

The Edinburgh Tram Inquiry
Witness Statement of Graeme James Greenhill

Statement taken by Duncan Begg. Laura Irvine, a Solicitor at BTO Solicitors, was also in attendance.

My full name is Graeme James Greenhill. I am aged 55. My date of birth is [REDACTED]
[REDACTED] My contact details are known to the Inquiry.

My current occupation is as a Senior Manager with Audit Scotland's Performance Audit and Best Value Group. I was also a Senior Manager with Audit Scotland in 2007 and 2011 when I was involved in the production of two performance audit reports on the Edinburgh Trams Project. I have provided a copy of my curriculum vitae ("CV") [CVS00000026].

Statement:

Introduction

1. I have provided a copy of a brief introduction to the role of Audit Scotland ("AS") [WED00000157]. In summary, the Auditor General of Scotland ("AGS") is responsible for the audit of central government bodies, such as the Scottish Government, the NHS, further education colleges and Scottish Water. The Accounts Commission is responsible for the audit of local government, which includes local authorities but also joint Boards, for example, Health and Social Care Integration Boards. Audit basically forms two streams: there is the annual audit of public bodies' accounts, called the audit of financial statements; and there are performance audits (which includes best value audits) .. Audit Scotland is split into two operational arms: there is what we now call the Performance Audit and Best Value Group, which carries out

performance audits and best value audits; and there is the Audit Services Group, which carries out financial audits. For financial audits, auditors are appointed for a five year period. In some cases financial audits are awarded to Audit Scotland auditors and others are awarded to private accountancy firms. About two-thirds of audits are conducted by the Audit Services Group of Audit Scotland, and one-third by private firms. There is a competitive tendering exercise. Performance audits and base value audits are conducted in-house by Performance Audit and Best Value Group staff. I am a senior manager in the Performance Audit and Best Value Group. The key thing is that both the AGS and the Accounts Commission are completely independent of Ministers and Parliament so they decide the subjects they wish to audit as part of their annual performance audit programme. On the financial audit side there is a requirement to conduct audits of accounts on an annual basis, the approach to which is informed by professional auditing standards.

2. Audit Scotland has produced two performance audits on the Edinburgh trams project. The first one, on behalf of the AGS, in June 2007 came from a request by John Swinney, the Cabinet Secretary for Finance and Sustainable Growth, who approached the AGS asking if he could conduct a high level review of two Edinburgh transport projects: the Edinburgh Trams Project; and the Edinburgh Airport Rail Link. The second was published in February 2011. The 2011 report, on behalf of the AGS and the Accounts Commission, was intended as an interim report because we planned to carry out a subsequent performance audit, once the tram project had been delivered. When the Edinburgh Trams Public Inquiry ("ETI") was announced we considered that it would not be appropriate for us to conduct a follow-up audit as there would have been duplication with the work of the ETI. In addition to the two performance audits, we monitored the project over a number of years from 2007 onwards. The results are reflected in the Annual Audit Reports which are produced as part of the annual financial audit, particularly on the audit of the City of Edinburgh Council ("CEC"). Our financial audits are conducted in accordance with Audit Scotland's Code of Audit Practice, which is informed by professional auditing standards. One of these is called International Standards of Auditing 260 ("ISA260") Communication with those charged with governance. ISA260 and

the Code of Audit Practice require financial auditors to produce an annual report, reporting the results of their audit activities in the course of the year.

3. I have also provided a copy of Audit Scotland's retention policy [WED00000159], which is informed by International Standards of Auditing 230 Audit Documentation and Regulation 3.11 of Audit Regulations and Guidance [GOV00000016], page 51, jointly produced by the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants in Ireland. Those standards do not require us to retain documents beyond a six year period and so very little remains of the audit information we collected as part of the 2007 performance audit we conducted on the Edinburgh Trams Project. We have a little more in relation to the 2011 report which I have made available to the Inquiry.
- 4.
5. I conducted both audits reported in the 2007 and the 2011 Performance Audit Reports. Normally we have an audit team, which includes a couple of audit assistants, a project manager responsible for managing the performance audit and a senior manager who oversees the audit. There is a chain of command whereby the the draft audit report goes up through an Assistant Director, then a Director, and then, finally, to the Auditor General and/or the Accounts Commission for approval. The 2007 report was conducted in a very short space of time and because of that we changed the normal way in which we conducted that audit. As a senior manager my role was normally to oversee audits and not to actually manage them. As the 2007 report was required to be conducted in such a short space of time, I was asked to carry out the audit and draft the report. As I had knowledge and experience from the 2007 trams audit, I also managed and undertook the 2011 audit. As you will have seen from my CV, I have been an auditor for over 30 years and I am a qualified accountant. By 2007 I had been auditing for 20 years and Audit Scotland perceived me to be someone with the experience and the forensic audit skills to work my way through large volumes of evidence, to make connections, to draw out important issues from less important ones and to make audit judgements and conclusions, which informed the contents of 2007 report. My

other role was as a liaison point between the Auditor General and the auditors of both CEC and Transport Scotland ("TS"). Between 2007 and 2011, we were monitoring progress with the trams project and reporting as required through the annual audits of CEC and TS. There was a need to keep an eye on how things were going to inform thinking about when another performance audit might be required.

6. The Code of Audit Practice requires auditors to report things which come up in the course of annual audits which are of significance to the bodies in question. The Edinburgh Trams project was obviously a significant project for the Council. It was something which was high profile and there was a need for the auditor to report on that. The auditor's fundamental requirement is to express an audit opinion on the financial statements of the body in question, stating whether the accounts represent a true and fair view of the state of affairs and the financial performance of that body. The Code of Audit Practice goes a bit further. It requires auditors to comment on things such as governance, overall performance, and the management of risks.

7. After the conclusion of the 2007 report we agreed that the auditors would continue to monitor the trams project through the annual audits of the financial statements. I suppose our concerns about the project first registered around 2008 when the first of the disputes arose between Transport Initiatives Edinburgh Ltd ("TIE") and Bilfinger, largely from the media, but also from the auditor of CEC who was in conversations with CEC staff, the Director of Finance and the Chief Executive. We began to come under a certain amount of pressure towards the beginning of 2010 suggesting that we should be looking at the project again, and perhaps thinking about another performance audit. This pressure was partly from the media and partly from correspondence that we were receiving, for example from Murdo Fraser MSP. However, it is a very difficult thing for auditors to get involved in the kind of legal disputes that were arising; there is a feeling that we should take a step back as we do not want to be seen to be taking sides. Also, any kind of performance audit is demanding of the management time of the people that we are auditing and we felt it was better that the management of TIE

concentrate on resolving the disputes. There were different stories appearing in the media about how much had been spent and what progress had been made. Shirley Anne Somerville MSP also wrote to us. The Auditor General decided around 2010 that we had to think about changing our approach. There were various meetings between Audit Scotland staff, including the Auditor General and myself, and auditors of CEC and TS. We agreed that both the auditors of TS and the auditors of CEC would produce a Position Statement setting out the facts as they knew them and their audits would inform a potential Performance Audit. In the event, a Position Statement was produced by the auditors of TS, but not by the auditor of the CEC, because they were concentrating on producing their annual audit report and because it was overtaken by events. As events and pressure built up, the Auditor General decided around October/November 2010 that we needed to produce another performance audit and that is what resulted in the 2011 report.

8. As detailed in my CV, I started off in my career auditing financial accounts, moving on to performance audits not long after I had qualified as a member of the Chartered Institute of Public Finance and Accountancy. As can be seen from the list of reports in my CV, I have been involved in a large number of performance audit reports over the years. As I said earlier, the Cabinet Secretary asked the Auditor General to conduct an inquiry into the Edinburgh Trams Project in 2007, which is a very rare occurrence and which has only happened on another two occasions. One was on the trunk roads maintenance contracts, which we undertook in 2001/02, and the other was on the Scottish Prison Service prisoner escort services, conducted by Reliance, in 2004/05. It is not by accident that I was involved in both of those projects, and I was involved in the Trams project because I had that forensic audit experience of doing things on a quick basis. There are other reports that we call 'What went wrong reports'. These are not really classed as part of the performance audit programme, but are more reactive reports as we have identified that something has gone wrong. These would include the reports on the Agricultural Business Improvement Scheme in 2000, and on Individual Learning Accounts in Scotland in 2002. These were audits that were required to be done in relatively short timeframes and which required a forensic audit

ability to quickly identify the issues, conduct the audit and form appropriate judgements.

'Edinburgh Transport Projects Review', Audit Scotland, June 2007

9. I have been shown a copy of the Audit Scotland report on the EARL and Tram projects published in June 2007 [CEC00785541]. At the time of the 2007 report, the Edinburgh Tram Project was still at a relatively early stage. While several of the contracts had been signed, negotiations between TIE and bidders were still underway regarding the main infrastructure construction contract. TIE had still to prepare a final business case and no utilities diversion works or infrastructure construction had commenced. The AGS had already made a commitment that Audit Scotland would undertake a review of major capital projects in Scotland in its current work programme. Scoping that work, including developing the audit methodology, was already well-advanced. On this basis, AGS agreed to bring forward a more focused review of the two projects, utilising the audit methodology being developed for the review of major capital projects. The high level objectives of that review were as set out in paragraph 2 (page 4) of the 2007 report:

- Whether the Edinburgh trams and EARL projects were progressing in relation to time and cost targets;
- Whether appropriate management systems were in place to promote successful completion of the Edinburgh trams and EARL projects.

The report made clear that a lot of things were about to happen, for example the signing of the infrastructure construction contract, which could influence the future success, or otherwise, of the Trams project. The report also made clear what we did and did not do as part of the audit. In particular, in paragraph 4 (page 4) we made clear that we looked at the process for estimating project costs and project management arrangements but we did not provide any assurances on the accuracy of the estimated project costs.

10.

I undertook the 2007 audit, as it pertained to the trams project, and drafted the report. It was then considered, in accordance with our normal procedures, by the Assistant Director, the Director and, ultimately, Bob Black, the AGS. Bob Black determined the scope of the 2007 review. The report is published in his name and so he took responsibility for its contents. Reflecting his independence from Ministers and Parliament, he decides what he is going to audit and how he is going to audit.

