

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: Andrew Mayhew Holmes

Dated: 17/5/17

## **The Edinburgh Tram Inquiry**

### **Witness Statement of Andrew Mayhew Holmes**

Statement taken by Gordon Mitchell, 3, 4 and 5 of May 2016.

My full name is Andrew Mayhew Holmes. I am aged 69, my date of birth being [REDACTED]  
[REDACTED]. My contact details are known to the Inquiry. I was the Director of City Development for the City of Edinburgh Council between 1999 and 1 April 2008.

*Statement:*

### **INTRODUCTION**

1. My original degree was in Civil Engineering from Leeds University during the 1960s. I started work with Edinburgh Corporation around the end of 1972. I took a Master's degree in Transport Planning in 1975 at the University of Newcastle and then came back to Lothian Region. I then moved away from conventional civil engineering and certainly, personally, I had relatively little experience in contract matters. I moved more into the local authority context of general technical management and became Acting Director in the City of Edinburgh Council (CEC), before becoming Director in 1999. Part of the job was trying to ensure sufficient expertise within the Department to give sensible advice. My main duties and responsibilities were planning, economic development, transport, property, emergency planning, building regulation and various other minor things as well as facilities management of the Council's offices.

2. In relation to the remit of Edinburgh Tram Inquiry, I was the Director in CEC responsible for transport, the initial development of the project and for a period. I was the tram monitoring officer and the person responsible for the majority of the reports to the council on the project. I was a member of the Tram Project Board, the Chief Executive of CEC's Internal Planning Group (IPG) and the CEC/TIE Legal Affairs Group from September 2006 until shortly before I retired on 1 April 2008.
3. Prior to the establishment of Transport Initiatives Edinburgh Ltd (TIE) the development proposals were done by staff in my department. The Head of Transport was Keith Rimmer and there were various other managers such as Barry Cross who was the person responsible for preparation of most of the Parliamentary material. The Head of Transport reported directly to me and others would report through the Head of Transport or the Head of Planning for planning related issues.
4. At the time, through all of this period, the city was growing rapidly; the population was growing faster than projected anywhere else in Scotland. There was a huge financial sector with two of the world's top ten banks at that *time* having their headquarters in the city and there were growing problems of traffic congestion and accessibility. The main development areas in the city were relatively poorly served by transport networks, by road connections and because of a combination of all these factors it was felt to be necessary to recommend a tram and this view was taken by quite a number of other UK cities at the same time and still is.
5. There were individuals who championed a tram network. There were a number of interests right across north Edinburgh, industry, commercial and property who were vociferous champions of the tram. Under the aegis of Forth Ports there were a number of groups put together who produced their own reports. In terms of political groups, Labour and Liberal Democrat administrations were in favour of the project. The SNP were opposed at that time and the Conservatives were sceptical but then became supporters. I recommended the project to the Council.

6. It should be noted that we are now talking about things 15 or 16 years old in my memory. It is obviously not going to necessarily hold out for everything and also I am retired. My last day at work was 1 April 2008. I have had absolutely no contact from the Council, TIE or anybody else connected with the project since then. There are going to be huge gaps for whatever reason for my ability to answer some of these points. The Council has not even responded to some of my emails following the Inquiry's contact with me.

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

### **The New Transport Initiative and the creation of TIE**

7. I submitted a report to Council on 18 October 2001 (**USB00000228**) seeking approval to submit an application for approval in principle to the Scottish Executive for funding for the Council's New Transport Initiative (NTI) of which a tram system and road charging formed a part. The report also proposed the creation of a wholly owned Council company as a *"procurement, project management and finance management organisation"*. Members were provided with an update by a report to Council on 2 May 2002 [**USB00000232**]. That report appended a letter dated 28 February 2002 from Wendy Alexander, Transport Minister, which supported private sector involvement and the principle of an off-balance sheet company.
8. In relation to the creation of TIE I think firstly, TIE was beyond the management span of the relevant Council departments and its functions could not be undertaken by the Council as a single project. Secondly, it was quite clear that the interests of Scottish Government and the interests and perspectives of the Edinburgh business community and others, including Wendy Alexander, were to have a delivery vehicle which was not directly part of the Council. It was thought that this would inspire more confidence in the public at large. Particularly, it would be an additional issue if we were

to seek down the line to raise money from development receipts and related things. Lastly it was quite clear from the Minister and civil servants that there would be no funding for major transport initiatives in Edinburgh from the Scottish Executive. Scottish Enterprise involvement was the only option at that time if it was being delivered by the Council itself as opposed to an arms-length company with a significant private sector involvement.

9. I think there was a feeling that the Council was not delivering and it was also part of the general perception of local authorities *at that* time. Bureaucracy would get in the way and there was not the delivery capacity within the Council.
10. There was great doubt as to whether the Council, tied to local government pay scales, could attract the right people for this type of project. This was an era when there was a dearth of experienced project managers and the Council itself had not been involved in any major capital projects. I think there was a feeling of general lack of capacity within the organisation.
11. Hindsight is a wonderful thing that you would do things differently however, I think if you were setting up an arms-length company then you would want it to be an off-balance sheet company to operate in that environment.
12. To be honest I cannot remember what *all* the arguments were at the time for setting up the company. However I think the main one was that it takes you out of the local government year on year budgeting restrictions. Setting up the company was not actually giving blank cheques but the company is able to be more flexible both in its spending and in how it raises its funding. To be honest we are talking about a discussion that went on 16 years ago and I cannot remember all the factors that were present at that time.
13. I think scepticism at the time was that local authorities generally, and the City of Edinburgh Council in particular, were not capable of delivering a project like this. This is because it was going to get mired in bureaucracy and "we all know local governments are incompetent anyway." (This

seemed to be the prevailing view in the press and a not always well disguised view of some civil servants) There were some pretty voluble individuals around at that time, Wendy Alexander; I suspect she would have been heavily influenced by dialogue with the *then* Chairman of the Royal Bank of Scotland, George Mathewson who had strong views on the development of Edinburgh.

14. I shared the view that we needed to have an arms-length organisation. My reasons were essentially about the ability to set up something that could focus on the project alone. If it was within the Department, it was going to require creation of a department or organisation which I did not think we could create and sustain at the time.
15. At this time CEC had experience in trying to produce the West Edinburgh Bus Way which fell because our preferred bidder, First Group, withdrew at a very late stage in the process and Government were not prepared to continue the funding of it *or* change what was generally regarded as an undeliverable funding model. That was not a very satisfactory experience and I suppose, in part, contributed towards some of the external scepticism. Apart from that we had actually very little experience at that time in procuring, managing and delivering major capital projects. The City of Edinburgh Council itself had only been in existence for five years and its predecessor, Lothian Region, had been involved in some major projects. However, that organisation had disappeared at local government reorganisation. Most of that organisation's staff with major project experience had taken early retirement or left. We felt we had very little in-house that was capable of taking on a project of that size. We had a number of lesser projects like flood defences and things which were within our span *and* were fully occupying our staff but certainly I think the general view was that this was just too big for our combined experience and expertise.
16. The creation of TIE to deliver the projects in the NTI was a decision of the Council and their decision was very strongly influenced by the views of the

Scottish Executive. As I have said it was the only way in which money was going to come. There was an organisation, Partnerships UK, which was a UK Government funded body intended to create a much greater involvement for the private sector in projects. They had a pretty strong voice with influence over both the UK and Scottish Governments at the time.

17. It was envisaged that CEC would exercise control over TIE with operating agreements and through Board membership, all of which changed over time. I, along with the Director of Finance and the Council Solicitor, obviously would have a major role in the input into the operating agreements.
18. An update of the Preliminary Financial Case on line 1 provided by TIE to the Scottish Parliament in September 2004 noted that, given its resources and experience, TIE was "essentially a procuring body rather than a major project management organisation" [CEC01868590]. I would have agreed with that description of TIE at the time. I think that changed over time as the project developed *and* moved closer to the original concept of TIE and having project managers with experience of the sector within TIE. Part of the difficulty was that there were other cities in the UK that were still developing their networks at the time but were all struggling to find anybody with any experience in the field. Certainly, there was no confidence when appointing the project managers and consultancy project managers that they would actually have the experience and knowledge in the field which is why there was an attempt to bring people in and, to that extent, TIE's project management role I think probably developed over time.
19. Let us call it project development but even the procurement was very definitely part of TIE's remit. It was a huge task and one which was well beyond anything that the department could have coped with. The model which TIE was seeking was to procure partners to deliver. One would have their own individual project management structures within it through the nature of the tender.

20. I honestly cannot remember the dialogue at the time concerning whether there was any consideration given to TIE, or the Council, instructing an external expert body, such as a firm of suitably experienced consulting engineers, to act as project managers for the tram project. When you think that the design of the tram system was done by one of the blue chip names in consulting engineering in the field and all the problems that came with that, using the private sector was not necessarily taking you down any better route. It was thought at the time that it would be done by TIE procuring it through its partner organisations. That did not necessarily come to fruition.
21. Transdev was appointed in partnership with TIE. The form of the tram contract itself was envisaged that there would be the essential transfer of risks and project management under the contract. That sounds kind of woolly and it is woolly because I genuinely cannot remember all the dialogue and discussion that was going on. At that point in time across all my range of responsibilities, I was probably presenting something like 30 or 40 reports a week to different Council committees and most of them were fairly routine. However, I could not now remember the factors that were going through my mind at the time I signed off.

#### **Initial Estimates for the Tram network**

22. I am asked to comment on the various estimates for the tram project produced between 2000 and 2004, as found in the following documents, namely: **CEC01916700** is a July 2001 Feasibility Study, produced by Waterfront Edinburgh Ltd (a joint venture between CEC and Scottish Enterprise, in collaboration with local businesses), which reported that a North Edinburgh loop could be built for a capital cost of £191.1 million. **CEC01623145** is a September 2002 TIE report, "Integrated Transport Initiative for Edinburgh and South East Scotland, a Vision for Edinburgh", which stated that it was possible for the northern loop and the west lines to be built for a total capital cost of £355 million (at 2002 prices) and a south east tram line to be built at a cost of £123 million.

**CEC01190799** is a January 2003 report by Arup Transport Planning, "Edinburgh LRT Master Plan Feasibility Study", which estimated the total capital cost of all three lines (ie north, west and south east) at £527.83m (or, if built together, £465.55m). **TRS00000054** is the 2003 Preliminary Financial Case (PFC) for line 1 (northern loop), which estimated the capital cost of line 1 as £287.3m. The 2003 PFC for line 2 (the west line) (**TRS00000016**) estimated the capital cost of line 2 as £336.3m.

23. In November 2003 a Scottish Transport Appraisal Guidance (STAG) appraisal for line 1 was completed (**CEC00632759**) (and a further version was produced in July 2004, TRS00000041). A STAG appraisal was carried out for line 2 in March 2004 (**TRS00018617**) (and a further version was produced in September 2004 (**CEC01836749**). The September 2004 update of the Preliminary Financial Case for line 1 estimated the capital cost of line 1 as £274m (**CEC00630633**). The updated PFC for line 2 estimated the capital cost of line 2 as £320.9m (**CEC00642799**).
24. Any CEC reports in my name were, presumably, signed by me. I would have satisfied myself at the time over the content. My own staff would have been involved in all these early estimates. They were produced by various firms of consulting engineers. They were not produced by us. These reports would not just suddenly appear cold, I would see various drafts of them in preparation and there would be presentations. I can remember certainly sitting through quite a number of presentations on this and asking my own questions at the time. They would have been noted in notebooks but they are long since consigned to the recycling bin.
25. I had a PA but her job was simply to arrange my diary. It would have been mainly transport staff who would have arranged the context of the meeting. There were Departmental working meetings, some of which would have had a rough action note or minutes perhaps put on the file for things that would have been done. I would need to have access to my diary for the years 2001 to 2004 and I doubt if that exists.



26. Scottish Transport Appraisal Guidance (STAG) appraisals were laid down by Central Government as a prerequisite for obtaining central Government funding. I honestly cannot remember when STAG came in but it was not an unfamiliar concept at that time.
27. At the time, total benefits arising from a project such as time-savings and accident reduction etc. and all, were quantifiable benefits over the cost of the project discounted to a particular point in time that were included in the calculation of the benefit cost ratio. There were non-quantifiable aspects within the period in a separate "balance sheet". Benefit cost ratios would be calculated by whoever was doing the appraisals and the evaluations. I would imagine that it was done by the outside consultants at the time working with my own staff.
28. Contingency is a standard factor incorporated in all project estimates and in budgets for any major project. Optimism Bias, I do not know if it is still called that, was intended to reflect the fact that in the early stages of the project people tended to wear rose-coloured spectacles in looking at it and it was a deliberate attempt to introduce a percentage factor at that stage to reflect that things happen.
29. The Optimism Bias would have been applied. I think Optimism Bias is something that you apply at the early stages of a project and it should reduce as the project develops, risk factors are identified, and works itself back to the basic point of contingency. That would have been done by the authors of the reports and whoever was providing the technical input and I do not know at what point in these particular estimates Optimism Bias actually came in.
30. Members of staff in my department in some cases would do the legwork if that is the right word. I have got to remember that because the numbers of technical staff were so thin on the ground at the time the work would be shared between in-house staff, agency staff and external consultants. I just cannot remember who did the calculations at this point in time.

31. By continuous questioning of the staff in relation to the Benefit Cost Ratios, contingency and Optimism Bias taking place and through the presentations, I had confidence that the figures were satisfactory. I did not think anybody was "cooking the books" and I would like to think that I knew the questions to make sure nobody was "cooking the books" at the time.
32. You have to put different estimates in the plan against each estimate and look at what it actually was buying in terms of point A to point B. I do not think necessarily the scope of it decreased all that much and I am not sure at what point in this process Optimism Bias was introduced, if it was not present at the start. Over this time, there were significant construction cost inflation and allowances in there. In fact throughout the development of this project one of the background factors, if you like, was construction inflation (although, in the event, post-2008 we actually went through a significant period of construction cost deflation). However, throughout the early years of that decade, construction cost inflation was a particular concern and also, I think, the concern as to why that was occurring in the UK context when it was not necessarily occurring to the same extent overseas. It is still a problem for the UK construction industry that you can build a railway line or a tram system in France or Germany for about 70% what it costs in the UK.
33. In relation to whether there was a general trend of estimates for the project increasing, when you look at some of them, such as the figure from Arup, for example, in January 2003, if all built together for £465m, that was actually less than the September 2002 report for adding the capital costs of line 1 and line 2 so that does not look to me like a massive difference in cost there. Certainly between 2001 and 2004 there would have been a significant element of national construction cost inflation.
34. It was an issue for UK construction as a whole that on mainland Europe it would be possible to build a project of exactly the same nature with no ostensible differences in labour rates or anything like that for significantly less. There was a dearth of project management experience and it was

partly because the UK economy has been, particularly for major projects, so stop and start for so many years, there is no continuity. I think, again, part of the background for all this has been the difficulty of getting good project managers. Again, you come back to the ability of local authorities to capture staff that are capable of doing this and the salaries that were being paid for good project managers for major projects were considerably more than I was being paid as a Director of a Department with over 1,000 people. I do not cite this as a grievance but simply as a commentary on the difficulties of recruiting and retaining staff with the right experience, Of course, the different estimates caused me concern although I cannot have felt at the time that the costs were getting out of hand.

