrey had been President of the Chamber of Commerce when he came into the tram project and I am not saying it is corrupt, it is just not healthy to have a relationship with a key organisation based on sponsorship. You should actually rely on the facts and the evidence of the situation, rather than a commercial relationship which could potentially compromise views of key stakeholders.
337. There was a lot of information put out to try and mitigate the adverse effects of the tram works [see email from Leanne Mabblerley dated 16 May 2008 - **CEC01231803**], which I think was effective to varying degrees. I think what really hampered the issues was the fact that the on-street works were done in some instances two or three times. Rather than go in and do the utility diversions in one, they were not done properly and had to be done again. That was an issue we came up against when we were working with Bilfinger. My understanding, from senior Council sources including Sue Bruce the previous Chief Executive, is that the utility diversions were probably not done properly in Leith Walk, which will be an issue that will need to be addressed when the tram is (hopefully) extended.
338. I had generally good support from officers within the Council and they were my principal route to handle PR issues that came up with the tram. There were many over the period and I spent a lot of time working on it. I cannot comment after I left the Council whether members were informed of PR

issues in good time [TIE00147176], although I am not sure I was hugely impressed by TIE's capabilities in handling communications issues. We had some very able communications officers and, in general terms, I felt things were handled pretty well but it was not easy.

339. The Council should not, in my view, have held a referendum on the tram project. Having been through a referendum once, I would not advise holding a referendum on any issue in relation to a local government matter. It is not a logical way to take a decision and have rational debate, despite the fact you get a huge focus on that individual issue. We have seen, with subsequent referenda, in particular the one on EU membership, that people do not always take a rational decision once you get into such a debate.
340. At the Edinburgh Tram (Line One) Bill Committee on Tuesday 6 February 2006 [CEC02083972] it was noted that people had been in discussion with the Edinburgh Chamber of Commerce about how to handle the commercial premises that might be affected during the construction period. My recollection is that we wanted to make sure we carried out the works as efficiently and effectively as possible when the on-street works were undertaken. We were aware, particularly from Dublin; it was a huge challenge to carry out these works and not cause disruption and pain for some of the traders involved; that was very clearly understood by the Council at that stage. We wanted to make sure the works were carried out properly, that there was proper communication and engagement with the local stakeholders on the route and that they were, as far as could possibly be achieved, done quickly and properly and in one attempt.
341. There was thought to look at rates reductions for individual businesses along the route which might be badly affected. If a large organisation takes a hit on their business because of the tram works, it has an impact but it is not life threatening. Many small businesses and traders however could not survive a prolonged period of disruption to their business, which proved to be the case. The fact that utility works were done repeatedly was something that put enormous pressure on local businesses to a degree that meant, I believe,



some went out of business and stopped trading. It was an issue we were aware of, that needed to be handled sensitively with works needing to be proceeded with as quickly and efficiently as possible. There was no end of discussion with Andrew Holmes and Tom Aitchison about the need to do that and officers were specifically sent to Dublin to learn the lessons of getting the utility works right.

342. I believe TIE published a Communications Management Plan in February 2007 [CEC01815033]. I probably was given a copy of it as an elected member, although I cannot remember any of the detail of it or whether I had any particular views on it. My general observation would be that a great deal of effort was put into communications involving the tram project. If the same effort had been put into taking the right decisions, for the right reasons, there would have been a lot fewer problems in the implementation of the project. Time and money would have been better spent making sure they got the decisions right rather than trying to massage information about the problems. There were some early examples of very poor information being provided to stakeholders: I mentioned having West End village information in Leith Walk, which is an incredible mistake to make once, never mind twice. It does not matter how good the messaging is, scrutiny can be staved off for a while, however, if there are fundamental issues, problems are stored up for the future and I think that is what happened to the tram project. Through the way in which communications were managed, problems were hidden from elected members. I do not mean the press activity; communication with elected members was used as a means to suppress scrutiny of the project, ultimately to the detriment of the project, the council and the city.

### **Cost Overrun and Consequences**

343. I am not sure exactly when I became aware there was likely to be a significant cost overrun. However, around the time of the Princes Street Agreement and with the press coverage about that, I had conversations with David Mackay. In the early stages of the delivery of the project, not only was David Mackay

confident the project could be delivered within budget, he thought they could get the extra tram line if the contingency was not used. At the start, he was very confident things were going well but by the time of the Princes Street works it was clear there were some issues in the way that the project was being implemented. I am not sure I understood at that time any of the reasons for the cost overruns but it was clear problems were beginning to sink in.