11. I understand that the Auditor General received a phone call in June 2007 from the then Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP, asking if we could undertake a high level review of the arrangements in place for estimating the costs and managing the Edinburgh Tram and EARL projects. This was the genesis of the 2007 review. I was obviously not party to the discussion, but as I understand it on the back of that phone call Bob Black decided he would undertake the review which resulted in the 2007 report. I think Ministers were feeling a bit of political pressure elsewhere and so they were looking for independent assurance.
12. I do not know whether there had been any previous discussions between the AGS and the Cabinet Secretary, or within Audit Scotland, about such a review being carried out.
13. The material and evidence that the 2007 review was based on comprised interviews and a review of key papers, which is a normal part of the audit process. These key papers included the Outline Business Case, reports and minutes relating to meetings of the Tram Project Board, diagrams outlining TIE's operational and governance structures, its Project Management Plan, its Risk Management Plan and its procurement strategy. A standard audit process is triangulation, whereby we take different sources of evidence and, for example, follow up a review of key papers with interviews of key personnel to explore in more detail. This was the process used for the 2007 review.
14. I have been shown a document entitled 'EARL and tram projects review - terms of reference' [ADS00066]. This was prepared by myself, and is what we called an issues and investigations matrix, which is part of the way in which

we plan to conduct performance audits. We have various project management frameworks, performance audit manuals, which spell out the various stages of conducting a performance audit. One of the first things we do is a scoping exercise, and the issues and investigations matrix set out the aims and objectives for the performance audit that was carried out. It set out the aims and objectives, the key questions that we wanted to ask and answer to fulfil and meet the audit objectives, and how we were going to carry out and obtain the evidence we needed. This is a standard document that is prepared for all performance audits. Normally performance audits typically take around nine months and we have various stages to go through, but we had a very short space of time for the 2007 audit. The issues investigations matrix we produced enabled us to conduct that 2007 audit.

15.

The trams audit utilised the audit methodology being developed for the review of major capital projects. The issues investigations matrix gave an indication of the methodology we used for the 2007 report. The final methodology is set out in Appendix 4 (pages 43 - 44) to a report entitled 'Review of Major Capital Projects in Scotland' dated June 2008 [CEC01318113]. We were developing our thinking in 2007 in respect of what ultimately became the 2008 report. Paragraph 11 of Appendix 4 noted that we assessed the project against good project management criteria. It noted that we looked at five areas of project governance and management effectiveness. Those included governance arrangements, how risks were managed, and the reporting of financial performance and progress. I would not say that we have a standard methodology for auditing major capital projects because each major capital project differs, however all performance audits contain features which are very similar to others. When auditing major capital projects we looked at the issues which are outlined in Appendix 3 of the 2008 report (page 42): vision and direction, planning, execution, measuring and monitoring, and business acceptance. In terms of the 2007 report we looked at various elements of these things to a greater or lesser depth. Obviously as it was the early stages of the Trams project in 2007, we could not look at execution in any detail. In essence, Appendix 4 is still the current methodology we use for auditing major

capital projects, although it may be tweaked to reflect the circumstances of the audit.

16. The audit team spoke to various senior members of TIE at Director level and above to senior CEC employees, including the Director of Finance and Chief Executive, and to people in TS as well when we undertook our review. We did not speak to any of the contractors, partly because we were influenced by the short timeframe set for the audit, partly because we were influenced by the high level objectives we had set ourselves, and partly because we were influenced by the relative lack of progress that had been made with the project to date. Most of the contractors had not actually started doing any work at that time.

17. The audit team had a number of meetings with CEC, TIE and/or TS in relation to the 2007 report, although any documents that we had relating to 2007 have been discarded in accordance with our document retention policy. After a review of my Outlook calendar and that of my colleague Angela Cullen, I can confirm the following meetings took place, although this may not be a complete list:
 - On 7 June 2007, Angela Cullen, Dick Gill and I met with Claire Dunbar-Jubb, Andy Park and Damien Sharp from TS;
 - On 7 June 2007, Angela Cullen, Dick Gill and I met with Tom Aitchison and Donald McGougan from CEC;
 - On 7 June 2007, Angela Cullen, Dick Gill and I met with Willie Gallagher, Stewart McGarrity and Graeme Bissett from TIE;
 - On 14 June 2007, Dick Gill and I met with met with Bill Reeve from TS.

Dick Gill, who was the same grade as me, was responsible for looking at the EARL aspect of the 2007 review. These were high level introductory meetings, advising attendees that we were doing the audit and how we were going to do it. We would have been asking for their account of progress to date and for them to identify the key papers that we needed to consider. At the meeting on 7 June, particularly in connection with TIE, we highlighted what we needed to

see, such as project management plans, risk management plans, and progress reports. There were other meetings subsequent to 7 June with members of TIE, but I do not have a full record of who they were with. It was part of the process of triangulation I spoke about earlier that we interviewed people such as TIE's Project Director, Graeme Bissett, and Stewart McGarrity, TIE's Director of Finance, but I cannot recall the precise dates that we conducted those interviews.

18. I have been shown an email from Dick Gill to Graeme Greenhill dated 14 June 2007 (ADS00039). This email was intended for Bill Reeve at TS. It refers to a meeting on that date and provided an agenda for the meeting. As I have mentioned, Dick Gill and myself attended that meeting and by then we had started looking at some of the papers that TIE, in particular, had provided. We would have followed the agenda for the meeting with Bill Reeve, but I cannot remember the meeting specifically and we do not have any records of that meeting.

19. Our conclusions in respect of the Edinburgh Trams Review are set out in paragraphs 9 to 15 (pages 5 - 6) of the 2007 report [**CEC00785541**]. Paragraph 10 noted that the final cost of phase 1 was expected to be £593.8m and that the estimated project costs had been subject to robust testing. Paragraph 11 noted that the Scottish Executive had committed to provide up to £500m for phase 1a of the project and CEC a further £45m. It also noted that funding for phase 1b had yet to be confirmed. Paragraph 12 noted that £79m had been spent on the project up to the end of May 2007, which included £17m which had been required to take the two Bills through Parliament to progress. Paragraph 13 noted that there had been some slippage in the project but that TIE was acting to ensure that phase 1a could be operational by early 2011. Paragraph 14 noted that the arrangements in place to manage the project appeared sound. It recorded five reasons for that, which I consider below. However, it was noted at paragraph 15 that the project was approaching a critical phase leading up to early 2008 when Cabinet Secretaries and CEC were expected to be asked to approve TIE's final business case. It recorded that there were a range of key tasks which needed

to be completed before the final business case could be signed off. For example, the signing of the infrastructure construction contract was required and at that point utilities diversion work had been halted. It recorded that unless work could progress to plan, cost and time targets may not be met. Those views were informed by the evidence we looked at and the interviews we conducted.

20. The review was instructed on 4 June 2007 and AGS published his report on 20 June 2007. The short timescale was definitely a challenge. Three weeks for a performance audit is very fast going for Audit Scotland and as I said earlier, normally performance audits can take up to nine months. Special investigations tend to take a lot less than nine months, but normally take longer than three weeks. My involvement was basically conducting the audit as opposed to overseeing it and I had to work longer hours and weekends but it was a very high level review reflecting the progress of the Trams project at that time. While we recognised that the short timetable was a challenge, I considered that delivering the report to the timetable was achievable.
21. I can only speak for myself, but I did not have any concerns about the material provided or the methodology used by Audit Scotland in its review.
22. I think full reliance could be placed on the 2007 report subject to the parameters of the report. The report is quite clear that it was a high level review and that we did not look at particular aspects of the project. We did not, for example, provide any assurances on the accuracy of the estimated project costs (as recorded at paragraph 4). It also made clear that the project was reaching a critical phase and that there were a lot of things happening over the coming months which could influence the future direction and success of the project (as recorded at paragraph 15). For example, none of the infrastructure construction work had commenced and the contract had not been signed at that point in time. We could not influence how people interpreted the report and what use they made of it.

23. We did not have any concerns about the reliance that might be placed on the report with regard to the fact that the main infrastructure contract had not been signed and no utilities diversion works or infrastructure construction works had commenced. AGS' conclusion that the arrangements in place to manage the project appeared sound was based on several factors listed at paragraph 14:
- A clear corporate governance structure, which involved all key stakeholders. This included a clear written remit for the Tram Project Board and a regular cycle of progress reports from the Tram Project Director to the Board.
 - Clearly defined project management and organisation. TIE had five teams responsible for delivering different elements of the project. The Tram Project Director met regularly with project managers to discuss progress. There was also a clear project programme that provided start and finish dates for each stage of work. The Project Director and Tram Project Board regularly reviewed progress against the programme and considered requests to change it.
 - Financial management and reporting of the project appeared sound. TIE had a clear scheme of delegated authority to incur expenditure. The Tram Project Board considered expenditure against budget at each meeting. It also considered the financial consequences of any change to the project programme.
 - Procedures were in place to actively manage risk associated with the project. There was a clear risk management plan which set out responsibilities for recording, monitoring and reporting risks associated with the project. Risk was considered at the regular progress meetings between the Tram Project Manager and project managers. The Tram Project Board considered the primary risk register at each of its meetings.
 - A procurement strategy existed which had been designed to minimise risk. The procurement strategy separated the project into a series of contracts and included consideration of such issues as the scheduling of individual elements of the project, the separation of tasks to allow

contractors to concentrate on their strengths, and the best allocation of cost risk between TIE and contractors.

24. I refer to paragraphs 53 to 55 of the 2007 report (page 16), which outlined the slippage that had occurred. There had been some slippage in the dates for signing the contracts for infrastructure construction and vehicle delivery to allow sufficient time for negotiations. There had also been slippage I think in the process of taking the project through the Parliamentary approval stage.
25. Paragraph 54 of the 2007 report outlined that TIE had responded to the slippage in the dates for signing the contracts for the infrastructure and construction of the vehicle delivery by bringing forward advance works, including critical path works such as the construction of the tram depot at Gogar. The point I make about that is that action had been taken to ensure that phase 1a could be operational by early 2011. We were not giving any assurances or guarantees that the action would be successful, but we were making it clear that action was being taken. It is one of the issues that we have with live auditing that we are not in a position to offer any assurances action taken will be successful.
26. I refer to paragraph 61 and 62 of the 2007 report (page 18) in relation to how AGS satisfied himself that the procedures in place would manage the risk. As I have said, we were not offering assurances as to whether the actions that were being taken to manage risk would be successful, but there were procedures in place to actively manage risk. To me, those procedures represented the key things that you would expect to see in a major capital project when managing risk. There was a clear risk management plan, there was a primary risk register, there were responsibilities for managing risk clearly assigned to individuals responsible for delivering the project, and there was a clear mechanism by which risk issues were being reported to the main governance Board, the Tram Project Board. Additionally, the AGS's conclusion was informed by my review of a sample of minutes of meetings between the Tram Project Director and project managers and a sample of minutes of meetings of the TPB.