### **The Parliamentary Process (2004-2006)**

35. I note that Bills for the construction and operation of Line 1 (the northern loop) and Line 2 (the west line) were submitted to the Scottish Parliament in early 2004 and that, in March 2006, the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006 were passed.
36. I have been shown [TIE00058492] which is an email dated 27 November 2003 from Graeme Bissett attaching a paper [TIE00058493] which noted that, having explored all reasonable avenues, it was concluded that "A substantial unconfirmed funding requirement will remain relative to each of the two lines".
37. I assume that there must have been consideration given to producing a fresh Bill or a different STAG appraisal and draft business case in relation to a shorter section of line that could be built within the available funding. I think there must also have been a decision that the funding that was available at the time was not necessarily going to reflect the funding that would be available further down the line. I recollect that there were different funding models discussed at that point. I cannot imagine that the Bill Committee did not discuss this and felt that there was no impediment to its progress. I have some experience of private legislation on other projects

- and other issues and I can think of Bills that were approved under this regulation where there was little or no funding available for them. I think the practice, in general, for Parliamentary Bills was to ensure that when you were getting the powers, you sought the powers for everything that you might want and, indeed, do over the life of the legislation. It is an overly expensive and time-consuming process if you have to go back and add 100 yards.
38. The Bill was drafted to allow for construction of what we intended to build albeit it had been thought that it might not have been built in one individual piece and might have developed over time, which is not at all unusual for major projects authorised by the Bill process. They are quite often done incrementally as the powers allow you to.
  39. I cannot remember anything in relation to the Bill Committee, including who were the members or the Chair.
  40. The Bill itself was drawn up by the Council's Parliamentary agents and submitted.
  41. Bircham Dyson and Bell were the Parliamentary agents that would have drawn that up at the time.
  42. It was known at the time that the available funding from the Scottish Executive Integrated Transport Fund was going to be insufficient for both lines. There was the possibility of changing funding from other sources and also the possibility of integrated transport funding itself increasing by borrowing. That possibility always exists. The purpose of the Parliamentary legislation was to obtain powers for what we wanted and intended to build within the life of the powers.
  43. I cannot recollect my own thought process in relation to whether there were insufficient funds to build both lines at the time. If you are involved in any major project you have permanent alarm bells ringing over the availability of

funding because funding can be fickle. It does not change in terms of the Bill, your desire, or your need to, obtain the powers for what you intend to build albeit, you do reflect on the fact that you might need two bites at it in terms of funding. This has been a feature since Victorian railway promotion by Bill.

44. By email dated 23 September 2005 [TRS000019610] Ian Kendall sent Damian Sharp a note [TRS00001962] that had been received from Senior Counsel and Dundas & Wilson in relation to the funding gap and "*the inflexibility of the Bills*". The background first of all is actually pretty well stated in the report on the line 2 Bill by the Committee itself saying "*the Committee is content at this stage that the expectations of funding from sources other than Scottish Executive are reasonable and the information is as robust as could reasonably be expected at this point in the process*" (quoted in TRS00001962). I think I would have taken at the time that this was a reasonable endorsement. The report points to the fact that the financial viability of each line had to be demonstrated separately. With hindsight we are where we are outside on the street at the moment. At that point, the whole working assumption was that we would be able to answer concerns about fund raising, operational surpluses etc.
45. The assumption was that these issues would be solved and there were messages coming through from Scottish Government that actually the money that was available for the tram project would be index-linked and there was going to be scope from operational surpluses, development receipts etc to close the funding gap. I think at that stage, there was a reasonable confidence across the piece that funding would materialise.
46. If I had not had confidence at the time I would not have signed the reports that went to the Council nor in my opinion would the Director of Finance.
47. There were a lot of things going on from discussions with civil servants at the time. One of the biggest blows to financing the project was Scottish Government reneging on the applicability of the *National Concessionary*

TRS000019610  
should be  
TRS00001961

Fare Scheme. This is because there were clear assurances given, I think from very senior civil servants. There were definitely assurances and that may have included assurances originating from the Permanent Secretary that, for planning purposes, we should assume that the national Concessionary Fare Scheme would apply to the project. In any case, part of the message was index-linking at the time.

48. I remember seeing a message about concessionary fares and there might have been something along the lines of "*I might be prepared to present to Ministers in due course the index-linking of the fund*". It was not dredged out of thin air.
49. There was a list of top Scottish transport projects, Government funded ones, and the tram project was number four. One would always have this confidence that things like index-linking etc. would materialise. It was not just a high priority project for the City of Edinburgh Council; it was seen as a very high priority project by national Government.
50. The view that the operational surplus would close the funding gap would have taken place from the assessments of the business case, revenue projections and the rest of it that there was going to be an operational surplus and it would be possible to transform that through financial engineering towards the capital cost of the scheme.
51. The works in relation to the scope for operational surplus to close the gap were not done by the Council Department or Finance. We would have looked at the cases that were made and how the financial engineering for that sort of thing is carried out. That is something which probably would be better answered by people like Graeme Bissett.
52. I have a feeling that the Council did not actually lodge the Bill **[CEC00455293]** for tram line 3. The route was being protected in planning terms. All the work was done to ensure that it had planning protection. I honestly cannot remember whether or not the Bill was actually lodged.

Something would have gone back to the Executive if it was not launched, or it might have been lodged and not progressed.

53. I cannot honestly recall the purpose of the "*Route Development Report, Design Pause*" produced by Faber Maunsell in November 2003 [CEC01702137].
54. The purpose of the "Network Effects" document produced by Faber Maunsell for TIE in January 2004 [CEC01839544] was that the Parliamentary Bills for lines 1 and 2 had to be separate. The purpose of this report was to produce an accessible public document that identified the network effects of actually running the two together – if you like to identify the difference between the whole and some of the parts.
55. I cannot remember how long we estimated the Parliamentary process would take and what came out at the other end. It was a prerequisite of the project that it had to go through this process. I cannot remember what the difference was between initial estimates at the time and what it subsequently worked out at.
56. I would suspect that the Scottish Parliament did not consider the issues around the line that was actually built because nobody at that time thought we were going to finish up in that artificially shortened position.
57. In relation to the meeting of the Tram Line 1 Committee on 27 September 2005, [CEC02084687] hindsight is a wonderful thing. I remember Phil Gallie and I think he was MSP for somewhere in Ayrshire. Nobody was trying to hide anything, TIE and the Council would have been open about the possibilities of taking things out of it but the possibilities were seen as very small. Everyone was reasonably confident that both tram lines as proposed in the Bills would be built which is one of the reasons for actually doing separate Bills for line 1 and line 2 because those were seen as the smallest building blocks at that time.

58. Rebecca Andrew is a very good finance officer so I would not doubt the content of [CEC01541278], which is an email dated 18 October 2007 from Rebecca to me and others that noted Transport Scotland's view was that the cost of the Parliamentary process (of £17m) was included in the total TS grant for the tram project of £500m. I have looked through this document and cannot remember how the Parliamentary process monies were treated. Duncan Fraser and I were, however, working under the assumption that the Parliamentary grant was accounted for separately.

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

59. I note that in October 2004, Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, produced a review of the Preliminary Financial Case (PFC) for line 1 [CEC01799560] (and that Arup also produced a review of the PFC for line 2, CEC01019126). I think the starting point is that I would not expect any technical report at any stage on any element of any major capital project not to have caveats and concerns and the point is how those concerns are addressed. Our conclusion was that, in general, the approach described in the PFC was reasonable and robust. I would have seen the reviews by Ove Arup noted above, **together** with TIE's response [CEC01705043].
60. I note Arup's concern that the Benefit Cost Ratio was only 1.21. While a scheme has to have a positive Benefit Cost Ratio, there are a number of issues which do not necessarily appear within the cost benefit calculations. The unquantifiables around development at Granton and the rest of it. As regards Arup's concern that the economic case was heavily dependent on the benefits from one area. Granton was the principal development zone for the City of Edinburgh at the time where population demand was being satisfied. It was a huge regeneration project, it was not just Granton, it was Granton and Leith taken together. As regards Arup's concern in relation to funding shortfalls, these shortfalls are probably covered in the TIE response. If it had been a scheme intended simply for the relief of congestion, say, and then all the benefits associated with the scheme



would have been within the quantifiable Benefit Cost Ratio. A benefit of 1.21 is moderately healthy but so many of the benefits were seen as not falling within the quantifiables that the basic raison d'être of the scheme still held.

61. I do not remember a significant shortfall in funding. However, they must have been satisfied otherwise they would not have ploughed on. I or my staff's input would be in TIE's response at that time.
62. I cannot remember Arup's concerns in relation to the risk contingency or the risk sections in the Preliminary Financial Case but assume that we must have been satisfied on these matters at that time.

### **The 2005 road charging referendum**

63. A September 2002 TIE report noted that the New Transport Initiative (NTI) comprised a number of proposed transport projects, of which a tram system and road charging formed part and further noted that the financial strategy for the NTI required revenue funding from road user charging [CEC01623145]. I cannot remember the number of projects that formed part of the NTI but, obviously, road charging was an important factor, particularly for things like the construction of line 3. I think that for all practical purposes, the vote against road charging in the public referendum in February 2005 was probably the point at which line 3 became a long-term aspiration rather than a logical extension.
64. I cannot remember the consideration by CEC to the funding and affordability of the tram project in light of the road charging referendum. However, it would have been done by my staff and finance staff and would have been put back to the Council and signed off by myself and/or the Finance Director.

## The May 2005 Draft Interim Outline Business Case

65. I would have seen the Interim Outline Business Case (IOBC) produced by TIE [CEC01875336]. It would have been a necessary milestone. I must have agreed that the estimated capital costs of £327m (which included a contingency of £23.73m and optimism bias of £52.64m) seemed reasonable given the state of the project.
66. I must have agreed with the conclusion that either line 1 or line 2 was affordable within the Executive funding of £375m but that a network of lines 1 and 2 was not affordable.
67. I note that the IOBC stated that the 30 month construction programme from July 2007 to meet the operational date for the tram by the end of 2009 was a "*challenging timescale*". That was the assumption on the timescale at the time. I cannot see that it would have been of significance, if, let us say, the end of 2009 had slipped to the middle of 2010. I think the challenging timescale of the construction period was not the top issue necessarily. It was the desire to have the scheme up and running by a particular point in time. If the industry comes back and says "*it's going to cost you less to do it in the 36 month timetable*" instead of a 30 month construction programme, or something like that, then fine, you would have a discussion along those lines.
68. I would have imagined there must have been extensive discussion around each of the points that were flagged up in the IOBC.
69. I would not like to comment on my views on the "*challenging timescale*". This is because I do not know what my view was at the time. In retrospect, it seems to me that the timescale was driven by a desire to have a tram up and running in 2010.
70. The IOBC stated that risks would be "*aggressively managed*". That would primarily be done by TIE but there would be other risks around planning

that would be aggressively managed by other stakeholders at prior approval process.

71. TIE's Chief Executive, Willie Gallagher, would have given the impression of aggressively managing them. To be fair at the meetings of the Tram Project Board there was constantly a concern over risk and he would have been given a pretty hard time in terms of seeking assurances on specifics rather than on generalities. Certainly there were things like the Traffic Regulation Orders, or prior approvals that changed a lot of the assumptions because they were too optimistic at the time. I would expect all risks to be aggressively managed.

### **2006 Reports to Council and Draft Final Business Case**

72. I am shown a report to Council dated 26 January 2006 which made certain recommendations for funding and phasing the tram network **[CEC02083547]**. I believe it must have been in the second half of 2005 that I first formed the view that there was insufficient funding to build both
73. Lines 1 and 2 and that it would be necessary to build these lines in phases. I should say, however, that I am inferring that as I cannot remember the actual moment at which it occurred.
74. The report recommended that the section of line from Edinburgh Airport to Leith Waterfront gave the greatest benefits and was the optimum first phase (the capital cost of this line was estimated at £429m excluding optimism bias, and £484m including optimism bias). Leith Waterfront was the largest brown field development in Scotland, and would have been served by line 1. Phase 1 was considered to offer the greatest benefits for the reasons set out in the report, partly from the financial projections and partly because it provided the link into what was the principal development area. In fact, the majority of the development area in North Edinburgh would have been served by line 1. This is what was set out in the report.

The Scottish Government would have been involved in discussions as we went along. Whoever was liaison at the time would be fronting in relation to decision-making. I do not know what discussions went on internally at Transport Scotland but it would, possibly, have been Damian Sharp and Malcolm Reed at the time.

75. On 7 February 2006, I gave evidence to the Parliamentary Committee **[CEC02083972]** at column 1751, to the effect that "*only a small element of the total costs is unfunded*" and that "*within the totality of the proposed tram network, we are confident that the vast majority of the funding is in place*". If I said that I must have believed it. I thought that there was going to be indexation of the Scottish Executive's contribution and comfort that there were development receipts that would follow on from it.
76. I would not have stood up in front of the Parliamentary Committee and said something I did not believe. When you are involved in a project like this, you have constantly got concerns and you are constantly seeking the information to allow those concerns to be alleviated. They are never eliminated they are only alleviated.
77. I was constantly questioning all the staff within the finance and transport departments under the Head of Transport. Subsequently, I would have been attending their own internal meetings where they would have been discussing this. Some of them might have been minuted meetings. I cannot recall which ones were minuted.
78. I cannot remember who was actually acting as my principal drafting arm for the evidence that I gave to the Parliamentary Committee.
79. As I mentioned previously, we were confident that the funding was achievable in relation to extra income from tram-related development and receipts rather than from council tax. We were constantly satisfying the Director of Finance on documents as to where the development receipts would come from and other contributions. However, the Council was cash

strapped, always has been, and always will be, and there was very little room for manoeuvre in terms of making up additional sums. It is important to remember that assumptions on development receipts were formed around the development climate present at that time.

80. By joint report to Council on 21 December 2006 [CEC02083466] myself and Donald McGougan sought members' approval of the draft Final Business Case. The report noted that the estimated capital cost of phase 1a (Edinburgh Airport to Leith Waterfront) was £512m if built alone. The report noted (para 4.28) that the most significant risks affecting the timeous completion of the project within budget were (1) the advance utility works, (2) changes to project scope or specification, and (3) obtaining consents and approvals. The report further noted that to maintain control over the capital cost of the project the following actions were required, namely, (a) enabling works, including utility works, should be authorised to proceed on a timetable that would not disrupt the main infrastructure programme, and (b) negotiations with bidders should continue with a focus on achieving a high proportion of fixed costs in the final contracted capital cost.
81. I could not honestly say where the information in the report to Council on 21 December 2006, came from. However, it was my report so I must have agreed with the most significant risks identified there affecting the timeous completion of the project within budget.
82. The BCR of phase 1a was only 1.1 which was low because of the then proposed Edinburgh Airport rail link. I think it transpired it was becoming more and more likely to be cancelled and would never be built and it was an extremely healthy benefit cost ratio (of 1.58) without it. The current Edinburgh Gateway bears no relation to the earlier project for a rail link and indeed provides additional revenue to the tram.
83. Meetings of the Tram Project Board were pretty hard meetings. It was not just a bunch of people sitting in a room and rubber stamping things. There was constant and aggressive scrutiny of everything. We must have been

content, I must have been content and Government must have been content about the messages that were coming back, or sufficiently content not to throw our hands up in horror. It was never at any stage an easy project and I think we were, in hindsight, clearly getting overly optimistic responses back from the likes of Willie Gallagher as to which way the costs were moving.

84. I would not have been expected to have gone through, nor would I have had the necessary expertise to go through, the capital costs estimate for phase 1a in the December 2006 draft Final Business Case [CEC01821403]. My own staff who were working with or embedded within TIE would have had an input into that as would some of the finance staff. I would have relied upon their advice on that. I cannot recall whether the estimate of the capital cost was considered afresh at the time of the 2006 draft final business case.