344. In the immediate aftermath of the Mar Hall mediation I do not think I was clear on how the additional contribution by the Council would be financed. Ultimately, there was a report to the Council with a proposal to fund it through Prudential borrowing which, at the time, was probably the only practical means the Council had. That would have a significant impact on the Council's revenue budget and there would need to be room created to accommodate that, which would be difficult because there was a period of a Council Tax freeze in place.
345. I am not sure I am aware of exactly what information was communicated to Councillors during the project about the risk of a cost overrun, or how much that was likely to be. However, like other aspects of the project, I do not think Councillors were given proper information and that would include the issues of the cost overrun. Indeed, TIE deliberately tried to hide information regarding the potential for cost overruns by portraying the situation very differently to the reality. Going back to the adjudications, not acknowledging the fact that they had signed a contract that enabled Bilfinger to bill, separately and differently, for changes to the administration of the works was something that should have been accepted, understood and managed at a much earlier stage.
346. Another thing that caused me some concern was that there was no attempt by TIE at an early stage to look to save money. The fact that there are many more trams than needed was avoidable because it was clear by the time the trams were purchased that the line was not going to be developed in a way that was initially envisaged. The size of the tram depot is another issue: that scale of depot is not required for the tram line there is. It might have been the right decision to stick with the existing plans for the tram depot, but if there is

a situation where there is budget difficulty; attempts should have been made to de-scope the works where possible.

347. I think there was a degree of denial within TIE about aspects of the financing of the project that they kept from elected members for far too long. That meant elected members were not able to raise any of these issues or challenge any of the assertions being made by TIE. That also meant they were not able to take decisions to try and make sure that, despite the fact that the project was going to overrun its cost, the overrun was more manageable than it would otherwise have been. I mentioned the Murrayfield underpass previously, and it just seemed bizarre that the expensive option was considered because it was felt there should be a really high quality entrance to Murrayfield Stadium. When Bilfinger asked for the specification, my understanding is that there was no decision from TIE so it went to the Council, Andrew Holmes and Tom Aitchison, and BB still did not get an answer regarding the cost of the project. At that stage, I would have been highlighting the budget crisis and that the project that was going to overrun significantly and, against that backdrop, I would have reduced the scope of the works. There were comments made at various stages that the scope and the scale of the work was more appropriate to a heavy rail scheme than a light rail scheme. I am not a technical expert but there should have been a process TIE could have undertaken to look at the scope of the project to see if there was room to make sure costs were reduced wherever possible. I am not sure if any such exercise was ever undertaken.
348. There are trams sitting out at the depot that are effectively ornamental, because that number of trams is not needed for the tram route we have now got. That has cost money you cannot get back and they self-evidently should not have been bought in the first place. There was this whole climate of denial of the problems in the project, which just compounded the difficulties, the challenges and the overspend.
349. The consequences are that we do not have the tram that the Council envisaged and the city actually wanted. We have a truncated version. It works

in its own right but it does not reach the main residential area where the passengers are. The Leith area has one of the highest concentrations of people in the UK and was where the passengers were. In a sense that is one fundamental failure in delivering the project. The tram could have gone further than down Leith Walk but I would have said the absolute minimum should have been from the Airport to Leith. The opportunities for regeneration in Leith have been missed. The city's reputation has been severely damaged. It is recovering but for a period of time Edinburgh was a laughing stock. Key businesses in Edinburgh were even looking at diverting their resources elsewhere. The consequences are very severe for the failure to deliver it on time and, in addition to that, the Council has been clobbered with huge additional costs that it will have to pay back over a prolonged period of time.

350. I do not know if the Council could have delivered the tram project on time and on budget. I have a relatively high degree of confidence that it could have been done broadly on time and on budget but these are big projects, they are complicated, there are reasons why projects are delivered late and are delivered over budget, it's because they are difficult to do. It certainly should not have become the carnage it became and should not have taken the time it took or cost what it did. That was avoidable through good governance in TIE and good oversight of the project by the Council and, unfortunately and tragically, that did not take place.

351. The consequences for my constituents are that they will have to pay money towards the delivery of the tram rather than towards other services in and around the city. I was an elected member of the south side of the city, but residents in the north side have been denied access to a much-enhanced public transport service. The prospect of delivering a tram to the south of the city has been drastically reduced and delayed because of what has happened with the tram.

352. I am aware that there were attempts to try and mitigate the impacts on residents and businesses but I am not familiar with the extent of those activities.
353. The shortened line substantially failed to meet the objectives and benefits set out in the Final Business Case because it did not reach the areas of the city it was meant to. Indeed, because it took so long and was such a painful delivery, it caused additional problems that were not perceived in the Final Business Case. There were very significant failings in the initial objectives of delivering a tram for Edinburgh and it has been a painful and bloody experience for the Council and for the city.
354. As I have already stated, the effect of the additional borrowing by CEC was that there were less resources available for service provision in the city. There was less flexibility to take forward specific issues in the revenue budget and also on the capital side. Those are sizable sums of money to come out of the Council budget on an annual basis. A huge amount could have been achieved in Edinburgh for that amount of capital expenditure.