27. We always take into account the views of the people we speak to and the evidence we see, but ultimately our views are our own and they are our independent statements and judgements. We were able to come to our own views based on our own knowledge and from looking at the papers and the information being provided by TIE.
28. I refer to paragraph 63 to 65 of the 2007 report (pages 18 - 19). The heading just before paragraph 63 notes: "*a procurement strategy has been designed to minimise risk and lead to successful delivery of the project*". This conclusion was informed by my consideration of the scheduling of the various elements of the overall project, and TIE's efforts to achieve costs certainty where this was relevant. It seemed to me that action was being taken through the form and design of the procurement strategy which would lead to risk being minimised. For example, detailed design work was being undertaken in advance of the award of the infrastructure construction contract. That allowed the infrastructure construction company awarded the contract to know more precisely what they were expected to do because the detailed design work had been done. There were separate contracts for utilities diversion and infrastructure construction to provide greater cost certainty for the infrastructure construction contract. One of the key issues with the utilities diversion work was that there was some uncertainty as to what was likely to be found: you would not know what utilities diversion work was required until you started digging. Bidders for these kind of contracts like cost certainty and if they know exactly what will be required they will be much better prepared. Where there is less certainty, such as with utilities diversion work, bidders are less likely to agree to a fixed price contract because they do not know what they are getting in to. They might, if pressed, go for a fixed price contract, but what they would do is price the contract accordingly and add on extra to cover the risk. The utilities diversion work therefore was intended to be carried out in advance of infrastructure construction and the form of the utilities diversion contract was on the basis of unit costs. Therefore, the successful bidder would be paid according to the amount of work they actually carried out (for example, so many pounds per metre of cable moved, and the payment was that unit

cost multiplied by the number of metres of cables which were moved). There were separate contracts for utilities diversion and infrastructure construction and also the use of fixed price contracts, where relevant, with utilities diversion being a little bit different and based on agreed rates because there was uncertainty as to the volume of work required. Similarly, there were separate contracts for infrastructure construction and tram vehicle supply to allow the different parties involved to concentrate on their strengths. All these factors therefore, taken together, said to me that the procurement strategy had been thought out in a way which was designed to minimise risk. Again, we were not offering any assurances that it would minimise risk because a lot of things had still to happen and the whole process had still to be tested.

29. The 2007 review refers to benchmarking at paragraph 50 (page 15). I have been shown an email sent by Geoff Gilbert to me dated 14 June 2007 which appears to have been forwarded on by Miriam Thorne of TIE on 27 September 2007 [CEC01567301]. Attached to that email was a document entitled 'Benchmarking of Project Against Other Schemes' dated 14 June 2007 [CEC01567302]. This was a summary of benchmarking activities undertaken by TIE. Benchmarking is very common in the public sector, and is a means of comparing costs between different organisations. A good example of benchmarking is the Local Government Benchmark Framework which is run by the Improvement Service and which contains over 100 performance indicators which Councils use to compare their performance with other Councils over a whole range of different activities. It does not give all the answers but it does allow people to ask questions. For example, one Council might look at their numbers and query why another Council is able to deliver the same level of service for 80% of the costs. Benchmarking these kind of high level indicators allows you to bury down below the high level information to query what it is about the other organisation that enables it to deliver for 80% of the cost. Is it something to do with organisational structure? Is it something to do with operational practices? Is it something to do with paying different salaries to the staff involved? In some circumstances, you cannot do anything about it because of the factors associated with whatever you are looking at. However, the whole purpose of benchmarking is to enable you to

bury down and investigate high level numbers in more detail to try and find out what you can influence and perhaps change your costs accordingly.

30. The information contained in the Benchmarking document was used to inform our thinking for the 2007 report. In the 2007 report, I refer to a “recently completed tram system” (at paragraph 50). I do not remember whether I was referring to the “Merseytram project”. Every performance audit that we report and produce goes through a clearance process. Part of that clearance process is that we ask the bodies we are auditing to confirm the factual accuracy of the report. This was the process we went with for the Tram Project. I would have expected TIE to come back and challenge the reference to the recently completed tram project and question whether I was referring to Merseytram because it was not completed. They did not do so.

31. Towards the end of the reporting process we produce a draft report, which is agreed by the Auditor General and/or the Accounts Commission, and it is provided to the audited body for comment, largely for factual accuracy. We tend to get comments on the reports falling into three main categories: on factual accuracy; on interpretation of the facts; and comments which are seeking to provide more context. If there is a comment on factual accuracy, we will go back to our information and ask for additional information, if necessary, and change the report accordingly if we think that we have got our facts wrong in the draft. Similarly, if bodies give us comments on additional context, we tend to look at these quite sympathetically because it helps the reader understand the report a bit better. Usually, if we think it is going to help in that regard, we will accommodate those kinds of comments and change the report accordingly. Interpretation of the facts can be a little more challenging. We will ask for more information if necessary, we will discuss with the public body and we will change the report if we think it is proper and appropriate to do so. If we do not think it is proper and appropriate, we will not change the report. It is our decision how to accommodate comments that we receive. Occasionally a report will include a paragraph that states AGS says one thing, however, the audited body says something slightly different but, as I say, it is

our decision. We get comments on every report, it is by no means out of the ordinary and we take each comment on its merits.

32. We did not do any benchmarking of the trams project ourselves.
33. Referring back to the Benchmarking paper prepared by Geoff Gilbert dated 14 June 2007 [CEC01567302], it appears that the Merseytram project was the main project that TIE benchmarked. TIE obviously had cognisance of the National Audit Office report on the trams and linked rail schemes in England, but looking at Geoff Gilbert's paper it appears that the Merseytram project was one in which TIE was able to dive down a little bit deeper than some of the numbers which were appearing in the NAO's report.
34. I think it rather depends on the stage in the Merseytram project the estimated project costs were calculated as to whether it was reasonable to benchmark the Edinburgh Tram Project against that project, which was not completed. If the project was well advanced, if the consultants had been appointed to review the Merseytram project cost, if they had looked at benchmarking and if they had based their project costs on fixed-term contracts and on fixed-term cost bids, then I think it would have been quite reliable and appropriate to use the Merseytram project as a means to benchmark the Edinburgh Tram Project costs. If those costs were calculated at a time when the project was less well advanced, I think you would need to be a little bit more careful as to how you used the information from the Merseytram project as a means of benchmarking your own costs. I do not recall having any concerns about the use of Merseytram as a project with which TIE could benchmark its costs. We were looking at the process as to how TIE had arrived at the project costs and we took some assurance from the process TIE had used. The three elements of that process involved taking consultancy advice on the costs, benchmarking, and estimating the project costs based on fixed cost contracts and other means by which there was cost certainty attached to the project. I spoke about triangulation of audit evidence earlier, and this was a kind of triangulation that TIE was undertaking. They were getting information from different sources with which to support their thinking about what the estimated

project costs would be. If we had concerns at the time, I think we would have said so in the report.

35. CEC, TS and TIE suggested changes to the draft 2011 report. Sandra Elgin sent me an email with an attachment showing CEC's comments on 21 January 2011 [ADS00057]. Gillian McCole sent me an email with an attachment showing me TS' comments on 19 January 2011 [ADS00058]. Steven Bell sent me an email with an attachment showing TIE's comments on 15 January 2011 [ADS00059]. As I have mentioned, the standard process is that we provide a draft report to the audited bodies for them to comment on factual accuracy. I have outlined that different types of comments which come back. We consult with Bob Black, as the AGS, and the Accounts Commission about the changes. Ultimately Bob Black either agrees that the changes should be incorporated or not. It was a relatively short timeframe for the 2007 report for the respective bodies to come back and offer comments but they were given the opportunity to offer comments on the draft report and they did so. We do not have a record of whether other comments were made and how the changes were reflected in the report on the back of those comments, however, from memory, the comments we received were neither exhaustive in quantity, nor difficult to deal with in content. We always send the draft reports to the Head of the organisation, the Chief Executive, or the Accountable Officer, so that they are aware of it and have the opportunity to comment. The emails I have just referred to show comments coming back from their offices.
36. As I have explained, the proposed changes are not simply accepted by AS all the time, they are accepted or rejected on their merits. It is our decision, and the Auditor General has the final say as to what to accept and what to reject and how to change the report, they are not just simply accepted.

Documents associated with the 2007 Audit

37. I have been shown a document entitled "Edinburgh tram project: Key messages" [ADS00040]. I wrote this document. A document of this kind is a standard part of every performance audit. We plan, we produce a scope and the issues and investigations matrix that I mentioned earlier, and we go out and conduct the audit. There is a phase before we draft the report whereby we produce a key messages paper which summarises what came out of the audit and what we have done. It also includes the conclusions and recommendations we think the report should include, and provides a template for the future structure and content of the draft report. The key messages paper is shared and discussed with the Auditor General and/or the Accounts Commission as appropriate. It is purely an internal paper and the Auditor General and the Accounts Commission are asked to agree that paper which gives us a steer for drafting the report.
38. I have been shown a table entitled 'Audit Scotland Review, Edinburgh Tram Project' [ADS00043]. This table was prepared by TIE. We provided TIE with a copy of the issues and investigations matrix, and as part of the early discussions with them we told them what we wanted to look at in the audit. The first column details the Audit Scotland objectives and how we were going to conduct the audit and the questions that we were going ask. The subsequent columns were completed by TIE and detailed the papers that they thought we needed to consider to enable us to answer our questions, and the people that we needed to speak to if we wanted to ask further questions about the papers. This table was prepared at the start of the project. We discussed the audit at the meeting of 7 June 2007 and gave TIE an outline of the kinds of papers that we would need to see. We gave them a couple of days to find the papers and then we sat in their Boardroom with files and papers in accordance with the information that is in the table.
39. I have been shown an email from Gregor Roberts to Julie Thompson dated 26 November 2010 (CEC00115685). Attached to this email were the documents that TIE supplied to Audit Scotland. The documents supplied are those numbered between CEC00115686 and CEC00115706. The attachments included close reports, DLA letters on Contract Close, risk assessments and

CEC00115686
should be
CEC00115689

minutes of the TPB in relation to Financial Close. These documents were requested as part of the 2011 report. I have also been shown an email that I sent to Julie Thompson dated 25 November 2010 [CEC00115642]. In my email, I had requested certain documents. Gregor Roberts' email dated 26 November 2010 was in response to that request. I had requested the documents because I felt that I needed to see them in order to carry out the 2011 audit. The need to see the documents would have been identified during our initial discussions with TIE when we advised them that we were going to do the 2011 audit. I have been shown one of those documents, which is a presentation prepared by TIE dated 9 April 2008 and entitled 'Tram Project Board' [CEC00115706]. From memory, this was a presentation TIE was using to inform interested parties about the progress of the project to date. For example, I think there had been some changes in the governance structure. I think Sue Bruce had recently arrived as the new Chief Executive of CEC at that point, and this was the kind of information that TIE produced to brief people about the trams project. I thought this was a useful high level document which I used to begin thinking about the key issues and things that we would need to look at as part of the 2011 audit.