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85. The draft FBC stated that TIE had determined, in consultation with Transport Scotland, that no allowances for Optimism Bias were required in addition to the 12% risk allowance (para 9.12). At that stage, you would have expected the project to have been sufficiently well defined and the cost estimates to have been sufficiently refined that you were in the field of contingency rather than Optimism Bias.

86. I am referred to the evidence of Barry Cross to the Edinburgh Tram (Line One) Bill Committee on 7 February 2006 where he stated that "*Optimism Bias was very much an insurance*" [CEC02083972] at column 1771. He, however, would not have expected a project that was, at the time, seen to be so close to contract letting, to continue to contain a large allowance for Optimism Bias, as opposed to a fairly healthy *but lower* risk contingency.

87. I am not aware of which individuals in TIE and Transport Scotland agreed that no allowance was required for Optimism Bias in addition to the 12% risk allowance. I would have known at the time, currently I do not know.

88. I do not recall whether it was a factor, as I have said, that there comes a point in the whole process where Optimism Bias disappears and is replaced by a normal contingency allowance.
89. I am not aware of any discussions to the effect that including an allowance for Optimism Bias (in addition to a risk contingency) would have resulted in the total estimated cost for phase 1a exceeding the available funding, nor am I aware of any discussions to the effect that had an allowance for Optimism Bias been included the BCR is likely to have fallen below 1.0. Had the BCR fallen below 1, however, that would probably have been the end of any Scottish Government funding.
90. I am shown an undated letter from Donald McGougan to Mrs Polson **[TRS00010181]**, replying to her letter of 29 November 2006 **[CEC01722540]**. In his letter Mr McGougan refers to having carefully reviewed the draft Final Business Case and its Optimism Bias assumptions, and having jointly, with myself, recommended that the Council approve the draft Final Business Case. Donald and I would have done the review in conjunction with the same small group of staff internally so, yes, I would have to agree with what was in his letter to Mrs Polson as far as I can recall. At the time, my conclusions would have been the same as those of Donald McGougan.
91. I am also shown an email dated 5 December 2006 from Alison Bourne **[CEC01762658]** relating to the Business Case and which asked what level of Optimism Bias had been applied. Mrs Bourne stated, "Bearing in mind no fixed design...this opens the proposal to risk and I feel that the level of optimism bias applied should be fairly high". I obviously did not agree because I felt that the design had proceeded to a sufficient state to remove that.

92. Alison Bourne was a constant correspondent and she was also the wife of one of my own engineers who had a peripheral involvement in the project which caused quite a lot of internal angst and difficulties for him.
93. You would expect the draft Final Business Case to be produced before any contract bids had been received and, while no prior approvals and consents had been obtained, they did not appear to carry significant elements of financial risk with them. There were timescale risk issues but they cropped up later on.
94. I am asked about the official guidance available at the time in relation to risk and Optimism Bias. I would have read, at the very least, the relevant sections of the Department of Transport's Guidance. I note, for example, the Department of Transport's Transport Analysis Guidance on "The Estimation and Treatment of Scheme Costs" 2006 [CEC02084255] and The British Department of Transport's Guidance on "Procedures for Dealing with Optimism Bias in Transport Planning [CEC02084257]. I also note, Mott MacDonald's Review of Large Public Procurement in the UK [CEC02084689] and the STAG Guidance issued by the Scottish Government 2003 (updated 2005) [CEC02084489]. I cannot recall ever going through the entirety of HM Treasury's 2003 Green Book *but* I must have done at the point when it came into use [CEC02084256].

### **The Procurement Strategy**

95. We understood that the purpose and aim of the procurement strategy was best value and risk minimisation. We would have had an input into the procurement strategy at the stage that it was decided upon and we would not have reported to the Council in December 2006 without having had an input into it.
96. The procurement strategy included obtaining a fixed price for the infrastructure contract with substantially all construction risk being transferred to the private sector (see, for example, the September 2004



updated Preliminary Financial Case, [CEC01868590, page 10], and the December 2007 draft Final Business Case, [CEC01821403], pages 16 and 97). My understanding of the importance of achieving a fixed price contract is that it is obvious that when you have a public sector body you want a fixed sum and a fixed price contract. I cannot recall exactly what I understood at the time other than the price was fixed under static conditions. We went through various exclusions that would apply to that "act of God, act of War" and all the rest of it. If the conditions set out at the start of the contract were maintained then it was a fixed price and the risk was borne by the contractor who priced accordingly.

97. In relation to how much of the design work was anticipated to be completed before the infrastructure contract was entered into, I cannot recall what the Final Business Case said and it would just be what was written at the time.
98. I was expecting infrastructure works to commence towards the end of the summer of 2008. I think it is worth saying this about the whole separation of the utilities diversions and the infrastructure works, I went to Dublin to see how the City of Dublin had dealt with this and the overwhelmingly message *in summary* was that the work should not be undertaken as a single contract. We followed that advice and separated the works.
99. I think, with the benefit of hindsight, that we were not necessarily getting the full position on the utilities diversion works. There was a massive amount of exploratory work but I think there must have been some rose-coloured spectacle reporting at the time. However, I think from a pretty early stage it was seen as the critical risk.
100. In late 2006, the strategy of scheduling the majority of utilities works to commence in 2007, and to end in summer 2008, was considered realistic at the time and especially at the time against what appeared to be a pretty rigorous set of site investigations as to the location of the utilities.

## Design

101. I am asked whether there was delay in progressing design and for my understanding of the cause or causes of any such delay.
  
102. I would start by saying that in September 2005 when the Systems Design Services (SDS) contract was entered into between TIE and Parsons Brinckerhoff (PB) Tom Aitchison was the Chief Executive of CEC and David Mackay was Chairman of the Tram Project Board. Tom Aitchison would chair CEC's Internal Planning Group for the tram project. I would be part of the core membership of that group although some issues were discussed without my presence and without my knowledge. I became aware that David Mackay and Tom Aitchison were having fairly regular meetings but I do not know what was discussed. There were also discussions and papers between Jim Inch and Tom Aitchison, at least one of which I have only become aware of since reading the documents sent to me by the Tram Inquiry. Some of it, for example, discussions between the Chief Executive of the Council and David Mackay regarding the remuneration for the Chairman of TIE I had no involvement with. Was I particularly concerned that I didn't have any involvement in it? I think I was content for discussion on the remuneration of the TIE chairman be taking place somewhere else and not have the additional worry of it. I would have preferred to be aware of other issues discussed. There were other things the Chief Executive had a habit of going off and discussing on issues that fell within my responsibilities and which I didn't get good or any feedback on.
  
103. I have been referred to the following documents in relation to delay in progressing design, namely: the Tram Project Board minutes of 26 September 2007 [CEC01357124] which noted that I raised concerns that the programme assumed that SDS would get designs right first time and what the impact on the CEC review would be; a report to the meeting of the IPG on 27 September 2007 [CEC01561544] which noted that a trial submission had highlighted some serious gaps in the quality of information being brought forward; the minutes of the Tram Project Board of

31 October 2007 [CEC01387400] which noted areas of minor slippage in SDS deliverables; a report to the IPG dated 15 November 2007 [CEC01398241] which noted that further delays to the design programme were becoming apparent with all technical reviews programmed to complete after financial close; a report presented to the meeting of the Tram Project Board on 7 December 2007 [CEC01526422] which noted that 66% of phase 1a detailed design was complete; and a report to the meeting of the IPG on 11 December 2007 [CEC01398245] which noted that prior approvals may require to be re-visited if there were substantial changes in design coming from inter-disciplinary coordination, technical approvals or value engineering. In relation to the report to the meeting of the IPG on 11 December 2007 [CEC01398245] I am trying to remember the context. The context of that was right first time in terms of prior approvals getting it right for planning. In other words listening to what they had been told in the design process ensuring the final design represented something that was capable of prior approval. That was what I was trying to work out and get the context.

104. I cannot honestly recall if there was a significant delay in progressing design and in obtaining statutory approvals and consents. There was delay but the Council side put a huge amount of effort in terms of trying to ensure that the prior approvals process ran as smoothly as possible by laying down what were the minimum requirements necessary for each of the major structures to get through. The process did improve considerably as it went on but there was a problem with the designers that they just did not get it at first.
  
105. Parsons Brinckerhoff were one of the blue chip names in designers. The Tram Project Board had serious concerns about Parsons Brinckerhoff's execution of the SDS contract. The boat had been well and truly pushed out with Parsons Brinckerhoff. I can recall some offline discussions going on as to what the exit strategy might be and I think the conclusion was that we just had to make it work. I know Willie Gallagher actually had meetings

in America with Parsons Brinckerhoff's principals and things did improve after that.

106. I think that whatever delays there were because Parsons Brinckerhoff in these prior approvals did not get it right first time and there had to be an iterative process. We structured planning in such a way that people were sitting waiting for the prior approvals to land on their desk and primed and programmed to respond directly. This was the busiest Planning Department in Scotland by a considerable margin and we shifted resources to ensure that this was addressed. These are the steps we took to try and address the delays. We were bending over backwards to hold the Design Team's hands in this and to turn things round as quickly as possible.
107. From the start of this process, I always recognised that prior approvals had to run smoothly to keep on timetable. There was a secondary issue, to avoid it becoming a smokescreen for timescale. (Managers within TIE failed to appreciate the full statutory nature of the prior approvals process and the inflexibility of a minimum timescale for issues. They had to have constant reminders to properly programme the process and not to have the opportunity to blame the Council processes for delay).
108. Steps were taken to beat the designers about the head to make sure that they listened to the advice that they were given and understood the context of the prior approvals within a World Heritage Site and numerous conservation areas in the City of Edinburgh.
109. I cannot remember at this stage as to the extent to which the designs were late in entering the statutory prior approvals process and the extent to which the designs were not right and were bouncing back. Someone would need to do a lot more work at looking at that.
110. The delay in progressing design and in obtaining statutory approvals is reflected in the minutes. I think we were all extremely concerned about it and put a lot of effort into trying to get the thing back on target. I have

mentioned from the Council's end the pulling together, the responses on the prior approvals and holding the Design Team's hand in taking them through all those steps. My understanding was that SDS were also getting additional resources themselves.

111. The basic problem was that SDS just did not get it in these critical areas. It was a failure in something that is recognised. There were actually pedestrians and local shops *to be dealt with*. The Tram Design Working Group was attended by CEC Transport and CEC Planning. We also had Historic Scotland and the World Heritage Trust sitting and looking over shoulders. I actually felt that I was not doing too badly in driving this process along but it was constantly an issue with SDS. They were just not getting it right first time. It was too easy for anybody in this kind of process to simply point a finger and say "*it is local authority bureaucracy, delays, these people who knock off at 5 o'clock every night etc who are causing this*" but it was a basic failure by the designers to recognise that they were not working in Dallas Texas or wherever, they were working where they were ie in Edinburgh and that they had this host of other matters to contend with, all of which were flagged up.
112. I also think that there was a problem within TIE. I think the people from my side, senior managers in planning (the person most involved was David Leslie), were constantly holding our hands up because of the failure of people in TIE as well as within SDS to actually understand what were involved in prior approvals. There are no shortcuts for the prior approval process which itself is a considerable shortcut on the normal planning process. My recollection is that this refers to the fact that the full planning application process is not required. In general, where the Bill gave certain "prior approvals, in effect outline planning consent but we were pulling out every stop to turn things round as far as possible. We had drawn a quite clear line in the sand in terms of how far compromise could go. However, that was not understood within TIE. I think that business about the sign-off of design is as well read as being sign-off of design or other issues by TIE. The reluctance to accept that designs could not be signed off *unless* they

were able to receive planning approval, eg bridge designs in sensitive locations that ignored any design aesthetic. Again, in relation to prior approvals, local authority planning bureaucracy is a convenient finger for everybody to point to. In addition, at this stage SDS were, I suspect, losing money hand over fist on this particular contract. I suspect that when you get these kinds of issues it is because somebody has priced the job against a particular resource which was always insufficient. I suspect they were losing money; they had to make a claim to try and get back into profit on it and were seizing upon every possible thing to claim against. I saw this as a potential finger pointing exercise as I was taking a personal interest in the progress of prior approvals and the rest of it. We had some very good planning staff who were involved in it.

113. I would refute any that suggestion that CEC caused or contributed to the delay in the production of design including statutory approvals and consents. There are always things at the margin but I refute that suggestion. The principal problem was a failure of those involved to actually understand the nature of the prior approvals process and the necessary timescales. This was all set down and there were exchanges of correspondence probably between TIE, SDS and myself about service standards (the agreed timescales for processing prior approvals) but it just did not seem to work all the time.

114. I think it was hard to get people within TIE to understand. If you have had no previous experience of the way the planning system works, let alone how the prior approval system works, then you cannot figure it out. I think there were points in there where things had to be referred to Historic Scotland because of their proximity to listed structures. It was not a question of in one day, stamp and then out the next. This refers to the different expectations over what was a reasonable time to process the prior approvals, especially where there was third party involvement, eg Historic Scotland. We did not second *planning* staff into TIE to actually grant the required consents, you could not do that. What we did was that we safeguarded the workload of staff within planning to be able to deal with

this by recruiting additional temporary staff within planning. We subsequently placed an experienced member of planning staff within the design team to guide designers towards satisfactory end products. We cannot second staff as that compromises the integrity of the whole approval and consent process. We seconded engineering staff into it but that was a different process. To a certain extent they may have been embedded in there to minimise any communication issues but they would not be seconded. They would report, almost certainly, back to the relevant Manager in Planning.

115. If you have got staff who are actually sitting in the same room across tables, or whatever ( like when we moved the Council staff into open plan offices), productivity shoots up because half the time people are discussing things over the table in the canteen or when they are gathered around the coffee machine.
116. I think at the start of the process people just did not understand it, and I do not know what was inside SDS, for example, what internal assumptions may have been made on design programming that were completely unrealistic in what they were assuming on prior approval turnaround.

### **Utilities**

117. I cannot recall what the delay was in commencing with utilities. There is always a mobilisation period. I do not know whether Alfred McAlpine went beyond that. I would expect any delay in commencing and carrying out the utility diversion works to be reflected in the Minutes of the Tram Project Board.
118. I have been shown an email [CEC01730251] dated 16 March 2007 from Rebecca Andrew to Donald McGougan. I think it was Rebecca's cry from the heart about the attitude of Transport Scotland. Transport Scotland staff changed a number of times and I think they did not always have the confidence to make decisions. You expect people to sometimes have to go back and discuss with superiors and sometimes it did seem to take an

inordinately long time for a decision to be made. I will not say an overly-cautious approach, but it was too non-committal.

119. The Transport Scotland people who had sat on the Tram Project Board were generally the people that we dealt with. There was Bill Reeve, I think, and Damian Sharp. I cannot remember the others, they are just the two names that come to mind and that has only been prompted by reading the Tram Inquiry papers.
120. I am asked for my views on the extent to which, if it all, the commencement and carrying out of the utilities diversion works were delayed by the uncertainty surrounding the tram project as a result of the election to the Scottish Parliament in May 2007 (and the change in Council administration). I would be very surprised, given what was happening at the time, if the utilities works had not been delayed with the uncertainty surrounding the May 2007 elections. I know we continued to deal with land assembly and other issues but I would imagine that there was a message coming through to stall pending a formal Government decision. I think it was probably discussed in every available forum. I can certainly recall seeing issues on costing the winding up of the project at that stage.