## **Final Comments**

355. I think the main reason for the failure to deliver the tram project in the time, within the budget and to the extent projected is that there was an organisation that effectively went rogue. I think TIE was dysfunctional and 'corrupt' with a small 'c', and there was a succession of poor decisions within TIE and within the Council in tackling the problems that occurred during the delivery of the project. I'm not sure anyone could have foreseen the scale of the problems. It was almost the case that, at times, there was a problem, or a difficulty, or a failure with everything you looked at. There are some aspects of the tram project that are really good and have been successful: the trams are attractive vehicles, the service is a good one, aspects of individual elements of the route are quite attractive and I suppose you could argue that there is a tram depot there that is ready to be expanded (though at a high price). The fact that the

bus company and the tram operate in a complementary way is also something that is good but all of that could have, and should have, happened with proper governance of the tram project. For whatever reason, and there are a huge range of reasons, there was not good governance of the project. There was no leadership given by some of the key individuals or collectively by the Council, TIE and elected members to take the project forward and tackle the problems and what we are left with is a very disappointing and bitter experience for Edinburgh and for the Council.

356. I have already touched on a range of issues where these failures might have been avoided. There is no question that the problems in TIE should have been addressed much earlier on and that actions by key individuals in TIE should have been challenged. The Council should have been more assertive in its responsibilities to demand information and receive proper advice in relation to the administration of the contract. I cannot explain why that did not happen, but it did not, and if those issues had been addressed at a much earlier stage a lot of the pain could have been avoided.
357. When major projects are delivered, there has to be an understanding that they are going to take a considerable period of time to deliver. In that time, there will be changes in the individuals involved, elected members and officers, so there has to be a broad range of support for the project and that was there for this. There also has to be the ability to address individual problems as they arise in an effective and efficient manner and that is where this fell down. Where a problem arose in the contractual dispute, TIE was pretty much left to get on and administer it in the way it wanted, almost without regard to anybody else's view. That was a major failing, particularly when the project was costing at least £2m a month to run. Although members of TIE, as an organisation, lectured elected members and others about the need to protect the public purse, they were doing the exact opposite in practice because they had a cavalier attitude as to how long the project was going to run. On major development projects time is money and they need to be delivered quickly, not just because that makes the administration better, but because it saves money. There was no feeling of any sense of urgency within TIE to resolve

the issues. The dispute dragged on for way too long and was allowed to run without either internal scrutiny from TIE or external scrutiny from the Council, which was a fundamental problem that caused the large bulk of the additional cost. It is not difficult to envisage circumstances where the cost could have overrun on a major project like this that is always a risk that cannot be taken away. The degree to which costs overran however is unlike any other public procurement project I can think of beyond the Scottish Parliament building.

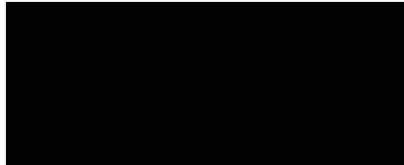
358. As I have already mentioned, TIE almost became a life raft for some Council officers from their roles within the Council. That is one of the aspects that to me is deeply disturbing. If I was still in the Council I would have been asking more questions as to why just so many officers ended up working in TIE. I think to many officers were farmed out to TIE from the Council, creating an additional cost in TIE that did not help the Council and that blurred the lines of authority and accountability.
359. It beggars belief that there were people in TIE who felt they were more superior to, and felt able to tell the Council officers what to do. If it was a means of giving them a soft landing on their way out of the Council, that is a completely indefensible position to take. I cannot for the life of me understand why senior officers sanctioned the scale of that that as an approach to managing a major project and why it was thought that was a satisfactory way to behave. I have known Andrew Holmes for a long time and I cannot reconcile that huge intellect and ability to cut through issues with, what appears to have been, a lackadaisical attitude to putting too many ex-council officers into an environment where they were not properly supervised. I believe it would be worthwhile looking at how many officers went over, the positions they had and what their terms and conditions were. It was not what is not what TIE was there for, it was for delivering a Tram.
360. One issue that deeply shocked me was that there appears to have been attempts to withhold information from elected members. Nick Smith's email, if an accurate assessment of the position is completely unacceptable. Members

were not given the information they needed to make decisions on this project and anyone culpable in that needs to be taken to task.

361. There is also the issue of the payment that went to Andrew Fitchie's personal account and the failure of people within the Council, particularly the Council Monitoring Officer, to tackle that problem.
362. If the inquiry feels we made mistakes in the early planning of the tram project, it is entitled to say so. When operating a project over a period of time it is not just about how you start out, it is about the journey you go on and how you tackle problems that arise along the way. There is no way the tram project should have ended up where it did and there are a lot of complicated reasons why that came about. Fundamentally however, it was about a dysfunctional and a dishonest organisation that was left to its own devices.



I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 136 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..... 26/7/2017 .....