40. I do not think we had any concerns about the Tram Project at the time of the 2007 audit, in particular given the stage that the project was at. The 2007 report makes clear that it was a high level review that was limited in scope; it specifically said we did not look at certain things and that we did not provide assurances, for example, of estimated project costs.
41. It is certainly unusual for us to be asked to undertake a review by Ministers, bearing in mind the Auditor General's independence. This kind of live auditing can be awkward because we do not know what is going to happen in the future, however ultimately it was Bob Black's decision to undertake that review. It was clear that the Government was having second thoughts about the trams project, but I think we were clear in confining the scope of what we were going to look at and we reported what we found. I think that we would think seriously about the timing of any similar audit in the future. We need to

be very careful about whether we can offer assurances about something that is at such an early stage.

42. I have been referred back to the 2007 Report [**CEC00785541**], and specifically to paragraphs 62 (page 18) and 66 to 67 (pages 19 - 20). These paragraphs identified what I considered the main risks to the cost arising from the project to be. At paragraph 62, I referred to the risk of the utilities diversion work because there was uncertainty about the volume of work was required. At paragraph 62, I also highlighted the risk of general delay with the programme. At paragraphs 66 to 67, I noted the uncertainty about whether the project would go ahead at all. TIE was the main body involved in managing those risks, particularly the operational aspects of the contract regarding utilities diversion work and keeping the project to programme. Uncertainty about whether the project would go ahead was something for the Scottish Government and TS to consider because they were funding the majority of the costs of the project.
43. Paragraphs 57 to 59 of the 2007 report concerned TIE's project management. As far as we were concerned, at that point in time and based on other experiences and knowledge, we felt that the fundamental processes were in place. However, you can have the greatest processes in place and unless you have the right people you cannot guarantee anything. In 2007 we had no concerns about TIE's project management abilities. I refer to the letter sent by Fraser McKinlay of Audit Scotland to the ETI dated 14 July 2015 [**CZS00000053**]. We made clear, in that letter and elsewhere, that we have never conducted a full audit of the Edinburgh Tram Project, so we have not looked specifically at project management. The 2011 report [**ADS00046**] makes clear that we did not, as part of that 2011 report, look at project management within TIE (for example, paragraph 4 on page 4 of that report).
44. We did not have any concerns in relation to the governance arrangements in 2007. Paragraph 56 of the 2007 report ([**CEC00785541**] page 16) summarises the governance structure as it stood at the time of that report. There were obviously changes to governance structure as time progressed but we

considered that the key things you would expect to see in a governance structure were present. For example, the Tram Project Board consisted of representatives from the key organisations involved in the trams project. There was a clear project management organisation and clear responsibilities for the Tram Project Director. Those responsibilities included delivering the project with teams underneath him, with clear responsibilities for delivering particular aspects of the project, and clear mechanisms for reporting progress to the Tram Project Board.

45. The Tram Project Board was freestanding, as it was not a Project Board within any one organisation but there were representatives of each of the main parties involved in the project. For example, it had TS involvement as the key funders, it had representatives from CEC as the main promoters of the project, it had representatives from TIE as the organisation responsible for delivering the Tram Project, and it had representatives from TEL which was going to be responsible for integrating the tram system with the bus system in Edinburgh. It had a clear remit. We did not look at the legality of its constitution.

46. I have been advised that the cost estimate included an allowance for risk representing approximately 12% of the underlying base cost estimates, and with no allowance for Optimism Bias. I do not recognise this allowance of 12%. Paragraph 62 of the 2007 report records the project cost estimates containing an allowance of 24% for project risk and contingencies in January 2006, which a year later had fallen to 10% of current project costs and estimates. You expect that in any major capital project. Very early on you do not know what you are dealing with and you do not know the detailed design. You need to build in a high level of contingencies as the project goes ahead and as you firm up on design costs, you reduce that level of contingency and risk. It is certainly unusual for a project to not include some allowance for Optimism Bias but the level of Optimism Bias can be quite wide and can be quite different depending on the type of project and where it is. There is something called Appendix 4 of the Treasury Green Book, which lists indicative percentages for Optimism Bias. The applicable percentage depends on the project and on whether the issue is time or cost. I cannot

remember the precise figures, but for something like the tram project, which would probably fall into an unusual engineering undertaking, the level of Optimism Bias can exist between something like 6% and 60%, I think it is as wide as that. Obviously by the time costs are being firmed up and the project is more advanced, the allowance for risk and contingencies should be lower.

47. As I have said, I would normally expect to see some kind of Optimism Bias built in, but it may well be the case that TIE had reached the point where they were satisfied through tendering and any other steps they may have taken that they did not require an allowance for Optimism Bias. They could have included Optimism Bias in their other risk contingency allowances that were still in the project costs in 2007. I think we would certainly have asked questions if there had been no risk or contingency allowance built into their costs. We were satisfied that there was some kind of allowance in the costs calculations. If we had a concern, it would have been reflected in the report and it was not.
48. It would have been difficult for us to express an opinion on whether a risk allowance of 12% was reasonable within the context and the parameters of the report. We do not have the skills, as we are auditors and not engineers. If we wanted to look at that in detail, it would have required us to appoint our own consultants to get a second opinion. Clearly it was not an option to do so in the three week timescale for the audit. If there had been time and if we had concerns and felt there was value in appointing our own consultants, it would have been something that we would have considered.
49. I have been shown a memorandum sent by Nadia Savage to Bill Reeve, both at TS, dated 21 June 2007 [SWT0000056]. The memorandum concerned the AGS 2007 report. In that memorandum Nadia Savage drew attention to the discrepancies in the information provided by TIE to TS and AGS. She wrote (page 6): *"it is an obligation on the programme office to register concern that Transport Scotland and tie have information which does not support the information that has been presented by Audit Scotland"*. This memorandum appears to have been written immediately after the report was published and I had not seen it until it was provided by the ETI prior to my interview. I was not

aware of its contents and TS had not discussed the context and the content of it with me. I have no idea how TS acted upon the contents of that memorandum. I repeat what I have said about factual accuracy: TS was given the opportunity to comment on the factual accuracy of the report. If they had raised the issues that were raised in that memorandum, we would have looked at them and reacted accordingly, but they did not.

Audit Committee meeting on 27 June 2007

50. On the morning of 27 June 2007, Robert Black and I gave evidence to the Audit Committee of the Scottish Parliament. I have been shown a copy of the Official Report produced by the Parliament for that Committee session [SCP00000031]. In the afternoon, Parliament debated a motion on the future of the tram project. During that debate MSPs referred to the AGS report and to the evidence given by the Auditor General at the Audit Committee that morning. In his evidence to the Committee, Mr Black said (page 9 (page 15 of the Official Report)): "*The review looks both at the process for estimating project costs and at the project management arrangements for the trams ... It does not provide assurances on the accuracy of the estimated costs – in other words, we did not reperform any analysis...*". Mr Black later said (page 10 (page 17 of the Official Report)): "*We consider that the project estimates have been subject to robust testing. TIE has subjected them to independent review by consultants and it has benchmarked the estimates for infrastructure construction ... against a recently completed tram system elsewhere*". The overall project estimate was calculated by TIE and contains a number of elements reflecting the different elements of the project. For example, the project estimate comprised costs for things like infrastructure construction, the cost of supplying tram vehicles, utilities diversion works, design work, the purchase of land and compensation associated with land, project management costs, and an allowance for contingency and risk, and so forth. We were aware therefore of the basic processes by which the costs had been built up. We were also aware that TIE had subjected those costs to a

consultancy review and that they had attempted to benchmark those costs to assess their reasonableness. We were also aware that, towards the later stages, the project estimates were largely based on fixed costs with reference to contracts either signed or tenders received, or on the unit cost approach taken in respect of utilities diversion works.

51. We would have picked up the various elements of the costs from papers such as the regular reports from the Tram Project Board. We were aware of the different elements of the costs, how they had been developed, and the relative size of each of these different elements of costs. We had access to the consultancy report that had been commissioned and we had also seen the high level benchmarking that TIE had done.
52. I have already mentioned triangulation, and that the project costs that TIE prepared were informed by different sources of evidence. New contracts, fixed cost contracts, benchmarking and consultancy review were all together indicating to us that the process for calculating project cost estimates was robust.
53. The consultants that subjected the cost estimates to independent review are named on page 15 of the 2007 report as a footnote: Brian Hannaby & Associates.
54. As I have already discussed, the recently completed tram system elsewhere that AGS referred to could well have been the Merseytram system, although I cannot recollect. However, if it was not Merseytram, I cannot remember where. If we had referred to Merseytram, we did not get any comments as part of the clearance process for the 2007 report pointing out that the Merseytram system had not been completed. Mr Black's evidence to the Committee was, however, consistent with the contents of the 2007 report.
55. During his evidence to the Committee, Mr Black was asked questions about whether the estimated project costs were accurate. Mr Black is recorded as having said (page 13 (page 23 of the Official Report)): "*the cost estimates*

have been robustly prepared by project management". At the same page of the Official Report, he is also recorded as saying: "*you can take assurance that the project costs have been robustly calculated to a standard commensurate with that of other major public programmes*". I think the question of whether it was accurate to say that costs estimates had been robustly calculated is one that would be better put to Bob Black. Certainly on the face of it, his comments were not consistent with the 2007 report, which referred only to the process of estimating project costs. I think he was talking about the process of preparing the project costs rather than the accuracy per se of those project costs. I do not know what other major public programmes he had in mind when he said that project costs had been calculated "to a standard commensurate with that of other major public programmes". He might have had in mind the Scottish Parliament building project, which we had reported on, but again Bob Black would have to answer for that. I was there at the Audit Committee meeting, however I do not recall him saying those specific things, it was ten years ago. It can be stressful when you are appearing before the Committee. I know myself, having read the Official Report where I have spoken and noting that it was not quite what I meant to say. I think, if I had picked up on those comments and there had been an opportunity, I might have said something which referred to what the report said. I would not have overtly corrected the AGS, but I would certainly have drawn attention to what the report actually said. I would have remembered saying something along those lines but I do not recollect doing so. Looking bluntly at those comments, I think you could say that his comments do not tally with and went beyond what the report said. It is worth bearing in mind however that he said a lot of other things about the report, for example that TIE had subjected the costs to independent review benchmarking and that we considered that the project estimates had been subjected to robust testing. I think you need to take everything that he said in the round.