### **The Infrastructure Contract 2006**

121. I have been shown an email dated 21 November 2006 from Geoff Gilbert [CEC01797672] attaching a draft paper "Infraco and Tramco Revised Process Award" [CEC01797673], which noted, *"From the discussions to date with the bidders it is clear that there is insufficient clarity in the design information issued with the Infraco bid to obtain a de-risked price by 9<sup>th</sup> January as envisaged by the Procurement Strategy, particularly in respect of key structures ... the design information necessary to minimise the pricing risks within the Infraco tender will not be available to meet the deadline for closing the Infraco deal in July 2007"*. I note that the draft paper included a diagram of the Tender Evaluation and Negotiation Process, which showed an intention to provide design information to Infraco



bidders throughout the Infracore evaluation and negotiation process. I have also been shown the Quarterly Review Report for Transport Scotland dated 26 November 2006 (CEC01691907), which noted that AMIS had indicated that the quality of design was far below what would have been expected at that stage and that that may have an impact on their ability to deliver their first programme. SDS performance was also noted to remain a key concern. I cannot recall these matters; I am just going by what the documents say.

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122. The actual contract negotiations would have been done by TIE and reported back to the Tram Project Board. We would then have reported back to the Internal Planning Group
123. I think that any problems noted within the documents referred to above would have been reported to members of the Council. The issues around that and how they develop would have been reported in the next milestone report. This was done around December 2006 or January 2007 reports. I think there were reports made around that time.
124. Obviously, if we felt that at a particular time it was necessary to do something in relation to something which was going to halt the project in its tracks, or whatever, the report would have been done. If you have, for example, a report on a Business Case or something coming up, you would have referred to it in any such report.
125. I think at that stage, if it was up and running, the Internal Planning Group would have been responsible for reporting these issues and problems to the elected members.
126. I think there was a fairly general sharing of information. For example, Donald McGougan was also on the Tram Project Board so in terms of who actually said what in terms of initiating any such reporting, I could not be entirely clear.

127. I would not necessarily have expected a report to members in the specific terms in the documents noted above, but certainly things like the revision to key dates etc would have appeared in the next report to members that was being prepared. I would be updated through the Tram Project Board plus ad hoc meetings. We usually had such *ad hoc* meetings at 6 o'clock at night. Ad hoc meetings would be meetings convened by TIE when they wanted to have a wider discussion on something or there was a particular issue *for* which they wanted a level of comfort ~~on~~.

128. I am referred to an email dated 1 December 2006 [CEC01787192] by which Geoff Gilbert, Project Commercial Director, TIE, sent me a short summary of the risks retained by the public sector [CEC01787193]. The risks were noted to include: "Changes to the scope of the work to deliver the Edinburgh Tram Network specified by TIE (effectively CEC)"; "Delays to commencement of Infraco works due to delay in completing utility diversions"; "Delays to commencement of Infraco works due to TROs not being in place"; "Delays to commencement of works due to prior approvals not being in place"; and "Cost increases due to changes to the scope and design required by TIE (effectively CEC)".

1 December 2006  
should be  
11 December 2005

129. I am asked about my understanding at the time of the steps that would be taken (and by whom) to prevent or reduce these risks.

130. The risk arising from a delay in completing utility diversions required TIE to ensure that there was a match between the completion of utility diversions and the commencement of the construction works.

131. There were two elements to Traffic Regulation Orders: one is Permanent Traffic Regulation Orders and the other, which is where the contractor comes in, is Temporary Traffic Regulation Orders for the duration of the works or part of the works. If it is a Temporary Traffic Regulation Order then it is a three part process between the contractor, TIE and the Council.

132. The first step for Traffic Regulation Orders was making sure that the Council had the necessary resource in place. Secondly, to progress those by making sure that TIE understood the timescales around Traffic Regulation Orders in terms of statutory timescales and programming accordingly. The other thing was making sure that TIE actually had people preparing the Traffic Regulation Orders. From memory, they actually brought in another consultant specifically to deal with that element which was a locally-based one. I think I remember it seemed to work reasonably well in my time.
133. In relation to risks arising from design and changes to scope, the steps taken by the Council side were to ensure that as much prior input was given to the Design Team as possible and that we were in a position to turn things around within the programme period. In addition, once you have signed the contract, you do not change the scope or design. You are relying on TIE, as your agent, to actually deal with any conflicts. There is very little you can do yourself other than through continued progress monitoring at the Tram Project Board, or whatever, and the TROs being in place. Again, you make sure that the process is in place which can produce the TROs and respond to them within the timescale and the same for the prior approvals.
134. In theory, the steps I have identified as far as I can remember them should have been ample to mitigate these risks. They were revisited in the draft Business Case, the draft Final Business Case and they should have been sufficient.
135. On the one hand, you had all these things in front of you, on the other hand, there was a tremendous bullishness coming back from TIE and from TIE senior management around the time that bidding negotiation was going on. There were constant references along the lines of "*we should come away with money left on the table*" kind of thing. You could see in TIE this enormous organisation, which it was by then, the messages coming back, the amount of work being put in that things seemed to be being handled.

There was no shortage of documentation suggesting that things were being done, you had the confidence.

### **The Infrastructure Contract 2007**

136. In January 2007, Infraco bids were received from the Bilfinger Siemens Consortium and the Tramlines Consortium. Three would have been ideal, two is not uncommon. This was a period when on smaller scale contracts in the Council were frequently sending contract documents out to six contractors and getting two, sometimes only one, back. This comes back to the point I made earlier about the overheating of the economy, and the construction industry, at that particular point in time.
137. I have not seen [TRS00003551] before, which is an internal Transport Scotland email dated 23 January 2007 from Bill Reeve to John Ramsay and Damian Sharp reporting on key issues arising from a meeting of the Tram Project Board. The issues included: "3. Mathew Cross – Initial report Engineering performance of SDS needs fixing: issues on TIE side as well as PB – need for clarity re priorities in instructions. Need for clarity on how novation, risk transfer and vfm will work in contract implementation", "5. James Stewart of PUK concerned re implementation practicalities of contract structure. How has risk allocation been responded to by bidders? What is the negotiating plan to secure risk transfer as we desire" and "6. TRO process – I remain worried about this. Not clear how CEC proposed plan to resource this in more detail works out in practice".
138. I am not included on the email and I do not recall this ever being discussed between Bill Reeve and myself so I cannot be quite sure. I am interested in an earlier bit which refers to Matthew Crosse's initial report that the "*project [is] in better shape at this stage than the Mersey tram, Nottingham or Barcelona*". No large project is perfect at any one time. I was always concerned throughout the TRO process, which is why we did a lot of work on that and on prior approvals. I think the traffic management preparation was always going to cost more than TIE and the designers had originally

thought, not dramatically more but it was going to be more resource intensive. It was well up on our radar throughout the project but I do not know what particular point Bill Reeve is making. The key issues should have been in the minutes of the Tram Project Board.

139. If Bill Reeve was concerned about what was said on TROs he must have heard something from me at the meeting. If he had said in the meeting he remained worried about it I would have had the discussion with him then. I do not recall that but if it took place it would be minuted, if it is not minuted there would be subsequent discussion with him about it.
140. I was aware of **[TRS00003669]**, which is a report by TIE, "*Infraco Initial Analysis and Updated Project Estimate – Response to Transport Scotland Queries*" dated 8 February 2007. ( I cannot recall after 10+ years what my view was at that time) The report noted: "Both bidders have amended the terms and conditions. Whilst the amendments are substantial we have checked the bidder's reasons for this. Which are that they are protecting their risk position pending receipt of detailed design information and completion of due diligence" (p3). The report also noted that "To maintain the strategy of novation we need the successful Infraco bidder to take detailed designs and responsibility for them to achieve this, SDS's performance and their performance in the perception of the bidders needs to improve and bidders need to undertake due diligence on the designs before award, or for the critical risk and price elements before coming to a final deal on the Infraco contract in July 2007. This means that critical designs must be completed well before contract award" (pp 4/5).
141. I am also referred to an email dated 19 January 2007 from Willie Gallagher **{CEC01826306}**, which noted that TIE's new Programme Director, Mathew Crosse, had advised that "At the heart of his concerns remains the SDS contract. We are still dealing with missed deadlines and communication issues at all levels". Mr Gallagher requested that consideration be given to "refreshing" the full-time Director of the project. I was aware of these matters. My view was that it was absolutely right. TIE had brought in a new

Programme Director, Mr Crosse, he had done his homework on the whole thing, had expressed his concerns coming in as a fresh face and what was being sought was a change in senior management of a failing design contractor. He was quite right.

142. I have been shown an email dated 27 February 2007 from Colin MacKenzie of CEC Legal to me and others [CEC01730130]. I think that Colin, in paragraph 4, is expressing what Donald McGougan and I were already aware of in terms of the fact that construction could not start in December 2007 and the delays in that. In paragraph 6, Colin Mackenzie states that, *"The risks are highlighted by the fact that TIE is entering into all the contracts, whilst the Council bears all the grant obligations in respect of expending the money where it is not a contracting party!"* I understand what he is getting at; he was looking, in a typical Colin fashion, for a written instruction to start doing something. I can understand where he is coming from, I cannot recall what actually followed from that, presumably somewhere down the line is a written operating agreement between CEC and TIE. He had written to both Donald and me. I do not know who actually responded to that. I honestly cannot recall what I agreed at the time. There was a constant dialogue and discussion with Colin around that and I cannot recall what the outcome was.

143. I cannot recall [CEC01834694] which is a document dated 6 March 2007 from Brian Farrell headed *"Note on Progress of Meetings Related to Tram Decision Making"*. The note set out various issues in relation to the design decision making process and perceptions about hold ups and pinch points. In his note Mr Farrell's suggested areas for improvement included: frustrations at senior manager level that communication upwards to Directors and Chief Executives was not working properly (he noted, for example, *"Frustrations in City Development over access to the director and the limited time he can spare for project briefing also emerged quite strongly"*); the charrette process having resulted in some Council officials being treated with a degree of caution or suspicion; parallel working and governance structures; and various technical issues (including that there

were hold-ups with the tram prior approvals, which appeared to be directly related to the level of design in the submissions, and that part of the planning process encouraged major rework of design).

144. I think at the time, that Brian Farrell was in the Department of Corporate Services and he must have been asked by either the Director of Corporate Services or the Chief Executive to produce this note. I was not aware of it. I would have found it extremely frustrating at the time had I known that the matters referred to in the note were happening and were not actually being discussed with me. I suspect it just got squirrelled away by one or other of them. I am sad that the document was prepared but not shared with me. And it reveals in retrospect the extent of external meddling in a process whose success required a crisp and unambiguous approach. I think when I look at the cast of characters; the trouble is that there were people like planning official known as, City Design Leader, CEC who was not of this planet in terms of understanding such things as deadlines, responsibilities or anything like that. He was not one of my appointments and is no longer employed by the Council. Part of my real problem was the extent to which he was having discussions with senior politicians and people outside the Council on design issues. I was unaware that he was drawing in people like the Chair of the Planning Committee into, actually, quite detailed design matters, which was quite inappropriate. Mr Farrell's note includes a complaint that limited time was spared for project briefing with me, the Director. My response to that is that as the Director I cannot be at everybody's beck and call. I have to try and ration my time and I am pretty confident that I knew what was going on and that I had my hand on the issues. Also, I think it is people at a relatively junior level in the project feeling that because they were working on the tram they were entitled to have direct access. Of course, there is limited time I can spare for project briefing but it was adequate time for project briefing. I think speaking to the people who were managing the input on the prior approvals process would illustrate that. In relation to the statement "Directors can overturn working group decisions on an apparent whim without full information", I would say that nothing is ever done on a whim and nothing is ever done without full

information. The manager in charge of the overall planning approval process at that time, David Leslie is a very competent and forthright individual and I would not have attempted to impose my own view. We were very careful to ensure that the planning officers were involved, to try and minimise the attitude that “things take as long as they take”. That just does not cut the mustard in this project or any other so there was a bit of having to manage some of these officials as well as manage the policy.

145. The reference to LRT in Mr Farrell’s note is, I presume, a reference to Lothian Buses and there was an issue in Lothian Buses with the top management. They did not like anything to do with the tram despite the fact that the 90% shareholder (ie. the Council) told them to like it and get integrated with it.
146. In relation to the reference in the note to “the need to address upfront the role of urban design” etc, I spoke to the urban design dimension (ie the need for the tram permanent works to integrate satisfactorily into their local physical environment) at the Tram Project Board and the relevant senior staff within Planning were quite content with their involvement.
147. The reference to “Inside/outside the tent” problems is, I think, a reference to Sir Terry Farrell, who was the Council’s design champion, and Trevor Davis, the Chair of the Planning Committee. Both of those were “outside the tent” and wanted to be brought “inside the tent”. They were not, however, in charge of the tent, and were not prepared to work within the timescales of the project or to have their views questioned. While the urban design dimension was disregarded and misunderstood within SDS, certainly I am quite comfortable that I was on top of that.
148. In relation to the reference to there being “parallel working and governance structures in play”, all of these were necessary and are set out in Mr Farrell’s note. These were all groups set up to expedite the process and ensure information flowed as quickly as possible. I think that some individuals felt that if they were not on a particular group it was not doing its



job. Servicing these groups and ensuring an exchange of information between them was a major issue.

149. The reference to "Technical issues" flags up that the delays in the prior approvals were due to design faults and the issue lies with SDS and also their design capability. I recall the issue on the bridge structure at South Gyle because that came in a form that was unacceptable and led in many respects to an improvement of the process within SDS.
150. In relation to the conclusions section of Mr Farrell's note, he refers to the need to engage with the "key players", namely, the Directors, Chief Executive and Council members. Council members were a particularly difficulty, with the Chairman of the Planning Committee at one stage having his own dialogue with junior staff on the process *and setting himself as a design arbiter*. Junior staff do not always have a *comprehensive* understanding of what was going on and are flattered to be talking to the Chairman of a Planning Committee. There is a reference to "*Pressure to progress the prior approvals process and that means a higher design content from within TIE and that will have budgetary implications*". There is also a reference to the need to "*sign off*" decisions which were nearing agreement, for example, Leith Walk, the Edinburgh Park bridge structure and the depot design. All of these were signed off. In relation to urban design and the suggestion that "*TIE and the Council should consider appointing a Design Director*", that was simply adding another layer and I refused to go along with that. We had a process in place that was working at our end and *to bring in, a Design Director, to revisit decisions that had already been made, was not an option*. In relation to the reference to "*the necessity of reviewing the consultation/working structures*", one constantly does that. The working structures and consultation structure had evolved to ensure that there was proper communication and seemed to be generally working, in particular, in relation to planning.
151. Brian Farrell was not on my staff at the time. He had earlier been a member of my Planning staff. He was a long-term acquaintance or friend but was

working for the Director of Corporate Services with a completely separate role. I suspect it was probably his planning background that resulted in being instructed to do this particular task.