56. During his evidence to the Committee, Mr Black was asked by the Convenor about the robustness of the tram figures. Mr Black is recorded as having said (page 15 (page 28 of the Official Report)): "*the important point is that I can offer the assurance to the committee that we have examined the procedures*

pretty thoroughly". Mr Black is clearly talking about the process by which the project costs were pulled together. As I said earlier, we were aware that the project costs had been triangulated. As I have said, TIE had taken evidence from different sources to build up a picture of the likely project costs, through independent review by consultants, benchmarking where possible, and the use of fixed cost contracts where they had reached that stage.

57. Looking at procedures used to arrive at cost estimates is quite common in audit circles. Without going into a huge amount of detail, with the audit of financial statements, for example, you can either take a systems-based approach or what is called direct substantive testing. A systems-based approach looks at checks and balances and controls within systems, for paying invoices for example. You can use that as a means to actually take assurance around the accuracy of the accounts. The alternative way of doing that is direct substantive testing, which looks at samples of invoices that have been paid and, for example, whether they have been paid to the correct people and are for the right amount. Looking at the procedures does give you a certain amount of assurance regarding the accuracy of costs. If we were looking at the accuracy of project costs, I think we would have adopted a similar approach to the one that TIE had. We would have appointed consultants to look at the costs because we do not have the skills. We would have thought about benchmarking to look at other similar projects and we would have looked at the shape of the contracts and what kind of assurances the form of the contract could give us as to the certainty of costs.
58. I have already mentioned that slippage in the programme had occurred. Mr Black mentioned this in his evidence to the Committee. He is recorded as having said (page 10 (page 18 of the Official Report)): "*Some slippage in the project has occurred, but action has been taken to ensure that phase 1a can be operational by early 2011*". Paragraphs 53 to 55 of the 2007 report (CEC00785541, page 16) detailed the slippage associated with getting the Bills through Parliament. Paragraph 54 noted that the estimated dates for signing the contracts for infrastructure construction and vehicle delivery had slipped by four months to allow sufficient time for negotiations. It also noted

that TIE had responded to that delay by bringing forward advance works, including critical path works such as the construction of the tram depot at Gogar, to address the slippage.

59. It would be difficult for the AGS to have offered assurances that any action taken was likely to remedy the slippage and would ensure that phase 1a would be operational by early 2011. It should be borne in mind what stage the project was at in 2007 and we do not, in the 2007 report, offer any such assurances. I think the AGS' comment regarding slippage during his evidence was appropriate, and I do not think his comments were offering any kind of assurance that phase 1a would be operational by early 2011. What he was saying was that action was being taken by TIE with the intention that phase 1a would be operational by early 2011.
60. During his evidence to the Committee, Mr Black said (page 10 (page 18 of the Official Report)): "*the procurement strategy... has been designed to minimise risk*". This was AGS' conclusion in the 2007 report ([CEC00785541], paragraphs 63 - 65 at pages 18 and 19).
61. Paragraphs 64 to 65 of the 2007 report record my understanding of the main elements of the procurement strategy. The procurement strategy consisted of a number of different elements: the early involvement of an operator in the design and development of the project; planning of an integrated service network with the buses; separation of the day-to-day operation of the tram network from the initial construction of the tram system; early involvement of a designer to complete the design phase and reduce planning and estimating risks; utilities diversion to be carried out in advance of the infrastructure construction work; different contracts being signed to allow the people most capable of actually delivering those different elements to do so; and contracts based on fixed costs where relevant. As a package, I felt that the procurement strategy had been designed to minimise risk associated with the project.
62. The procurement strategy was in the process of being implemented at the time of the 2007 report, although the infrastructure contract had not been

signed at that stage. I was not in a position to provide any assurances as to whether the procurement strategy, as a design, would be effective as only time would tell. I consider that this was made clear in the 2007 report.

63. During his evidence to the Committee, Mr Black is recorded as having said (page 15 (page 28 of the Official Report)): "*TIE subjected the figures to independent review by consultants... it has benchmarked the costs, including infrastructure costs, against other UK tram projects. That provides a degree of assurance. Confidence in the cost estimates is considerably greater now than it was even a few months ago, because bids for infrastructure construction, where a lot of the risk lies, were received in January 2007. Just short of 80 per cent of the project estimate is based on rates and prices from those firm bids – that is an important point to bear in mind – or is based on known rates being applied to estimated quantities. So, getting on for four fifths of the costs is on that basis. A further 20 per cent is based on applying market rates to quantities that are derived from the preliminary designs.*" Paragraphs 50 to 52 of the 2007 report ([CEC00785541], page 15) set out how we satisfied ourselves that the project cost estimates had been subjected to robust testing. In essence, Bob Black's evidence to the Audit Committee was an explanation of the method used by ourselves to conclude that the project cost estimates had been subject to robust testing.
64. The AGS did not examine the bids received for each of the contracts making up the tram project, although we would have ordinarily, given more time and if we had conducted a different type of review. It is part of any review of a contract, whether an operational contract such as trunk road maintenance or a major capital project contract, that a standard part of the audit process would be to look at the whole tendering arrangements, including the assessment of bids received. This was not done partly due to the timescale and partly because it was intended to be a high level review looking at the process as set out in the objectives in paragraph 4 of the 2007 report.
65. As we did not look at the bids or the contracts, we were not aware of any qualifications which might have been included in any bids received, for

example qualifications relating to completion of the design or the utilities diversion works.

66. As I have previously said, I was at the Audit Committee session on 27 June 2007 and I have read the Official Report prior to giving this witness statement. I was not personally concerned about how the Audit Committee was interpreting the 2007 report, nor the Auditor General's evidence to the Committee. The purpose of us going to the Audit Committee session, which applies to every Performance Audit Report that we produce and not just the Edinburgh Transport Performance Audits, is to allow us to expand and explain the contents of a report in more detail and to give members of the Audit Committee the opportunity to ask questions about the report to assist their understanding. We might seek to influence how they interpret a report, but we cannot control how any individual member will interpret a report. There are times when it is quite possible to anticipate how an individual member might react to a Performance Audit Report. For example, you might find a member of the Audit Committee who is a member of the Government concentrating on the more positive aspects of the report, whereas a member of the opposition parties might be looking more at the negative and critical parts of the report. A classic example of that is the report for "The Gathering", which we produced in 2011. The Gathering did not involve an awful lot of money and was a bit of a storm in a teacup, but there was an election coming up and the SNP members of the Audit Committee wanted to move on, whereas the opposition party members wanted to spend more time investigating. Ultimately it ended in the First Minister and Mike Russell MSP, who was the responsible Cabinet Secretary, appearing before the Audit Committee to give evidence, which was unprecedented, either before or since. It was done with scoring political points in the mind.
67. In summary, I do not recall having any concerns about how the Committee was interpreting our report and nor did I have concerns about Mr Black's evidence to the Committee.

Scottish Parliament debate on 27 June 2007

68. I have been shown the Official Report of the meeting of the Scottish Parliament in the afternoon of 27 June 2007 [SCP00000030]. I attended the debate as an onlooker. During the debate, opposition parties referred to the AGS's 2007 report when opposing and amending the Scottish Government's motion not to proceed with the tram project. The Government's motion, number S3M-243, is quoted at page 12 (page 1137 of the Official Report). I have read the text of the opposition amendment S3M-243.1, moved by Wendy Alexander MSP, to amend the Scottish Ministers' motion and which is copied at page 12 (page 13 (page 1140 of the Official Report)). That amendment referred to the report of the AGS and called upon the Government to proceed with the trams project. The leaders and members of the opposition cited the AGS report and the evidence of the AGS as reasons for their support of the trams project. Margaret Smith MSP, a member of the Audit Committee, is recorded as having told Parliament (page 23 (page 1159 of the Official Report): "*Anyone who listened to the Auditor General at the Audit Committee today could be in no doubt about the robustness of the trams project*". It is important to remember the context of the debate. There was a new minority Government. It was clear to me that the opposition party members were getting together and sending a message to the Government that it would not always get its way and would be held to account. Clearly, there were people who spoke at the debate who were taking from the report what they wanted to support the line of argument that they wanted to push. For example, Sarah Boyack MSP is quoted as saying that the Auditor General gave the trams project a clean bill of health (page 17 (page 1148 of the Official Report)). I am sure the AGS would not have signed up to that kind of language. It is clear when you read the report that he was not giving the trams project a clean bill of health because he made clear that it was a high level review and that we were not giving assurances, for example, on the accuracy of the project costs. He made clear that there were key things about to happen which could influence the future direction of the project. I do not think, however, that

anything which was said in the debate represented a significant misrepresentation of the contents of the 2007 report.

69. I think when we started off the 2007 audit we did not foresee the report being used to inform a Parliamentary debate, but the fact that the Cabinet Secretary phoned the AGS asking him to undertake this high level review said to us that the Government was having second thoughts about continuing with the trams project. It was clear the purpose of the 2007 report was to inform Government thinking about whether they would continue funding the project. I did not have concerns about the report being used in this way.
70. After AGS's 2007 review was published, TIE and CEC issued responses welcoming the report. I have been shown an email from Suzanne Waugh dated 20 June 2007 [CEC01607199], and a news release dated 20 June 2007 [CEC01607202], both on TIE's behalf welcoming the report. I have also been shown a news release dated 20 June 2007 published by CEC welcoming the report [CEC01607201]. In its news release, CEC called on the Scottish Government to decide to support the tram project. I personally did not have any concerns about how the AGS report was interpreted and used by politicians, political parties or others. Similarly, I was not aware of any concerns being expressed by other Audit Scotland staff about that issue. I spoke previously about how the report spells out the high level objectives and the limitations of what we did and did not do. Very rarely, Audit Scotland might respond to a media article which we think significantly misrepresents a report by writing to the letters page, spelling out what was wrong and what we actually said. There was nothing that I saw in any reaction by CEC, TIE, TS or anyone else which made us think that the report had been taken out of context.
71. We did not have any concerns about the short timescale for producing the report or the reliance placed on it despite the short timescale. I carried out the audit and so it was staffed at a more senior level than we would normally expect for such an audit.

72. After the 2007 report was published there was a corporate Audit Scotland decision that we should continue to monitor the project through the annual financial audits of CEC and TS. We had no plans at that time to produce a subsequent performance report, but if the situation had changed then we would have considered doing some additional work. At that stage there was nothing to set alarm bells going because the project was at such an early stage. One of the purposes of continuing to monitor the project through the audits of CEC and TS was to keep an eye on the critical events which were coming up and the subsequent delivery of the project. We decided that if things went wrong at some point in the future then we would be in a position to respond accordingly.
73. I think the main point at which we began to become concerned about the tram project was towards the end of 2008, when the disputes between TIE and Bilfinger first began to raise headlines. We had continued to monitor what was being said about those disputes through the audits and through the media. By late 2008 there was further media attention and we were beginning to receive correspondence. At the start of 2010, we had reached a corporate decision that we would not get involved because we did not want to be seen to be taking sides in the dispute between Bilfinger and TIE, and because performance audits are demanding of management time. We felt TIE's management time would be better employed trying to sort out the dispute. However, as further media attention and further correspondence arose, we reconsidered our position by the middle of 2010. That is what gave birth to the position statements, and what ultimately led the AGS to decide to proceed with another performance audit.
74. Our concern was the dispute between Bilfinger and TIE. There were stories of work coming to a halt, about cost overruns, about a lack of progress, and that other issues were accumulating. We were partly informed by media and partly informed by the engagement that the local auditor in particular was having with CEC. There were also a lot of issues coming up in various papers that were being submitted to committees of the full CEC. Some of the papers were

beginning to explore some of the problems in the nature of the dispute between TIE and Bilfinger.

75. The accumulation of those issues persuaded us in late summer of 2010 to carry out a further review of the project.
76. Most of the monitoring and reporting between the AGS reports of June 2007 and February 2011 was done via the Annual Financial Audits of CEC. The results of that monitoring are recorded in the Annual Audit Reports of the CEC, which CEC's auditor produced. The reports are at productions [ADS00047] through to [ADS00053]. These reports explain what work the CEC auditors had been doing, and report what was happening on the trams project at that time.
77. The auditors of CEC and TS would have been having discussions with CEC and TS respectively about the tram project. I am not aware if the AGS had any discussions with anyone about any aspect of the tram project.

'Edinburgh Trams Interim Report', Audit Scotland, February 2011

78. I have been referred back to the joint AGS/Accounts Commission February 2011 interim report [ADS00046]. As I have already explained, the genesis of the 2011 review was an accumulation of factors including media attention and correspondence. At the time, there was a very public contractual dispute going on between TIE and the Bilfinger Berger Siemens ("BBS") consortium regarding the infrastructure construction contract. Unlike the 2007 report, we were not asked by external sources to produce a report. There was no discussion with Scottish Ministers or CEC over the decision to do this work. The AGS decided that it would be in the public interest for an independent body, a key strength of audit, such as Audit Scotland, to provide an objective account of the progress of the Edinburgh tram project up to that point, and to consider issues for the future. The 2011 report was produced on behalf of the

AGS and the Accounts Commission. The Accounts Commission was involved because it is responsible for the audit of CEC, and the AGS, because he is responsible for the audit of TS. I undertook the audit, and drafted the report because I had prior knowledge of the project. We had a desire to put something in the public domain which clearly outlined the progress and cost to date, and which commented on the adequacy of the project governance arrangements. Again, the 2011 report made clear that we were not commenting on project management and we were seeking to steer clear of the dispute between BBS and TIE because we did not want to influence the final outcome (for example, paragraph 4 on page 4).

79. The main purpose of the 2011 review was to put something in the public domain. Audit Scotland has a respected voice, independent of Government and other public bodies. Therefore, we were best placed to prepare a report which the public could have confidence in. We wanted to ensure that what we were saying about costs and progress was a factual representation of where the project then was.
80. Bob Black, the AGS, and the Accounts Commission determined the scope of the 2011 review. I have been shown an email dated 10 November 2010 which I sent to Julie Thompson at TIE [CEC00114000]. Attached to that email was a project brief, which I had drafted [CEC00114001], which summarised what the report would consider. There is also the issues and investigations matrix [ADS00055] which we prepared around that time. These papers, including the scope and methodology to be used as part of that audit, were agreed with the AGS and with the Accounts Commission. They signed off on them in the same way as they would do for any other performance audit.
81. The material and evidence that we looked at for the 2011 review was largely similar in kind to that for the 2007 report. The audit methodology mainly consisted of document review, interviews with key staff and other analysis. As such, there was no significant difference between the methodology used in the 2007 audit and the 2011 audit, although the focus of the 2011 audit was more

on what was being done to address the problems being encountered with the project.

82. We took the project brief and the issues and investigations matrix to the November 2010 Accounts Commission meeting. The audit lasted from the middle of November through to publication on 3 February 2011.

83. The main conclusions of the 2011 Audit Scotland Review were set out in paragraphs 9 and 10 (pages 6 - 9). There is a section following paragraph 9 of the report which set out the key messages. It confirmed that the original plan to have the trams operational by summer 2011 would not be achieved; that utilities work was 97% complete, although there had been greater than anticipated utilities works; that good progress had been made in the delivery of tram vehicles; that disputes with the contractor responsible for infrastructure construction had delayed progress; and that it was possible that the trams would not be operational until at least 2013 (all first bullet under the heading 'Key Messages' on page 6). It recorded that the dispute between TIE and BBS showed no signs of abating. It noted that TIE had tested a number of principles associated with the contracts, scope and specifications, through formal dispute resolution processes. It observed that whilst TIE had some success with that, it had resulted in additional project management costs, and that a significant disagreement between TIE and Bilfinger remained about interpretation of elements of the infrastructure construction contract (all bullet two under the heading 'Key Messages' on page 6). It recorded that negotiations had been conducted and that further rounds of talks with an agreed mediator were planned for March 2011, however a more co-operative way of working had still to be achieved between TIE and BBS. It noted that what that meant was that only 28% of infrastructure construction works had been completed up to the end of December 2010 against the original plan of 99% (all bullet three under the heading 'Key Messages' on page 6). The report recorded that TIE's spend to the end of 2010 was £402m on phase 1a, representing 74% of available funding, and that infrastructure construction had cost £150m to date. It noted that TIE considered that it could accurately predict the final outturn expenditure for most elements of the project but there

was still uncertainty over the final costs associated with resolving the infrastructure construction dispute. As a consequence, it noted that the final cost was still uncertain and that TIE was of the opinion that the £545m budget to deliver all of phase 1a would not be enough (third bullet on page 6 under the heading 'Key Messages', and onto page 7). It observed that TIE and CEC were in the process of developing options for taking the project forward. Those included, for example, considering an incremental introduction of phase 1a and the possible impact on the project if TIE decided to go down the line of terminating the contract with Bilfinger Berger. It noted that there was contingency planning but that the current situation was complex and that it was expected that the outcome of mediation talks in March 2011 would help inform options going forward (first bullet on page 7). We also made a number of comments under the heading 'Governance Arrangements'. We noted that CEC elected members had different views on the project, which made it difficult for the Council to present a unified commitment to the project (bullet one on page 7). We noted that CEC's governance arrangements for the project were complex (bullet two on page 7). We observed that TS had decided in June 2007 that it was not going to take part any further in the main governance arrangements (bullet three on page 7). We recorded that there was a lot of commercially sensitive information being presented as part of projects reports to the Tram Project Board and CEC, although that commercial sensitivity had an impact on how much information could be made available to full CEC meetings as information disclosed in that forum could perhaps be used by Bilfinger to inform its approach to the dispute (bullet four on page 7). That was causing frustration to CEC members, because the information that was being made available to them was limited. There were also CEC members sitting on the Board of TEL who were getting information but, because of the commercial sensitivity, those members were unable to spread that information further.

84. The 2011 report was approved by the AGS and the Accounts Commission.
85. I have already mentioned the issues and investigation matrix for the 2011 review [**ADS00055**]. The matrix quite clearly identified the methodology and

detailed the kind of papers that we wanted to look at. The fifth column "Potential PIs" detailed how we intended to use the information and how we would present information in the report from, for example, the final business case. The final business case made mention of cost and the operational date for delivering the project, and we wanted to report on that. The fourth column "Lead responsibility" largely detailed "PAG". That was the Performance Audit Group. We have gone through several internal organisational changes and PAG is now called the Performance Audit and Best Value Group. In essence, that column identified that I was going to be doing the work, although there were some aspects that we felt the auditors of TS and CEC could obtain information for us as well.

86. I can confirm that, based largely on reviewing outlook calendars, the following meetings took place between Audit Scotland and CEC, TIE and/or TS in relation to the 2011 report:

- Anne MacDonald, at the time the AGS Senior Audit Manager responsible for the annual external financial audit of CEC, and I met with Dave Anderson from CEC on 15 November 2010;
- Ronnie Nicol, who was the AGS Assistant Director in charge of the 2011 report, and I met with Richard Jeffrey and Stephen Bell from TIE on 22 November 2010;
- Ronnie Nicol and I met with Tom Aitchison and Donald McGougan from CEC on 23 November 2010;
- Ronnie Nicol and I met with David Middleton, John Nichols and Ainslie McLaughlin from TS on 24 November 2010;
- Ronnie Nicol and I met with Richard Jeffrey from TIE on 14 January 2011.

87.

I have provided the ETI with agendas for the November meetings with TIE, TS and CEC [ADS00056]. These were all largely introductory meetings to understand where each body thought the project was, and to identify key papers. Later on there would have been further meetings, in particular I had

discussions, largely email exchanges, with Steven Bell. Ultimately, Ronnie Nicol and I met with Richard Jeffrey from TIE on 14 January 2011 as part of the standard report clearance process. Normal procedures when producing performance audits, is that we would send out the draft report, and we also offer the opportunity to meet to discuss the draft with the people concerned. Richard Jeffrey took up that offer so we discussed the draft report with him and a couple of days later he followed up with specific written comments on the draft.