152. The issues in his note are in many respects grumbles by junior members of staff. The core issues in the note seemed to be getting satisfactory solutions to the urban design issues and ensuring the prior approvals were right. We set up particular structures. I hesitate to use the phrase, but I cannot think of a better one, "*with business minded*" planning officials in place and I put a lot of personal time into pushing on areas like the foot of Leith Walk, Picardy Place and Haymarket, where there were design issues, and insisting that solutions and agreement were reached.
153. I have been shown an email from Willie Gallagher dated 2 April 2007 **[CEC01670358]** forwarding an email from Matthew Crosse attaching a joint note agreed between TIE and SDS, "*Summary of the actions agreed to address SDS commercial issues*" **[CEC01670359]**. I am advised that the joint note was followed by a meeting on 20 April 2007 between Matthew Crosse and Steve Reynolds **[CEC01624377]**. I think the note was intended to tighten up on whether there had been changes to the contract scope with SDS. The suggestion seems to be that there were too many outstanding issues and I think the intention was just to make it much crisper to set timelines on it. This is something I would have expected to be aware of through the Tram Project Board but not under any circumstances to be part of managing the process, that's a TIE issue.
154. I have been shown an email dated 3 April 2007 that was sent to me by Bill Reeve **[TRS00004144]** with Transport Scotland's comments on the draft Final Business Case **[TRS00004145]**. I note that Transport Scotland commented that the 12% allowance for risk for a rail related project just entering detailed design may be viewed as a little optimistic and queried whether the programme was realistic, given that it was based on an assumption of "right first time and on-time delivery". I also note that an email dated 13 April 2007 was sent to me by Rebecca Andrew

[CEC01559060] attaching a spreadsheet [CEC01559061] containing both Transport Scotland's and CEC's comments on the draft final business case and a further email dated 18 April 2007 from Rebecca Andrew to Transport Scotland (TRS00004225) sending CEC's response [TRS00004226] to Transport Scotland's comments. I note that CEC's comments included concerns over how the project was being managed, that thought required to be given to how information could be provided to elected members in a format that enabled them to make an informed decision, that further work was required to give confidence in the 12% risk assumption (and where any residual Optimism Bias uplift would be allocated) and whether the programme was realistic (it being noted that commencing the MUDFA and potentially the Infracore works prior to design completion was potentially building risk back into the project).

155. I think I would have, in general, respected Rebecca's views on these matters as set out in these documents. She was a good Finance Officer and pretty bright with it. I felt the independent project assurance was one of the purposes of the Gateway reviews that were being carried out. They were being carried out by a Government-sponsored organisation.
156. What Rebecca was saying, quite rightly, is that we cannot present the information as was presented in the draft Final Business Case for elected members to comprehend. We have to find a better way of doing it and I think it was done. The figures in the Final Business Case were simplified in terms of the report to members although, obviously, the Final Business Case itself was also available for members to look at.
157. I have set out above my views on whether the 12% risk allowance was optimistic. I cannot recall what my view was on the 12% risk allowance at the time. From memory there was a further analysis of costing assumptions carried out and that that was one of the things that was looked at in the Gateway review. I think the key is, or ought to have been, the extent to which matters were clarified at the time of contract signing. In relation to the

programme, we knew that the programme was tight and the programme was, in fact, extended. .

158. In relation to the reference to the need to build in independent "Project Assurance" reporting to the Tram Project Board , to give comfort on TIE produced reports, to appoint an external watchdog at that stage would have been difficult and, again, I think we were tending to rely on our own assessment and, crucially, on the Gateway Reviews. As the year went on, further work was done but the risk allowance still remained tight, the programme was tight and the programme that was envisaged in April 2007, from memory, was extended.
159. I note a letter dated 29 May 2007 from Willie Gallagher and David Mackay to Stewart Stevenson, Transport Minister [TRS00004406] which stated that TIE had a high degree of confidence in the overall cost estimates, that the tram project was developing an innovative procurement strategy whereby advance utility diversions and completing detailed design in advance of the main works would secure significant reductions in risks and costs borne by the public sector and that advanced detailed design was at a point where it formed the basis of securing competitive fixed prices for the main construction contracts.
160. I do not see anything in this letter that I would necessarily contradict although it was not an innovative procurement strategy. I would not necessarily want to disagree with what is in there.
161. The letter does paint a picture with the known delays in design, approvals and consents i.e. "*Dear First Minister we are miles behind, we have got all sorts of problems but please continue to support us!*" I was copied into the letter and I can vague recall it being sent. I imagine it would certainly be reported to the Tram Project Board given the amount of discussion that was going on about Scottish Government's attitude.

TRS00004406  
should be  
TRS00004407

162. The information that was presented to the Minister in light of the known delays relates to what is being done. It does not actually refer anywhere in there that I can see to where the design currently stood. It was claiming that everything was under control. It is maybe what is unsaid that is the issue rather than what is said in the letter.

163. Following the formation of a minority SNP administration in May 2007, and a debate and vote in the Scottish Parliament in June 2007, the grant for the trams project from Transport Scotland was capped at £500 million. My attention is drawn to a Highlight Report to the IPG on 30 August 2008 which noted that that changed the risk profile for the Council and sought guidance on the procurement of resources necessary to provide a risk assessment and analysis of the Infraco contract for the Council within the available timescales (CEC01566861) (at para 4.1). My attention is also drawn to a request around that time from Councillor Gordon Mackenzie, Finance Convenor, for information on a number of matters, including what contingency plan needed to be in place in case of a cost overrun (CEC01556572).

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164. There was always going to be a cap on the amount of money contributed by Transport Scotland. The nature of any central government funding for a project carried out by local authorities comes with a cap on it. Equally, the element of revenue risk had always been there so, to that extent, nothing changed other than the capped figure. I cannot remember what specifically was done following that to improve our understanding. I know there was a lot more internal activity within the Council at this stage looking at the risk transfer and issues and all the rest of it but I cannot remember anything specific if it was not minuted.

165. I cannot recall any contingency plans being put in place by CEC at the time in case of a cost overrun. To a considerable extent the risk was seen at the time as coming from the £45m of the Council's support. If the Council was not able to bring in the capital receipts or the developer contributions then the Council were going to have to borrow to meet the outstanding balance.

I think the message coming back from TIE was that there was money still on the table.

166. I find the email from me to Jim Grieve and Clive Brown dated 5 July 2007 **[CEC01556572]** very interesting in that Councillor Mackenzie appears to have approached Clive Brown, a fairly junior member of staff. Clive was one of my staff and he has just retired. He, in turn, approached Jim Grieve who at that point was the Acting Head of Transport for a short while. It was not an email from Councillor Mackenzie it was a report of probably a telephone conversation.
167. Councillor Mackenzie was seeking information on a number of issues which created emails. The email chain noted that I spoke to him and said "*it is a complex work stream*" and we agreed that Donald McGougan and I would meet him to discuss the issues and that was the action that took place. Rebecca prepared revised briefing paper and sent it to myself and Donald McGougan. The briefing paper then went to Councillor Mackenzie.
168. The contingency plans were primarily concentrating on ensuring that there was not a cost overrun. It was rather hard to see what contingency plan there would be to deal with a cost overrun other than having to bear it. The whole emphasis was to ensure that it did not go over budget and the Council could not afford to go over budget. The ownership of the contingency plans to keep the project within budget had to rest with TIE as the people managing the project.
169. The Council created and appointed TIE to manage the project. The Council cannot itself take over at this stage. The management of the project and all the issues that go with it, were primarily for TIE, as opposed to Council officers monitoring the situation and sitting on top of TIE to ensure that it was doing all it can to keep the Council solvent.

170. From the Council's point of view, the team of officers that we had in place from Finance and City Development who were either co-located with TIE or, like Rebecca Andrew, were sitting on top of every morsel of financial information, we were all putting more and more time into the project.
171. I note that the minutes of the meeting of the TPB on 12 July 2007 noted Willie Gallagher as explaining that SDS seemed to be making progress in delivering the required design, however, "a line on the design may have to be drawn prior to full completion to allow Infracore pricing and VE savings to be firmed up" (CEC01565001) (at para 3.2). That was a reference to ensuring that the Infracore pricing was not going to be further complicated by a dribble of design information, even although this was proceeding in the background, and ditto the Value Engineering savings. It was a constant work stream at that stage looking at cost savings through Value Engineering. During this particular phase, through 2007, there was this constant sort of drumbeat in the background of construction cost inflation and cost pressures and all the rest of it. Remember this was at the height of the pre-financial crash boom and cost inflation and contractor capacity fears were widespread across the sector. Plus you had variations in the exchange rate with the euro. As far as Bilfinger Berger was concerned all the time, the "time is money" message was coming through. Genuinely, there was an understanding that the longer the time taken in this process, setting aside other internal issues for the moment, the more that the cost was likely to be clocking up. That was the background noise which, rightly or wrongly, might have influenced peoples' perception of issues and decision-making timescales at the time.
172. I note that the first meeting of the CEC/TIE Legal Affairs Group took place on 25 July 2007 [CEC01660091]. I think the group itself was part of the reaction to the pressures and issues which I mentioned earlier and way of concentrating peoples' mind on it.
173. In relation to which CEC officer or officers were responsible for ensuring that members had a clear understanding of the risks and liabilities to which

CEC were exposed under the Infraco contract, I would imagine that in terms of the formal reporting arrangement it would be the meeting of the Council on the Final Business Case and the joint reports to Council by myself and Donald McGougan and, possibly, Jim Inch as well, as being responsible for the legal side.

174. Jim Inch would sign on behalf of the Council's legal interests, which was his normal practice as Director of Corporate Services. If you actually had the Council's Solicitor standing up and saying anything in his or her own name or putting a report up in his or her own name that usually means you have got a serious legal problem
175. The protocol was that a briefing document or a formal public report to a Council Committee or to the Council itself would be produced. It would be the relevant service Director would sign it as taking full responsibility for its contents.
176. Finance reported through the Director of Finance. At that time, in terms of the Council's management structure, the three Directorates all reported to the Chief Executive. In the current Council all three Directorates have disappeared.
177. Finance in my time was always a much bigger operation and reported directly to the Chief Executive which is the private sector model. You would not expect the Finance Director of an organisation to be reporting through somebody else to the Board.
178. The Council Solicitor's duty was to sign off the work and report to the Director of Corporate Services at the time. The Director of Corporate Services would sign off work that had been done by his staff, in this case, the Council Solicitor. The Council Solicitor reported to the Director of Corporate Services, or, at least, did so at that time.



179. I am referred to the Highlight Report to the IPG on 27 July 2007 (CEC01566496) (at para 5.3), which noted, under Planning Prior Approvals, "The first two Prior Approvals were processed on 9th July, with informal consultation taking place on a further twenty two elements. However, the current Prior Approvals programme remains compressed with the submission of formal applications still progressing very slowly and based upon current estimates it is likely to be late August/September before the volume of approvals start to significantly increase ... The revised programme shows a compression of the workload which has now been extended from September 2007 to March 2008". I am also referred to an email dated 2 August 2007 by Duncan Fraser (CEC01551800), in relation to Feedback from a DPD meeting on 2 August 2007 (CEC01552370), in which Mr Fraser noted "We are in a difficult position. The delays have accumulated to the programme and now we are [being] pressurised because the TIE programme of delayed is a £2.5m cost per four weeks. If read literally we are now accountable for the delay and also for an unrealistic programme, which was confirmed today as [having] no float – unrealistic!!"
180. I would agree with what is said. The prior approvals programme took a lot of time and attention. It was getting delayed and was not coming forward. Our response was to move Frances Newton from Planning down to work with the core tram team to work closer and hold the hand of the design team to produce designs which were capable of receiving approval.
181. Things got better over time. We put good people in there, as I mentioned earlier, people with a better understanding, to review the programme. We also put one or two people in there with a sufficiently strong personality to keep the design team right. I do not know how many issues were actually still left outstanding, but things got a lot better.
182. I am referred to an internal TIE email dated 8 August 2007 by Jim McEwan [CEC01632109], which noted that Tony Glazebrook was of the view that "the VE register was not reflective or consistent with the true position on

Structures” and that Willie Gallagher had expressed his concern that the overall savings in the structures area was “not enough”. At this stage we were constantly discussing Value Engineering savings and I found myself being sucked down into this whole process rather more than I would have liked as Director simply because of the speed that was required for decisions. The Value Engineering savings were significant, they were not a dramatic change in the priority but they were a change in the right direction. I cannot remember what the totals were and I would not have signed them off. Some of the proposed Value Engineering savings were not realistic but I would not have signed them off unless they were so there was a tight turnaround on these Value Engineering ones. I would tend to try and get into the position to say “yes” or “no” on the day.

183. I did have concerns, at this stage, about whether the proposed Value Engineering savings were realistic, but as I said, if they were not realistic I would not have agreed to them.
184. I am referred to a document presented to the Tram Project Board on 9 August 2007 by David Crawley, “SDS Update – P4” (CEC01565001) (at page 35), which noted: “SDS have now arrested delay, but are not able to recover lost time and the programme of deliverables, which is still able to support the procurement programme effectively, will be made ‘just in time’. As there is no float left in the programme, it is very vulnerable to the effects of any additional delay”.
185. I cannot remember that document or what my views on it were. If the minutes of the meeting said there was agreement then I must, reluctantly or not, have agreed with it.
186. I think that “just in time” is a perfectly respectable concept though I would have been more comfortable if there was “float”. It would be useful to know what the minuted decision of the Tram Project Board was in that respect. I am referred to an email dated 16 August 2007 [CEC01632266] by Elliot Scott, which sent a paper by Geoff Gilbert on “SDS Commercial Issues

Resolution – Update on way forward” **[CEC01632267]**. The paper noted that authority to negotiate a proposed settlement with SDS had not been given by the Tram Project Board for a number of reasons including a lack of confidence in SDS's capability to consistently deliver to any agreed programme and a lack of clarity on what TIE would or could do to manage and mitigate the design delivery risk between that point and the point at which novation occurred (ie financial close). My views would have reflected those of the Tram Project Board as recorded in the TPB minutes.

187. I am asked to what extent the successful implementation of the procurement strategy (including, in particular, obtaining a fixed price for the Infraco works and transferring design risk to the Infraco contractor) was dependent upon outstanding design, approvals and consents being completed before Infraco contract close. I would have thought that the successful implementation of the procurement strategy was dependent upon outstanding design, approvals and consents being completed before Infraco contract close but I could not say whether it was 90% dependent on that or was 100% dependent.
188. I must, however, have had reasonable confidence that we would reach the position of securing a fixed price within the required timescale.
189. I note that on 20 August 2007, Rebecca Andrew sent an email **[CEC01560743]** to me and Donald McGougan attaching a revised briefing paper for Councillor Mackenzie on the subject of “Tram Finance” **[CEC01560744]**. The paper noted, under Mitigation Measures (para 7) that, “between now and the recommendation to Council on 25 October, Council and TIE staff will be assessing and quantifying risk in order to determine an appropriate level of financial headroom and, if necessary, identify further funding to provide this headroom. This will allow cost overruns to be accommodated within available funding”.
190. First of all, this is not a formal report; it is a summary briefing, a private briefing paper, for the Chair of the Finance Committee. At the time I must

have thought that, otherwise the paper would not have gone. I do not think any of us would have tried to conceal information and the reference to cost overruns etc. was probably for general improvements at the stage.

191. I cannot recall the full detail of further funding. I know we were always concerned about identifying sufficient funding to do a good job. With what I would describe as "urban realm" issues, the monies for which were not contained within the budget or covered by the grant award from Scottish Government, there was a desire to do wider work. I cannot recall what specific concerns on cost overrun there might have been at that stage. As the briefing paper says, it would have been done on a phased basis to limit the exposure to cost overruns.

192. I am referred to an email dated 23 August 2007 by Colin Mackenzie which forwarded Gill Lindsay, the Council Solicitor, and an email from Duncan Fraser [CEC01567522], which noted that Mr Fraser was "clearly very concerned that the contractual risks should be reviewed externally on behalf of the Council, and has his Director's support in that regard". I am also referred to an email dated 23 August 2008 to Donald McGougan [CEC01560815] in which Rebecca Andrew advised that CEC were looking for an analysis of the retained risks from the contract and the potential financial impact, should they materialise and noted, "We don't think we have sufficient internal resource in CEC to get this, and Andrew and Gill are both reluctant to engage external advisors (or even to approach TIE on jointly commissioning them".

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193. I cannot honestly recall these emails. I think, in terms of legal advice, I would have taken a steer from the Council Solicitor and the Director of Corporate Services if it was purely a question of whether the Council Solicitor and her staff could provide the necessary advice.

194. I cannot recall when and why a decision was taken that independent legal advice should not be obtained, but a decision on legal advice would rest with the Council Solicitor and the Director of Corporate Services. It may or

may not have been discussed in the Internal Planning Group. Clearly from the papers some discussion took place within CEC and, with hindsight, you can understand the context of it, but I cannot really remember the details of any discussion or any decisions that were made.

195. The same chain of emails ends with an email dated 27 August 2007 in which Colin Mackenzie suggested that before CEC accepted the conditional duty of care offered by DLA Ms Lindsay should obtain written confirmation from me that all instructions from TIE to DLA were the same as if they had emanated from CEC **[CEC01567522]**. I cannot recall whether I gave such confirmation but I do not think Gill would have proceeded had she felt such confirmation was necessary.
196. I am referred to the Highlight Report to the IPG on 30 August 2007 **[CEC01566861]** (at para 4.1) which noted that the detailed design technical review process would become a significant work stream for CEC (and could involve reviewing potentially as many as 16,000 drawings and 600 reports) and further noted that "It can be anticipated that there will be scrutiny from members of all parties as to the affordability and liability of entering into this contract. The Council currently does not have this information, as it was not party to the development of the Infraco contract or negotiations"
197. This report could have come from a number of people, including Duncan Fraser. I suppose my reaction would be that at the time, it was thought feasible to review these within the available timescale and that it was feasible to actually produce from within the Department the necessary resource to do that. Of the 16,000 drawings not all of which, I presume, may have require to have been reviewed. The report and the drawings can be for a fairly simple or for a fairly complicated area. I assume that at the time we thought that it was feasible to undertake the review.
198. Obviously concerns were there throughout the process but I cannot recall the individual paper or the minute of the IPG which should give the answer. At the time I was literally reading dozens of reports a week for one or other

- of the strands of work for which I was responsible so the details have not stuck in my memory.
199. For CEC to review as many as 16,000 drawings and 600 reports within the available timescale is a pretty extensive task. I think the context of the report suggests it was feasible but it is necessary to mobilise a very large resource to do so. It was all in my charge. In relation to the review of the documents, some of them would have been reviewed by people from planning, some would have been reviewed by people within the transport end of the Tram Co-ordination Team, and others would have been distributed throughout the Department. The minute of the IPG meeting would need to be looked at to see what was discussed and agreed in relation to the procurement of resources to provide a risk assessment and analysis for the Council. On that matter, however, resources were always tight. I think if we had felt that collectively in the IPG that additional resources were necessary then I suppose it would have been done but I honestly cannot bring back my thought processes from 10 years ago.
200. I cannot recall an email dated 31 August 2007 by Rebecca Andrew **[CEC01566895]** which raised the question of CEC procuring consultants "to analyse and quantify the risks in the tram business case, to give some comfort on the work carried out by TIE Ltd and its advisors". From looking at these emails somebody had gone as far as looking at all the details and costs. If they were not appointed I cannot think of any reason why not.
201. Certainly in the discussion between my staff and finance there does not appear to be any disagreement why independent consultants would not be appointed and everybody seemed to be in favour of it. If it was not done I do not know why.
202. My understanding of the matters set out in the minutes of the Legal Affairs Group on 30 August 2007 **[CEC01567587]** is basically what is set out in the minutes. I can remember these meetings taking place but I cannot

remember the dialogue that was going on within them other than that I felt it was essential to actually have the Council's Legal Team directly involved in discussions with the TIE Team at this stage.

203. I note that by email dated 14 September 2007 [CEC01567628] Colin Mackenzie advised that he had been asked by the Council Solicitor to ensure that I and Donald McGougan had the fullest opportunity the following week to meet with Andrew Fitchie of DLA, in relation to the Infracore and Tramco contract terms and risk. I can recall having a number of meetings with Andrew Fitchie. I think one of my problems throughout all this process is that I do not have any personal experience of major contract procedures and, again, I think you could see, with hindsight, an overreliance on those who had, including TIE and their own Legal Team.
204. Obviously the Council Solicitor is not the person I would listen to in regard to major contract procedures. I suspect that she, in turn, was probably struggling a little on this but it comes back to one of the basic reasons for appointing TIE to be able to assemble a professional team at arms-length and the Council capable of dealing with these issues. Hindsight's a wonderful thing but that was underlying the reason and certainly the huge amount of detail coming from people like DLA gave a certain degree of confidence.
205. I think it was probably a qualified confidence in TIE that they were going to need, support and considerable amount of interrogation as the process went along. Again, I will make the point, rightly or wrongly, all the time in the background of this; you had the issue of the project contract falling at this stage and any re-tendering issues taking it beyond our reach. Maybe that was a false approach but it was in the background all the time. (*This refers again to the background of cost inflation and contractor capacity at that time and the costs associated with delay*)
206. If meetings with Andrew Fitchie took place, it was, I suppose, to hear it, as far as possible, explained at a level of detail appropriate for senior officials of the Council who were not themselves lawyers.

207. The minutes of the meeting of the Tram Project Board on 26 September 2007 [CEC01357124] noted Mr Crosse as stating that SDS had produced approximately 58%-60% of the detailed design (para 3.20) and also noted that I had "raised concerns that the programme assumed that SDS would get designs right first time and what the impact on the CEC review would be" (para 3.22). The Highlight Report to the IPG on 27 September 2007 [CEC01561544] [noted: Detailed Design Review Process, "Initial meetings were held on the 7 and 13 September to discuss and agree the review process, which is being split into two separate areas; Planning and Policy related or technical. A trial submission highlighted some serious gaps in the quality of information being brought forward at this stage. CEC have emphasised that this needs to be resolved as a matter of urgency ..." (para 3.3). The Highlight Report noted, in relation to Planning Prior Approvals: "A revised Prior Approvals programme was tabled by TIE on 6 September. This differs to the previously agreed programme which extended until the end June (as outlined in the previous Report) in that a significant proportion of the Prior Approval determination dates have been brought forward to the end December/end January. This reflects the need to have Prior Approvals in place in advance of the letting of the INFRACO contract" (para 7.6).
208. The concern within the minutes of the meeting of the Tram Project Board on 26 September 2007 was the assumption that SDS was getting it right first time. We tried to address it through putting a greater resource into the whole prior approvals process from our end, holding SDS's hand, ensuring that we were turning them round, trying to give the detail that we were looking for them. It seemed to bring a considerable improvement to that. I could not comment whether it worked over the longer term.
209. It was more than one person and it was also a question of putting in people who could turn things round quickly. We had a small team of people dealing with the prior approvals, more people than we should have had, and we were throwing resources at it to keep it on programme.



210. With the statutory approvals you have got to retain certain independence and I do not think I ever regarded that as TIE's responsibility. TIE could have lent a bit harder on SDS to ensure that they got things right first time and I think there was a disappointment again that a supposedly blue chip team on the design side could not get it right first time.
211. We were trying to throw resources and advice to SDS to ensure that they did get it right first time. It should have been, given the amount of advice, information and help we were giving them. I cannot recall the detail of whether bringing forward prior approval determination dates were likely to assist or exacerbate matters.
212. I note that a joint meeting of the TIE Board/Tram Project Board/Legal Affairs Committee took place on 15 October 2007 and that the Boards were advised that the Infraco bids were primarily based on preliminary design **[CEC01357124]** (at p10). I think the assumption was that it was not unusual for major contracts to be priced on the basis of outline designs, with a modicum of detailed stuff, and the size of the provisional sum presumably gave me comfort or gave the Tram Project Board comfort. You always have concerns about a possible increase in costs and it would be extremely foolish not to have. I cannot recall how that particular issue was addressed ie of bids being primarily based on preliminary design.
213. I am referred to an email dated 19 October 2007 from Rebecca Andrew **[CEC01399632]** which noted concerns by the Office of Government Commerce (OGC) team that TIE did not have the team or strategy in place to adequately manage the contract and that it was important that the team who would be managing the contract knew it inside out (which was best done by involving them in the negotiation stage). I also note that Ms Andrew's email included an email of the same date from Duncan Fraser setting out what he regarded as three critical issues, including the MUDFA works were behind programme with a potential impact on Infraco costs, and "The risk of change after financial close is very high as the approval programme up to financial close is essentially only for 1b, hence

the critical design of 1a is only considered post financial close ...". The OGC Review Team were involved to try and flag up issues. I think the important thing about the OGC Review is that it was a continuing process and when they came back they would want to be looking at the issues which they had flagged up as concerns beforehand. I cannot recall the design, and statutory approvals and consents for phase 1b, being necessarily more advanced than phase 1a. Phase 1b was primarily on a disused railway line with very few complications. A lot of the earlier design for Phase 1b would have taken place fairly quickly.

214. I can recall that assurances were sought from TIE as to how they were going to handle the issues around MUDFA. I can only presume that the assurances given were satisfactory. I know that reviews of the design programme and a speeding up of that process was sought. It must have been reflected in the Tram Project Board agendas and papers at the time.
215. I note that on 25 October 2007, the Council's approval was sought for the Final Business Case, version 1, in respect of phase 1a (Edinburgh Airport to Leith Waterfront) [CEC01649235]. A joint report was provided to members by me and Donald McGougan [CEC02083538]. The report noted that the estimated capital cost of phase 1a was £498 million and included a risk contingency of £49 million. Fixed price and contract details would be reported to the Council in December.
216. The principal drafters of the report to Council would have been Duncan Fraser and Rebecca Andrew, with support from others. If you look at the protocol for council reports you will see beneath the signatures is usually the name of the report drafters. You are not going to replicate all the work that has been done by TIE, DLA and their different advice teams. On doing that you have to take on trust the bulk of the information that is provided and it is not provided in one tranche. A lot of it comes from meetings and discussions and the rest of it. Those involved in drafting the report would have had faith in what they were writing.

217. The discussion between the Council Solicitor and DLA, for example, on the terms of the contract, must all have been taking place in the background. People do not just sit down and write a report out of the blue. In relation to whether it is normal for approval to be sought for a Final Business Case after considerable work and expense had already been incurred, I would not like to comment on what is normal for this project and what is normal for other projects. It would be hard to see how you could get to a Final Business Case without doing a lot of work on a project. There were a whole series of outline and draft Business Cases prior to the Final Business Case but, in relation to what was normal, you would be better asking people with more experience in major projects than myself but. I cannot see, however, how it could have been done differently.
218. I am asked to what extent the estimate of the capital cost was considered afresh in the 2007 Final Business Case and to what extent it was simply taken from the 2003 estimate (with an allowance for inflation and a risk contingency). While I cannot recall the basis of the estimate in the Final Business Case, and the extent to which the estimate was taken from the 2003 estimate, I would have expected the estimate to have been had been constructed afresh and with the benefit of the initial contractual discussions.
219. I consider that the report to Council in October 2007 fully and accurately reported on the delays in relation to design, approvals and consents and utility works and the risks arising from these works overlapping with the infrastructure works. I cannot imagine producing a report which I thought did not properly reflect these matters nor can I envisage that either the Council Solicitor or the finance staff would have allowed such a report to go forward. There must have been a genuine belief that the report reflected the current situation at the time.
220. The report is signed on behalf of the Director of Finance by Karen Kelly the Depute Director of Finance, and by me. Any legal input would have come

from the Council Solicitor herself in discussion with, perhaps, the Director of Corporate Services.

221. I am referred to a presentation given to the meeting of Council on 25 October 2007 by Willie Gallagher, Neil Renilson and myself [CEC02083536]. While I have no recollection of the presentation, its purpose would be as part of the process of keeping members informed as far as possible and giving them, in turn, an opportunity to question all the principal protagonists. I do not have any recollection of Mr Gallagher's presentation but, in relation to the Capital costs slide (p14), I would have understood the reference to a "*Firm bid for Infrastructure for Phase 1a – subject to due diligence*" to be exactly what it says, i.e. it provided a firm price. I cannot recall the issue noted in the risk allocation and management slide (p17).
222. Whatever it said on the slides about the allocation of risk, it was the responsibility of the public sector to secure the necessary approvals including the prior approvals, traffic regulation holders and the various third party issues.
223. I am referred to the Highlight Report to the IPG on 15 November 2007 (CEC01398241) which noted, under Detailed Design Review Process, that "Reviews of the individual disciplines of the detailed design continue. The packages have yet to be coordinated by the designers therefore the value of these reviews is limited and all packages will require resubmission when complete and fully coordinated by the designers and TIE. Further delays to the design programme are becoming apparent with all technical reviews programmed to complete after financial close" (para 3.3). We were looking at reviews of the programme. The actions would have been sitting down with TIE to go through and rework the design and see how they were reworking the design programme. Day to day discussions would have been through the staff co-located with TIE. The concerns have been highlighted and also highlighted the fact that there had been an emphasis placed by CEC that the matter needed to be resolved as a matter

of urgency. They would then continue to have further discussions as to how that issue was going to be resolved in terms of addressing resources to complete within the necessary timescale.

224. I imagine the agreement would have gone back to myself and my staff and then would have been progressed. I know that it was essentially a matter for TIE to issue the necessary instructions and work with SDS and BBS to produce the necessary programme and resolve it. The subsequent bit on prior approvals is back to the issue that there was a lot of pressure and a compression of the timescale and that we needed to increase the number of staff working on prior approvals which we did.
225. I cannot recall what my views were concerning an email from Duncan Fraser [CEC01383667] on 20 November 2007. Duncan Fraser sent me emails almost on a daily basis. I think at one level it appears to be a briefing on TIE. The last two bullet points are reasonably understandable. In relation to the first bullet point, I do not understand how that fits with the novation of SDS into the contract.
226. I am referred to the minutes of the meeting of the Legal Affairs Committee on 26 November 2007 (CEC01500853) (which I did not attend) that "DLA would report to the Council independently of AF [Andrew Fitchie] who would be acting in his TIE Contracts Directors role". I cannot recall anything in relation to late 2007 and early 2008 that indicate whether Mr Fitchie was employed by DLA or by TIE. I think his first point of contact with the Council would have been through the Council Solicitor but I honestly cannot recall who he was employed by at any particular point in time. It would depend on the nature of the advice that was being given and the extent to which that advice was being scrutinised and whether it was clearly understood what Mr Fitchie's starting point was. At one level there may be a conflict of interest in there, at another level I suppose that he knew more about it than anybody else. I cannot recall the details of what advice was issued or to whom.

227. The minutes of the meeting of the Tram Project Board on 7 December 2007 **[CEC01526422]**, note that I had “queried the impact of the late design delivery, particularly its knock-on effects on the MUDFA programme, any change in risk profile accepted by the Infraco and the price impact” (para 3.3). I am also referred to the progress report presented to the meeting **[CEC01387400]**, which noted that 66% of detailed design for phase 1a was complete and that it was expected that about 75% would be complete by the date of placement of the contract in January 2008.
228. While I cannot recall the meeting of the Tram Project Board on 7 December 2007, I can recall being fairly aggressive throughout this whole series of meetings. I assume that I was satisfied by Steven Bell's response in paragraph 3.4 of the minutes saying that the programme accommodated the design delivery programme without price impact at the moment. My assumption regarding the impact of the late design delivery is that, on the basis of assurances by TIE, these things were capable of resolution without price impact.
229. I am referred to the Highlight Report to the meeting of the IPG on 11 December **[CEC01398245]** which included a Briefing Note (Appendix 3, at pages 7 and 90) that had originally been sent to myself and Donald McGougan by Alan Coyle on 3 December 2007 (the email is **[CEC01397538]** and the Briefing Note is **[CEC01397539]**). The Briefing Note set out a number of important issues which could impact on the report to Council on 20 December and sought guidance on how these issues should be treated in the report.
230. I think the Briefing Note probably reflects the underlying concern that while it may be achievable to reach a Financial Close, there was a major challenge in managing the steering of the contract, and while there could have been an extension of time, that would have a significant impact on overhead costs. I think, however, that the Briefing Note probably was a fair reflection of the concerns at the time.