88. We do not have any records of what was discussed at these meetings. We might have taken hand written notes, but those would have been reminders to ask about a particular paper to support something that somebody had said. Those will have been destroyed.
89. Suggested changes were made to the draft 2011 report by all the parties involved with the Tram Project. As I have previously discussed, part of our normal procedure is for us to issue the draft report to invite comments from the audited bodies around the factual accuracy; although sometimes these comments can also stray into interpretation of the facts and to provide additional context. We received comments from each of TIE, CEC and TS. We changed aspects of the report in response to some of the comments made; we rejected other comments that were made. I did not consider the comments we received to have been particularly onerous in terms of volume relative to some other reports, nor onerous in terms of dealing with any requested change or comment that was made.
90. I have been shown an email dated 17 January 2011 which Richard Jeffrey of TIE sent to me [**ADS00059**, page 47]. In that email, Richard objected to publication of the 2011 report prior to TIE's negotiations with Bilfinger Berger. A request to delay publication was uncommon, though not unprecedented, and we considered those concerns when we received them. We sought external legal advice, from Shepherd and Wedderburn I think, on whether the contents of the draft 2011 report, if published, would jeopardise the mediation process. We were advised that it would not. The AGS decided that report

publication would proceed as planned. I replied by email dated 28 January 2011, confirming when the report would be published [TIE00310320].

Guidance

91. There is a mass of guidance available about managing major projects, although Audit Scotland did not publish any specific separate guidance between 2002 and 2011 concerning the procurement, delivery, project management, governance and auditing, etcetera, of major infrastructure projects. I referred earlier to the Treasury Green Book. Additionally TS has "STAG" (Scottish Transport Appraisal Guidance), there is guidance produced by the Office of Government Commerce, and the Institute of Civil Engineers publishes guidance about managing major capital projects. The fact that there is so much published guidance probably reflects that a lot of this is quite difficult and that problems are often encountered. All that guidance helped form the 2008 AGS report on the 'Review of Major Capital Projects in Scotland, How Government Works' dated June 2008 [CEC01318113]. The guidance also helped inform our thinking regarding the 2007 report on the Trams project. I referred earlier to Governance arrangements and risk management, and it appeared as noted in the 2007 report that TIE had the processes in place we would expect to see. The main guidance we have produced on managing major capital projects is set out in a supplement to the 2008 report, called 'Review of Major Capital Projects in Scotland, Report Supplement: Good Practice Checklist for Public Bodies' [CEC01318764]. This was a compendium of some of the guidance I have just referred to. We are constantly trying to reinvent and make fresh our Performance Audit Reports and we went through a phase whereby, as part of a report (if it was relevant to do so), we would produce a guide for people involved in the subject matter of the report for their reference. To some extent we would do that for officers who were actually involved in the reviewing of major capital projects or managing major capital projects. More importantly, the report supplement was intended for more senior staff and also for elected members or other non-Executive Directors whose role includes oversight scrutiny of major capital projects. The

report supplement was trying to spell out the kind of things we would expect to see as part of a major capital project. Projects are always different, but the supplement detailed the kind of questions a non-Executive Director or a Council member charged with scrutiny should be asking to fulfil their scrutiny and management roles. That is the current guidance we have on managing major capital projects as a standalone entity.

92. The main report, 'Review of Major Capital Projects in Scotland, How Government Works' [CEC01318113] came about as part of our normal process for developing our performance audit programme. There is a process whereby the AGS and the Accounts Commission are consulted about potential performance audits. The performance audit programme reflects public sector audit risks, areas of significant public interest and areas of major expenditure, as the AGS and the Accounts Commission perceives them. We present various options to the Auditor General and the Accounts Commission, and they confirm which performance audits they like and which they do not. The timeframe covered by the performance audit programme has changed over time: initially from having an annual programme; to an annual programme with a second year programme where we were keeping an eye on certain aspects of that programme; and more recently we are now moving on to a five year programme. The 2008 report came about as part of that performance audit programme, although I was not involved in this particular audit. We had not done a huge amount of work on major capital projects as a whole and there was an awful lot of money being spent on major capital projects, so we felt this was an area which should be subject to audit attention. In addition to the report supplement that I have mentioned [CEC01318764], there is also a 'Key Messages, Review of Major Capital Projects in Scotland, How Government Works' [CEC01318765] paper, which was a summary of the main report.
93. The performance audit reports are a key way in which public bodies are held accountable for the discharge of their functions and for the economic, efficient and effective use of the resources provided to those bodies.

94. I reiterate that we have not carried out a full audit of the tram project and we did not consider every aspect referred to in the report supplement. For example, Appendix 3 of the 2008 report on the review of major capital projects [CEC01318113, page 42] highlights what we call a “*model of good project management practice*” and refers to ‘vision and direction’ (amongst other things) as one of the project areas. We did not look in detail at the Business Case for the tram project. We knew it existed, we obviously read it, but we did not look at it in detail and nor did we look at project management in detail in relation to execution. Of the elements of the tram project that we did look at, and at the points in the project when the reports were published, I felt the Trams project reflected good practice guidance.

95. I have provided a full list of all the projects deemed to be major capital projects that Audit Scotland have produced since 2008. In addition to the 2008 Review of Major Capital Projects [CEC01318113] and the Edinburgh Trams Interim Report [ADS00046], they are:

- In 2010/11 - Management of the Scottish Government's Capital Investment Programme [ADS00069];
- In 2012/13 - Major Capital Investment in Councils [ADS00068];
- In 2012/13 - Scotland's Key Transport Infrastructure Projects [ADS00070]; and
- In 2015/16 - Major Capital Investment in Councils: Follow-up [ADS00067].

Additionally, we are due to start an audit of the Forth Replacement Crossing later this year.

96. We have not published guidance on the use of risk allowances in major capital projects, nor the use of allowances for Optimism Bias. I said previously that we refer to the Treasury Green Book and the supplementary guidance it provides on Optimism Bias. I think it would be very difficult for us to spell out percentages of how much risk and contingency allowance should be allowed.

97. I have been referred to the press release for 'Review of Major Capital Projects in Scotland, How Government Works' report which AGS issued dated 24 June 2008 [CEC01318768]. It noted that " *Audit Scotland has found that only around two-fifths of projects were completed within the costs which were being estimated when the projects were approved. But at the stage when contracts for work are awarded, information about costs and timescales was more accurate.*" The main reasons for this are covered in paragraphs 25 to 31 of the 2008 report [CEC01318113, page 14], and essentially it is an issue of timing. When cost estimates are prepared early on in a project, there is a lot more uncertainty and costs are more educated guesswork. By the time contracts are awarded, there ought to be a lot more certainty as to what costs are likely to be and that comes out in the analysis that is contained in that 2008 report.

98. I have provided the ETI with a document called 'Major Capital Investment in Councils, Targeted Follow-up: Issues and Investigations Matrix' [ADS00063]. This is an example of an issues and investigations matrix that was produced as part of our planning for our Major Capital Investments in Council follow-up report published early in 2016. As I have previously discussed, the matrix is a planning document that we use to identify the aims and objectives of an audit, the questions that we are seeking to ask, and how we are actually going to go about the audit.

CEC Annual Audit Reports

99. As I have stated previously, the auditors' annual audit reports for CEC commented on the Trams project each year between 2007/08 and 2013 /14. I have been shown the 2007/2008 report [ADS00047], the 2008/09 report [ADS00048], the 2009/10 report [ADS00049], the 2010/11 report [ADS00050], the 2011/12 report [ADS00051], the 2012/13 report [ADS00052] and the 2013/14 report [ADS00053]. These annual audit reports were produced as part of our Code of Audit Practice, and in satisfaction of the requirements of International Standards of Auditing 260 report to those charged with governance. The key role of an auditor conducting a financial audit is to

express an opinion on the truth and accuracy of the accounts, but under the Code of Audit Practice he or she is required to go further and express key findings and judgements on areas such as governance, financial position, and performance management arrangements. Clearly the Trams was a big project. In the context of CEC, it had a lot of risks attached to it, and so the auditor was satisfying his or her requirements under the Code of Audit Practice to report on the Edinburgh Trams project. These reports were presented to Edinburgh Council's Audit Committee and published. We see them as an essential part of public accountability, ensuring that public officials are held to account for the discharge of their functions.

100. The evidence that these comments were based on was largely derived from the auditor speaking to senior staff within CEC, such as the Director of Finance and the Chief Executive, and from reviewing various papers, in particular papers that were submitted to full CEC meetings and sub-committees of CEC responsible for looking at the Edinburgh Trams project.
101. A combination of these audit reports, and media attention, brought things like the contractual disputes to our attention. One of the key things that auditors have to take account of is audit risks, and that is reflected in the plans that they produce. The auditor was developing concerns, hence why he or she was reporting on these issues as part of the final audit reports on CEC.
102. I have been shown the annual audit report for CEC of 2007/08 [ADS00047]. At paragraph 25 (page 12) it is recorded that £22.2m for the advance purchase of steel was paid out in advance of need, and that " *This would have had consequent borrowing and opportunity costs for central government*". This was the auditor thinking that some public expenditure was financed through borrowing, and so if CEC was spending in advance of need there would be £23m of steel sitting around. This could either be funded through extra borrowing, which would result in borrowing costs, or through reducing expenditure elsewhere. If the latter, there would then be an opportunity cost in not spending that money on areas such as education or health and social care by spending it on steel which, at that point in time, was not doing very much.

103. I have been shown the CEC annual audit of 2008/09 [ADS00048]. At paragraph 90 (pages 31 - 32), it states: *“Political group leaders within the council are regularly briefed on the project by the Director of City Development and Director of Finance. There have been restrictions on the level of financial information included within council papers due to the sensitivity of the project. In addition, councillors who receive full information in their position as a board member of the Limited or the Tram Project Board are unable to share this information more widely with their political group colleagues. Consequently, this continues to cause tensions and frustrations within the council”*.