231. The discussion of Quantified Risk Allowance in the Briefing Note flags that the information is awaited and states the caveat that a fixed price contract was in place at contract close.
232. In term of utilities, the Director's Briefing Note records that "*The MUDFA works programme has a direct impact on Infraco's ability to start works on street. The MUDFA works have been delayed by design drawing delays ...*" (para 6.3). That reflects a concern and comes back, again, I suppose, to the messages we were getting from TIE at the time that this would close out.
233. The Briefing Note stated under Consents/Approvals/Incomplete Design, "*The fact that the design is incomplete will increase the risk of variation orders, delay to MUDFA and subsequent delay to Infraco and have a knock on effect to the TRO process*" (para 7.10). In relation to progressing prior approvals, the response was and had always been that you can deal with the prior approval process by an appropriate resource allocation.
234. The Briefing Note contains a discussion of PI Cover/Guarantee. I cannot recall the issues around Professional Indemnity cover but it does strike me that it would be difficult to get PI cover for yourself against an organisation that you wholly own.
235. It was also noted that "There is also the issue that Council officials do not understand the contract nor have had any independent review of the contract document" (para 13.4) and that "Experience would tend to suggest that the presumed commonality between TIE and the Council cannot be taken for granted" (para 15.3).
236. The Briefing Note was written by a member of Finance staff so I presume that it would have been the Director of Finance that would have put it forward. I cannot recall the discussion in relation to all these things at the IPG meeting. You would need to look at the minutes of the IPGs to reflect it. They were topics that were being continually raised.

237. I am also referred to the passages of the Highlight Report for that meeting of the IPG which noted: Detailed Design, "Further delays to the design programme are becoming apparent with all technical reviews programmed to complete after financial close. CEC have emphasised that this needs to be resolved as a matter of urgency" (para 4.2), and, under Planning Prior Approvals, that one planning permission and five prior approvals had been granted, four prior approvals were currently under consideration and that 52 batches remained to be submitted for prior approval. It was further noted, "Of the batches received, a number have been put on hold awaiting revised details from the designers. There is concern that prior approvals may have to be revisited if there are substantial changes in design coming from interdisciplinary coordination, technical approvals or value engineering" (para 4.2).

238. I assume that the meeting would have been satisfied that sufficient pressure was being applied on TIE and others to resolve the issue around the design. In respect of the prior approvals, I would probably have taken some comfort from the fact that the majority of the outstanding prior approvals were actually already under informal consultation and therefore any issues had been flagged up. I can recall, around the issue of value engineering, rejecting at an early stage, one or two value engineering proposals because they would not be capable of obtaining planning approval. There was a sift at that stage which should have dealt with issues coming from value engineering.

239. In relation to the concern that prior approvals may require to be revisited if there were substantial changes to design, that is simply a statement of fact. If you change your design for something that needs prior approval then you are going to have to revisit the process. And, as I say, I can recall that issues had been flagged up sufficiently that I had been able to reject some of the proposals for value engineering for structures on the basis that they would not obtain prior approval.



240. The Action Note of the meeting of the IPG on 11 December 2007 **[CEC01391159]** states that dealing with the issues of concern seem to have been put down to Donald McGougan, Gill Lindsay, Tom Aitchison, Jim Inch and Duncan Fraser. I was not at the meeting and I do not know why. I do not recall that I was absent around that time, I certainly was not off sick. The Action Note seems to suggest that the lead for the meeting is the Chief Executive with Duncan representing myself presumably. I would have been happy that the points were being recognised and that there were high level meetings being called to deal with the issues.
241. It would be more than an Action Note for follow-up. If the matters there could not be addressed in the course of the meeting it would be one for follow-up work. I think my thought process would be that this has got to be dealt with. The meeting was flagging up that these are all there on the list of issues which need to be addressed pretty urgently and my assumption is that they were.
242. I am referred to an email dated 14 December 2007 by Duncan Fraser **[CEC01397774]** which referred to a presentation by TIE the previous day and asked certain questions about the Quantified Risk Allowance, including querying the provision made for the likely change in scope given the incomplete/outstanding design, approvals and consents. Mr Fraser stated, "The scope of the works is not clear to CEC and specifically the quality and quantity and status of designs on which BBS have based their price. Also none of the designs are approved (none technically and only 4 out of 61 prior approval packages) hence the scope is likely to change, hence provision should be made for this". I also note Geoff Gilbert's reply: "I have previously explained the interrelationship between emerging detail design, Employer's Requirements and Infracore Proposals works and how price certainty is obtained out of this process and are in the process of delivering such certainty. Therefore, please advise what scope changes you anticipate arising out of the prior approvals and technical approvals. The overall scope of the scheme is surely now fixed, is it not?"

243. I take it to mean that Mr Fraser was concerned, in particular, over the prior approval package. That is what I would take from it. Geoff Gilbert's reply seems to suggest that he has previously discussed that and that he cannot understand the points that Duncan is making. He does not envisage any change coming out from that process. I cannot honestly recall this particular email. It would have been normal that I was copied into the email but I was copied into literally hundreds of emails every day. I suspect I would have looked at it and looked at the response and thought okay. I would have been satisfied through what was being said about ensuring that the scope was fixed. I had hoped that we had been able to insulate (*I probably meant that we now had the process working with good people and free of external influences*) the process sufficiently and that scope changes were not going to arise from it. The prior approvals process was in train to ensure that prior approvals would flow smoothly. Everybody understood the nature of the prior approval process and how the designs would accommodate it. I must have thought that the overall scope of the scheme was fixed.
244. I have been shown minutes of a meeting of the CEC/TIE Affairs Group which took place on Monday 17 December 2007 [CEC01501051]. I was not present at that meeting. Apologies. The minutes show that Willie Gallagher reported that the Infracore contract was now at 97% fixed price with BBS taking on the design risk. Further negotiations were to be undertaken between then and financial close. To be honest I cannot comment on this minute. What seems to be set out is a factual position and I suspect that I was probably assuming that it was the fixed price. There was a constant message coming back about there being a fixed price.
245. I am asked for my understanding of a meeting at Wiesbaden, Germany, between representatives of BBS and TIE. I understood that the purpose of the meeting was part of finalising the contract negotiations with BBS. I cannot recall the details of what was discussed and agreed at Wiesbaden. I would presume that it would be in connection with the outstanding issues which should have been raising concerns over the previous month around

a transfer of risk. I would expect Willie Gallagher in the first instance to have given myself and the rest of the Tram Project Board an update.

246. I am referred to an email dated 18 December 2007 by Duncan Fraser [CEC01397825] attaching a note, Tram Project Board Critical Issues [CEC01397826], in relation to a meeting of the Tram Project Board the following day. The note stated: "1. Negotiations. Firm prices – 97% fixed leaving Picardy Place and Lindsay Road as re-measurable ... 2. Budget ... The Approvals Risk is now allocated to TIE with a £10m provision for Change Control ..."

247. I cannot recall actual matters in relation to the negotiations. This is a Briefing Note for the Tram Project Board and I would expect the minutes of the Tram Project Board to give some guidance on that. My understanding would have been the same as in the Briefing Note from Duncan. I would have taken my guidance from him and from others involved.

248. I do not have any recollection of the meeting of the TPB on 19 December 2007 [CEC01483731]. I am referred to slides that appear to have been presented which stated, "BBS taking detailed design development risk" and "Design development risk transferred to Infracore from this point on" but I have no recollection of what was actually discussed at the meeting.

249. I am also referred to the minutes of the meeting of the TPB on 19 December 2007 (CEC01363703) which noted:

*"AH questioned how the risk of programme delays, specifically due to design delays, had been allowed for in the cost estimate. WG explained that a number of factors provided comfort in this matter:*

- o Normal design risk is passed to BBS through the SDS novation.*
- o Sensitivity testing had been undertaken for a 6-month programme delay which is covered by risk allowances; and*
- o The risk of potential programme delays due to systems integration was passed to BBS through the Tramco novation"*

*"AH requested further details on the design risk being passed to BBS – SB to provide".*

*"AH expressed his concern about potential programme impacts arising from design delays. SB to provide greater detail on how the risk is passed to BBS".*

250. The questions that I am noted as having been involved in were asking were they as a result of what was coming through in my briefing and my own concerns.
251. I do not know what I understood in relation to "*design development risk*" at the time. I presume now it meant the risk of drawings not being available in time. The minutes note that I requested further details of the design risk being passed to BBS. I do not recall anything from the meeting itself, I presume, that it was because I saw it as a critical factor and wanted to be satisfied.
252. I cannot recall any concerns about potential programme impacts arising from design delays. I presume it was because of the impact on cost and programme. I think my concern must have been resolved at the time. I assume that they were resolved sufficiently, not necessarily at the meeting, to move on.
253. I think my understanding at the conclusion of the meeting, as to which party bore the risks and liabilities arising from the delays in relation to design, approvals and consents and utility works was that these risks had been transferred, on the basis of the assurances that were being continually given by the TIE team i.e. that what was necessary to transfer the risk had already taken place. It was always programmed to ensure that there was no difficulty.
254. I have been shown tables on p10 of the Tram Project Board papers for the meeting on 19 December 2007 [CEC01526422]. I must have seen the table at the time but I cannot recall it or at this length of time comment meaningfully on it. It is so far removed from me in *time* that I can only make assumptions that it reflects the firming up of core costs by taking things into the firm price.

255. There is a heading in the tables for risk allowance and that appears to look at the risks which were given in the Final Business Case and reduce those on the basis of an apparent agreement to transfer them into the fixed price or to transfer the risk to the bidder. That is an assumption reading the document at this point in time. I have honestly no recollection of the meetings in which that was presented and explained.
256. On 20 December 2007 Donald McGougan and I presented a joint report to Council [CEC02083448] seeking members' approval on the Final Business Case, version 2 [CEC01395434]. The report to Council was drafted by City of Edinburgh Council officials and cannot be drafted other than in discussion and partnership with individuals within TIE. TIE was consulted when drafting the report, although there may also have been side discussions with Transport Scotland or others. The principal authors, again, were Duncan Fraser and Rebecca Andrew and they would have drafted the report in discussion with Stewart McGarrity of TIE, as being the three principal people involved. There would be several drafts. It would have been quite clear from discussions internally over time that a report had to be ready on that particular date in terms of the programme and they would have been addressing their efforts to close out the issues for the report.
257. The normal process for a report of any significance like that is that it would have been bounced between them and various other colleagues. Once a report started to take shape, drafts would then have been passed around the Council Solicitor, Director of Finance and I for comment and return.
258. The standard protocol, other than on occasions when the Council Solicitor submits a report to the Council Committees etc., is that the report goes forward in the name and under the signature of the Service Director or Directors concerned or the Chief Executive.

259. In terms of whether any steps were taken to confirm the accuracy of information provided by third parties, comfort comes from the individuals involved in the drafting of the report and there would have been long discussions with TIE. Remember also that there was a constant series of Office of Government Commerce Reviews which provided external assessment.
260. In terms of the individuals involved, people built up a working relationship with Stewart McGarrity. These are not relationships with the third party engaged contractor or anything like that, there is a relationship with somebody who is ostensibly working on the same project albeit within the arms-length organisation as opposed to the main organisation. You have to have a certain level of trust within that situation, which evolves over time. You have to continue to challenge at a high level and there are areas and individuals that you might challenge more than others. If there has been a constant to-ing and fro-ing of information around the Final Business Case, then you would expect issues and checks to have been built into that.
261. I am referred to an early draft of the report to Council which noted that a further contingency of £25 million was recommended to cater for changes from the preliminary design to final design (ie email dated 29 November 2007 [CEC01383999] from Stewart McGarrity sending a draft of the report [CEC01384000] with comments by himself and Miriam Thorne) (see paras 3.3 and 4.3 in respect of the further contingency). That draft also included an Appendix on Risks which noted that designs were not complete and that "If the designs are built into the contract at contract close and the decision is made to change them at a later date, this will lead to additional costs and potential delay" (para 5). The Appendix also noted that if designs required to be reworked to obtain planning approval then, again, a variation order would be required at additional cost and delay (para 6). I note that the final report to Council on 20 December 2007 [CEC02083448] did not include a recommended further contingency for design risk or the Appendix on Risks but cannot recall why these were deleted from the version of the report presented to Council.

262. I have also been shown an email dated 14 December 2007 from Gill Lindsay [CEC01397758] responding to an email of the same date by Alan Coyle enclosing [CEC01397750] a draft of the report to Council [CEC01397751]. In her email Ms Lindsay stated “the version of [the] Report I had been working on was much more explicit re risks current and those to be contained. Has all this text been removed and if so why please”. In another email dated 14 December 2007 Ms Lindsay stated “I think we will need to be more explicit that further risk matters require closing prior to financial close, hence reasoning for delegation to officers and they will do this provided it is reasonable” [CEC01397758].
263. I have been asked who would have removed the reference to the recommended further contingency for design risk and the Appendix of Risks. If these passages were removed it was removed somewhere along the editing line but, on the other hand, things that Gill referred to in her earlier email had in fact been taken on board and incorporated so some things seemed to have been put in, some things seemed to have been taken out. Alan Coyle and others would have been involved in it. Colin Mackenzie would have been putting in the legal inputs and Rebecca Andrew and Duncan Fraser would also have been involved.
264. The report to Council on 20 December 2007 [CEC02083448] included the following provisions: the estimate of £498 million for phase 1a (inclusive of a risk allowance) as reported in October 2007 remained valid and the current price estimate was based on a compressed construction programme (para 8.2); “... Some cost allowance has been made for the risk associated with the detailed design work not being completed, at the time of financial close ...” (para 8.1); “*The fundamental approach to the Tram contracts has been to transfer risk to the private sector. This has largely been achieved*” (para 8.10); risks retained by the public sector included agreements with third parties (including delays to utility diversions) and finalisation of technical and prior approvals (para 8.13); and “*The risk contingency does not cover major changes to scope. It should be noted that the current construction programme is compressed to reduce the*

*length of disruption and provide best value. Changes to the programme could involve significant costs, not currently allowed for in the risk contingency" (para 8.16). Authority was sought from members for the award of the Tramco and Infraco contracts by TIE subject to price and terms being consistent with the FBC and subject to the Chief Executive being satisfied that all remaining due diligence was resolved to his satisfaction (paras 1.2 and 10.2).*

265. I am asked about the cost estimates including a provision for the evolution of detailed design but cannot recall the precise allowances that had been made for the risk associated with the detailed design not being completed at the time of financial close.
266. The basis of the statement in paragraph 8.10 of the report (that the transfer of risk to the private sector had been largely achieved) was on the work that had been done and the assurances had been given in the discussions between the Council Solicitor, DLA and others.
267. At the time I must have considered that the report to Council fully and accurately set out the delays that had arisen in relation to design, approvals and consents and utility works and the risks arising from these works overlapping with the infrastructure works.
268. I am also referred to the following provisions of the Final Business Case, version 2, dated 7 December 2007 [CEC01395434], namely: the Infraco bid and contract were variously described as being "fixed priced", "fixed at outturn price levels", a "lump sum" contract and a "single turnkey fixed price" contract (paras 1.68, 1.71, 7.100, 7.111, 7.127b and 10.53); there was a high level of confidence in the estimate of £498m, it being noted that "Approximately 99.9% of the costs included are based on the rates and prices for firm bids received for the main contracts (infrastructure, tram vehicle supply, utility diversions and design), the remainder of the costs are based on known rates and prices for personnel and, in the case of land, from the Valuation Office Agency (District Valuer's) assessments. The



overall level of confidence is reinforced by benchmarking against other tram schemes and the provisions for risk included in the estimate, as explained below" (para 1.66); "The updated estimates comprise base costs and an allowance for risk and uncertainty. A rigorous Quantitative Risk Analysis (QRA) has been applied to identify project risks to derive a risk allowance to deliver a very high level of confidence (statistically at a 90% confidence level, meaning that there is a 90% chance that costs will come in below the risk-adjusted level). The level of risk allowance so calculated and included in the updated estimate represents 15% of the underlying base cost estimates for future Phase 1a costs at Contract Award. This prudent allowance for cost uncertainty reflects the evolution of design and the increasing level of certainty and confidence in the costs of Phase 1a as procurement has progressed through 2006/2007 and fixed price bids for the infrastructure and tram vehicle supply contracts have been received" (para. 1.68); the most significant risks retained by the public sector were noted to be utility diversions, changes to scope or specification and obtaining consents and approvals (para 1.85); "The anticipated novation of the SDS contract to the Infraco will mean that responsibility for the design and all risks arising are transferred to the private sector system integrator (Infraco), without the normal disadvantage of an increased risk premium, that bidders would apply due to uncertainty, if they had to carry out all of the design work post contract award" (para 7.50); "MUDFA works commenced in July 2007 with significant work being progressed on target to date. The programme for these is under continuous scrutiny and although it is recognised that there will most likely be an overlap of MUDFA and Infraco works, this is unlikely to delay Infraco activities" (para 11.14); and "In summary, the public sector is exposed to significant, but diminishing and manageable, risks during the remaining period of scheme development" (para 11.57).