Paragraph 91 then states that the auditor: *“will discuss these matters further in a more detailed report on the tram project which will be issued in the first instance to the Director of Finance in January 2010”*. These tensions are referred to in paragraphs 77 to 81 of the 2011 report [ADS00046, pages 39 - 40]. The tensions arose from two sources. First, there were four, I think, members of CEC who were also members of the TEL Board. TEL was being provided with information relating to the Edinburgh Trams project which was of a commercially confidential nature, particularly around the ongoing dispute between TIE and BBS. These members, because of their responsibilities as Directors and members of the TEL Board, were unable to disclose some of the contents of the information they were being provided with. Secondly, reports were being made to CEC with updates on where the project was and with information about the progress of the dispute resolution. Again, however, because of the commercially confidential nature of much that was discussed at mediation meetings, there were restrictions on how much information was able to be made available to the full CEC, bearing in mind that CEC papers are made publicly available.

104. There was no further, more detailed report published by the auditor in January 2010. The original intention was that the auditor would produce a standalone report as part of the audit of CEC. In the event, the dispute between BBS and TIE made the auditor decide that it would not be a good idea at that time because he or she did not want to upset the process of those negotiations. The auditor produces an annual audit report which is made publicly available

on completion of the audit. The auditor is also responsible for producing a certain number of management reports during the course of their audits, and I think the original intention was that the January 2010 report would have been an internal management report to CEC rather than something which was made available on a wider platform.

105. I have been shown an email from Tom Aitchison at CEC to Mike Brown at CEC dated 12 May 2010 [CEC00266040], Tom Aitchison wrote that he hoped Audit Scotland would understand that it would not be helpful to start a tram review when commercial negotiations were at a very critical period. We were not due to review the tram project at that time. I think Mike Brown had obtained a copy of our two-year performance audits programme whereby, as I previously mentioned, the first year we would stipulate what performance audits we were going to undertake during the year and the second year we would flag up what we were interested in that might form the basis of a performance audit report. We were not committed at that stage to produce a performance audit report of the Tram project, but the project had been flagged up as a year 2 possible performance audit report. At that point we were still holding the line that we would not be producing another report because of the ongoing dispute. However, within a couple of months, with the continuing media attention, the continuing dispute, and the correspondence received, the AGS decided it was in the interests of the public that we should produce another report.

12 May 2010
should be 21
May 2010

106. The auditors of TS prepared a 'Position Statement' as at 10 September 2010 [TRS00010879]. I have been shown that Position Statement, and also an email from John Ramsay dated 13 September 2010 [TRS00010878] circulating it. The Position Statement set out a brief outline of events at that time. After we had come to the view that we should produce another report on the Edinburgh Trams project, it was decided as part of discussions between the auditors of TS and CEC, myself and the AGS, that the auditors of TS and CEC should produce a position statement. This was to set out the progress of the Edinburgh Trams project from the position of their respective audits and was what was referred to by AGS in the preparation of this document.

107. To assist in our thinking about whether we should produce the report and what we should look at, we were provided with internal monitoring papers by TS [WED00000158]. These were attached as appendices to the Position Statement.

Other action by Audit Scotland

108. I have been shown an email from Stewart McGarrity of TIE to John Casserly and Graeme Barclay dated 30 June 2008 (CEC01291209). In that email it is noted that Audit Scotland wanted to have a walkthrough of the commercial processes on MUDFA with reference to the MUDFA contract, which Audit Scotland also wanted to look at. I have also been shown a further email of 15 July 2008 from Stewart McGarrity (CEC01303756). It recorded that a date for Audit Scotland's review of MUDFA had been fixed for 21 July 2008. It also clarified what Audit Scotland wanted to look at. The 'Audit Scotland' being referred to here is the auditors of CEC, not the PAG part of Audit Scotland. Clearly the Edinburgh Trams project was significant to CEC and the MUDFA contract would have a material impact on CEC's accounts. The auditors were interested in how the contract was progressing and how it was being managed and maintained. As I understand it, they met with TIE to have a walkthrough of the process by which funds flowed from TS to CEC and then to TIE, to enable TIE to pay the people responsible for utilities diversions. The purpose of that was to inform the auditors' opinion on the accuracy of CEC's accounts, and so this review was to enable understanding, and for intelligence gathering about how the process worked. There was no resulting report by the auditors on that.
109. As I understand it, they would have looked at things like how the utilities diversion people reported the progress they had made and how TIE checked that the progress claimed had been completed. They would have looked at how the process had been converted into money and how TIE then prepared

an invoice to CEC. It was very much to look at the processes in place, rather than looking at any aspect of the MUDFA contract as such.

110. If there were any concerns I would have expected to see that reflected in the Annual Audit Report, but it was not. It was largely an understanding and intelligence gathering exercise to inform the auditors' opinions on the truth and accuracy of CEC's accounts.
111. I have been shown an email from Alan Coyle to Lynn McMath dated 24 September 2010 ([CEC00110126]). There were two attachments to the email: the first was an extract from a statement to be included in the TS final accounts for that year [CEC00110127], and the second was the statement of significant events to be included in CEC's accounts for that year [CEC00110128]). I understand that this email and the accompanying statement for the accounts acknowledged that grant terms had been breached because the full line 1a will not be delivered for £545m. The auditors of TS were to include a statement about this in their final accounts. This is what is called a post-balance sheet event, which requires the body which produces the accounts to reflect on anything of significance that has happened between the end of the financial year of the accounts in question and the time by which the auditor issues their audit certificate. The financial year lasts from 1 April to 31 March, and then there will be a process by which the accounts are prepared and audited and the auditors will issue their certificate. Depending on the audit, that could happen in June through to September, so within that period there is a requirement to consider post-balance sheet events. Sometimes these post-balance sheet events impact on the face of the accounts such that the financial figures in the accounts have to change. For example, there might be an occasion whereby some legal decision has been made which has cost implications for the body in question, and they will then have to change their accounts to reflect the fact that some future payment will have to be made as a consequence. More commonly, the audited body will include in the accounts some kind of management commentary which actually flags up something that has happened. The terms of the grant from TS to provide money to CEC included that CEC would have to tell TS if the project

was likely to exceed £545m. If it did do so, TS was within its rights to say there would be no more money made available. That was deemed to be a significant post-balance sheet event, a technical and a significant breach of the grant offer. TS decided to include a statement in this regard in its accounts as part of the management commentary, which is on its website in its annual accounts for 2009/10. Unfortunately, these accounts are no longer published on their website, however the accounts stated: *"Significant events since the end of the finance year. The only significant events since the end of the financial year related to the Edinburgh trams project. Transport Scotland makes a capped contribution to the costs of the project with payments made via City of Edinburgh Council. In June 2010 CEC indicated that it was unlikely that it would be able to complete the project as intended within the agreed funding. At the time of drafting its report CEC is considering options as to how to proceed but the outcome and implications of the options' appraisals are yet unknown"*. That was signed by the Chief Executive of TS, David Middleton, and is TS satisfying its responsibilities to report significant post-balance sheet events.

112. It was for TS to decide what to do in relation to this. The paper attached to Alan Coyle's email dated 24 September 2010 which I have just mentioned [CEC00110127] is an excerpt from the ISA260 report produced by the auditors of TS. Again, this has changed a little bit. We used to have a process whereby the auditors would produce a report under ISA260 and follow it up by an Annual Audit Report. They have now largely combined these documents. The ISA260 report for TS for 2009/10 spells out that the project was likely to exceed the £545m estimated cost for phase 1a and TS would have been within its powers to refuse more money. The auditors of TS satisfied their reporting responsibilities by reporting that through the ISA260 report. It was a similar situation for CEC, and the other paper attached to that email [CEC00110128] is an excerpt from the ISA260 report for 2009/10 for CEC. The difference there is that the auditor issued what is called 'An Emphasis of Matter Audit Opinion' on the accounts of CEC outlining that the accounts reflect a true and fair view of CEC's financial position but be aware that the Trams project is likely to exceed £545m cost and, as such, it exceeds the

grant offer level. The auditor's audit opinion is on pages 112 and 113 of CEC's audited accounts 2009/10 [GOV00000015].

113. I have been shown an email exchange between Richard Jeffrey and Alan Coyle dated 9 November 2010 [CEC00112960]. In that email, Alan Coyle wrote that Audit Scotland was going to undertake a low level exercise that would not form an official report. He wrote that he thought the exercise would focus on governance. I have also been shown an email from Alan Coyle to Richard Jeffrey and others dated 9 November 2010 [CEC00112982], where he makes a similar point. I have also been shown the email that I sent to Julie Thompson dated 10 November 2010 [CEC00114000] and the attached project brief [CEC00114001]. I think that between them, Richard and Alan have got the wrong end of the stick. The attachment referred to in my email [CEC00114001] is the project brief, which was the beginning of the 2011 report. It spells out that part of the audit we were going to do would include governance issues and we were calling it an interim report because we still expected to produce a further report on the Trams project at a later date. The reference to TS is, I think, a mistake and I think it was ourselves that they were referring to. We had provided them with a copy of the project brief, advising that we were going to be producing an interim report as we were calling it, but that it would be a published performance audit report. That is what became of the report we published in February 2011.

Final Comments

114. The 2007 review of the Edinburgh Trams Project was completed within a very short timescale, which differed to my experience of reviewing other major infrastructure projects. It was achievable partly because it was a high level review, and partly because we were minded to do it. It required people clearing their decks to look at nothing else and it required more senior people, the Auditor General, to clear his desk so that he could read the draft report and respond promptly. We followed the same process that we had followed for any other performance audit report, it was just that the whole process was

compressed. It would not have been possible to do it within that compressed timescale unless TIE had moved quickly to make papers available and to make people available for us to speak to when we wanted to. In all other elements, however, it was pretty much a standard performance audit report in terms of process.

115. I have considered what the main reasons for the failure to deliver the Edinburgh Trams Project in the time, within the budget and to the extent projected were although, as I have previously indicated, Audit Scotland did not carry out a full audit. I previously stated that our intention was to prepare another report, but in the event, the Public Inquiry occupied that space. I think the 2011 report does provide a series of clues as to what might have been going wrong, in particular utilities work taking longer than anticipated. There is a question about why it was not known what was underground until the work started. In our 2011 report, we refer to the design work not being completed, issues around the people responsible for doing the design work, and query why that was allowed to happen. We refer to the Infracore contract and how parties had different interpretations of certain aspects of the contract. To my mind, personally speaking, and bearing in mind that Audit Scotland has not looked at these issues in any depth, I think these are some of the key issues which the Inquiry should be thinking about.

116. I do not have any comments on how these failures might have been avoided without doing an audit or any other final comments that have not already been covered.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 49 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 1 June 2017



16 June 2017