269. I must have considered that the provisions of the Final Business Case gave an accurate account of matters at the time.

270. The capital cost estimates would have been produced by TIE and would have reflected a huge amount of internal work in TIE in terms of looking at contract documents. I imagine they would not have been checked in every detail by Council staff. There would have at the very least been a checking of headings. The staff that were there were all looking at this and I cannot recall at this point just how deeply they went into it.
271. I am asked about my understanding of the extent to which the Infraco contract would be a fixed price or lump sum contract. I cannot say what was in my own mind at the time. I can only say that whatever it was it must have been reflected in the signed reports.
272. I am asked about my understanding at the time of the main risks. The main risks must have been in terms of programme, overrun issues and, again, the assumption must have been that they were diminishing and manageable by TIE in terms of the various assurances and information provided.
273. I cannot say what my understanding was in relation to how the Infraco contractor could provide a fixed price at the time given the delay in completion of detailed design and given that statutory approvals and consents were outstanding. I imagine that a fixed price could be given because, through the exchange of information during negotiations, the Infraco contractor knew exactly what the situation was in relation to the remaining elements of design that would be novated to them.
274. I suppose I was probably less concerned about the TRO milestones because I could understand the steps and the nature of it and, I suppose, because I had the confidence myself that an element of it had evolved through my own Department. Presumably, the belief in CEC of the design risk element was that it would be satisfactorily transferred through novation to the contractor. The team from CEC dealing with that would be the various people from Finance and City Development who were engaged on

the project including, principally, Duncan Fraser, Rebecca Andrew and Colin Mackenzie.

275. I am asked about the passage in the FBC that, instead of using Optimism Bias, Transport Scotland and CEC had adopted a very high confidence figure of 90% (P90) in the estimate of risk allowances to cover for specified risk, unspecified risk and Optimism Bias (para 11.42). It must have been through my own staff. I think we were, quite possibly, taking the view that if Transport Scotland were happy, given their experience, and given the stage that the project was at, and then Optimism Bias, as such, was no longer an issue. I think, as I mentioned before, the issue was more around the level of contingency and risk built in rather than a blanket figure for Optimism Bias. I would have received a briefing on this from Duncan Fraser, I presume. I cannot recall what the collective wisdom was and how it was expressed on that particular matter. This is back to my understanding of Optimism Bias being applicable in the early stages of the project and being overtaken by contingency and risk allowances later on.

276. I am referred to the 2003 STAG Guidance (updated in 2005) **[CEC02084489]**, Risk and Uncertainty, which stated that, *"Ultimately, once a project has been designed and costed in detail, risks have been effectively mitigated, and full allowances have been made for anticipated and unanticipated risks, then there should be no need for further generic optimism bias adjustments. The contingency allowance referred to above should, in effect, cover the 'lower bound' optimism bias adjustments recommended by the Treasury"* (para 12.6.3).

277. In late 2007 phase 1a of the tram project had been *"designed and costed in detail"*. I think I was comfortable that it would have been designed and costed in sufficient detail for the provisions there to be applied. The comfort would come through the Tram Project Board and through briefings. I have mentioned the names earlier about the staff involved in briefings, reliance from the assurances and questioning within the Tram Project Board, on the state of the project and questioning from the Board of TIE.

278. I am asked, when delays in the production of design and in obtaining statutory consents and approvals became evident during 2007, and when delays and difficulties became evident in carrying out the utility diversion works, whether any consideration was given to re-visiting the decision not to make any allowance for optimism bias in the estimated capital cost of the tram project, and/or to increase the risk contingency. My understanding at the time was, as I have said before, that Optimism Bias was a factor that gets applied in a fairly hefty chunk in the earlier stages of the project. I think that the risk contingency was visited and revisited throughout 2007, and it would appear from the various documents, that changes were made at various times, but the approach by TIE seems to have concentrated on reducing or controlling the risk contingency by appearing to transfer risk to the private sector. I would have expected that there would be some evidence from the minutes, to have questioned about the risk and the risk transfer and I must have been satisfied with the answers I was given.
279. I am referred to an email dated 28 December 2007 (**CEC01514482**) in which I raised an issue with Willie Gallagher in relation to the current price of £498m not including tapered poles and advised that "This indicates the sheer scale of the risks around the prior approval process unless we can quickly gain a greater clarity as to these design issues. Can we discuss before the next TPB and agree a timescale/process through TPB".
280. I must have considered that I did obtain greater clarity on the outstanding design and approvals issues but I cannot recall the actual meeting at which this was discussed [**CEC01514482**]. I would have asked Willie Gallagher for a meeting and I presume the meeting or discussion took place. I do not know what the outcome of that was, but we were constantly, on the Council side, trying to keep on top of the prior approvals process through deployment of staff and the identification of issues. I do not even know whether the poles were tapered or not at the end of the day.

## The Infrastructure Contract 2008

281. I am referred to the minutes of the meeting of the Legal Affairs Group on 7 January 2008 (**CEC01475121**) which noted that *“WG [Willie Gallagher] reported that the contract negotiations with BBS are proceeding satisfactorily and following the trip to Germany fixity on price, scope and programme as reported to Council on 20 December 2007”* (p.1) and that *“SDS have completed 70% of detail design. BBS are prepared to accept SDS under novation agreement (quality of design, programme and commercial position) ... Consents and approvals remains an area of risk that BBS are not happy to sign up to”* (p.4). I cannot recall whether I attended the meeting of the Legal Affairs Group on 7 January 2008. I would need to go and look at my diary for 2008 which I suspect is no longer in existence. My understanding, reading the minutes, corresponds with the general impression that SDS were being novated to BBS, who were in full knowledge as the current state of design, and that the issue of the necessary approvals remained with CEC. I cannot recall the main issues that were the subject of negotiations between TIE and BBS at that time.
282. I have no recollection of any Tram Project Board meeting on 9 January 2008 [**CEC01363703**]. There appear to have been further meetings and provision of information to me regarding my constant raising of issues. The rest is just as reflected in the minutes. My understanding must have been that there were problems but they were being resolved to put it at its simplest. I must have been getting sufficient comfort, but not sufficient to stop me from raising the issues because there appear to be further queries throughout. However, there was a constant frustration in some areas. I think my main frustration probably at the time, was still on resolving the issues of prior approvals which I saw as something that could be solved from our side, from constantly keeping on top of the provision of information and rapid turnaround, which seemed to be feasible.

283. I am referred to the minutes of the Legal Affairs Group meeting on 21 January 2008 [CEC01476409], which note, in relation to Consents and Approvals (para 8), that "NS [Nick Smith] asked who would be liable if SDS does not work to the programme – MC [Matthew Crosse] noted that the SDS Novation Agreement will take care of this. At NS's request MC will confirm that the Agreement contains details of who will take the risk on knock on effects of delays". My understanding was, as the minute's state, that there was sufficient in place within the contract and in the novation agreement that would take care of it and that Legal were going to be provided with further information to satisfy them. I must have been satisfied that the risks would transferred through the novation agreement to SDS.
284. I note that on 22 January 2008, an email by Nick Smith [CEC00481318] noted a "significant issue with regard to design approvals and consents" against the background that "the design process is now over 12 months late in delivery". I think part of it was that Nick Smith had not been involved in the project for as long a time as any of the other Council Officers that were involved. That was my recollection, at any rate, so to some extent he was being briefed on past events. I do not recall and would not have expected to have seen this particular exchange but he is expressing a concern about approval delays.
285. On 23 January 2008, there was a joint meeting of the Tram Project Board/TIE Board/TEL Board [CEC01246826]. My understanding must have been that there was a need to establish a baseline for prior and technical approvals, and that we had to get that baseline right in order to measure everybody's progress against it. The consequence of establishing such a baseline would be to be able to keep track of progress. I cannot recall BBS's expectations of the level of design completion prior to novation and their concerns about programme impacts arising from approvals delays.
286. The minutes of the meeting note ( in para.5.14) that I raised a concern about the draft Close report regarding exclusions from the Infracore base price and requesting greater clarity on the definition of "additional works". I

cannot recall whether these concerns were addressed. I think it was fairly obvious what I was asking for and I cannot recall whether clarity was subsequently provided.

287. I am referred to the Highlight Report to the IPG on 24 January 2008 (CEC01390618) listed, in paragraph 3, the "activities and deliverables" that were expected to be achieved by 9 February to allow the formal award of contracts by TIE on or around that date. In relation to pricing (para. 3.7) it was noted that *"The Council requires a detailed analysis of prices, costs and risks allowance ... Otherwise statement on % of costs fixed and % outstanding as provisional sums with programme for moving these to fixed costs"*. In relation to SDS Novation (para.3, 9) it was noted, *"Full written explanation of the SDS novation to be provided by TIE, including risks of failing to deliver design. Full details are required from TIE on status and degree of completion of SDS design work as at 14 January 2008, including prior and technical approvals. If approvals risk is not being transferred to BBS, the Council needs to know the impact and likelihood of the risks and a strategy for managing the risks"*.
288. My understanding is that the Council was looking for greater clarity on the areas noted under "Pricing" in the report. I would have expected that they would have been seeking greater clarity. I would also have expected that my staff would have asked for that before it reached my level. I was concerned and getting frustrated that these things were not coming through. Probably Duncan Fraser prepared that report. We had had a change in Head of Transport the previous year and the one who was acting was not familiar with the project so a lot would have fallen on Duncan's shoulders in that respect and on his team.
289. The issue of SDS novation mentioned in paragraph 3.9 is just what it says ie how was the design being novated and where do the risks fall? In relation to the reference to approvals risk, my understanding, again, is what the report states.

290. The reference to "*TIE to provide written report on previous claim settlement with SDS ...*". was, I imagine, to ensure that there were no outstanding monies due to SDS that were not known about.
291. The report declares that these were to be provided by particular dates. I think it had been an exercise, I suspect, to sweep up all outstanding issues by a given date and to give the IPG the comfort that these were going to be provided by these dates.
292. My understanding in terms of whether any material progress had been made in completing and obtaining the outstanding design, approvals and consents must have been that there was progress. In relation to approvals, for example, you could see them coming through. I think there was probably a bit of concern where they had been put on hold awaiting revised details from the designers. I do not know if that was because the designers had changed their mind or whether that was part of the feedback process.
293. I am referred to Appendix 1 of the Highlight Report to the IPG on 24 January 2008 (**CEC01390618**), which included a draft Report, on Terms of Financial Close ("Close Report") ("draft 21.1.08"). I note that the draft Close Report stated (at page 64) that the following risks were wholly or partly retained by the public sector beyond financial close, namely, the process for granting approvals and consents, the process for granting TRO's, the interface with the implementation of utility diversion works, delays to design approvals for reasons outside the control of the Infraco and stakeholder instructed design changes. I also note that the draft Close Report included a discussion of Infraco price basis and exclusions (at page 66), including the passage that "*Crucially the price includes for normal design development (through to the completion of the consents and approvals process – see below) meaning the evolution of design to construction stage and excluding changes if [of?] design principle shape form and outline specification as per the Employers Requirements*". There was also a discussion of QRA and Risk Allowance. The purpose of Appendix 1 of the Highlight Report must have been to record that the risks



retained related to change of scope of the project and to any unreasonable delays in the necessary statutory approvals.

294. My assumption is that the issue of incomplete design was addressed by transferring responsibility to the Infraco bidder as part of the novation of SDS. That would be coming through from the discussions within the Legal Team around the contract. I cannot recall the name of the person at this time. It would have been coming out of the Legal Issues Group around the contract. The Council Solicitor, herself, was intimately involved in the process.
295. I am asked about my understanding of the passages in the draft Close Report in relation to "*Infraco price basis and exclusions*". I have no recollection of what my understanding was at the time. I assume, however, that my understanding would have been that provided you stuck to the basic shape of the specification then the cost lay with the contractor, subject to certain exclusions which are set out in relation to Picardy Place, London Road, York Place and Bernard Street and which were fairly well quantified.
296. The whole process, with the benefit of hindsight, would be different. With the benefit of hindsight, crucially there would have been much more work done and more questions asked both internally and externally over the risk transfer elements around design.
297. My understanding now would have to be qualified by this being more than ~~eight~~ nine years ago. I have been completely separate from the process, from any professional processes along these lines. It would be impossible for me to revisit it in my current state of knowledge.
298. Again, I cannot recall my understanding concerning the passages in the draft Close Report on "*Responsibility for consents and approvals*" (at pages 66/67) but my understanding now would be that there was a fairly

reasonable transfer of risk between the bodies responsible for the relevant activities.

299. My assumption must have been that there were elements of risk allowance that were within Council control could be managed. When I was there I would have expected any issues to come up on my desk and to manage it through the various discussions. I do not know when the issue started arising. I am not aware of any risk allowance now. I might have been at the time, I have no recollection now.
300. I have no recollection from the discussion in the draft Close Report on "*QRA and Risk Allowance*". I must have been satisfied and whether I was satisfied on the basis of correct information is another matter.
301. I am referred to an email dated 7 February 2008 (CEC01508412) in which Colin Mackenzie advised Susan Clark of a "*serious debate*" ongoing about consents and risk and that a decision may require to be made between balancing the cost of delaying the award of the contract against the cost of the Council bearing the risk of delayed prior approvals. There were constant serious debates about consents and prior approvals. The debate seems to have been, in terms of that email, whether the process should be delayed until the prior approvals and consents were in place. I think that does of itself run counter to the approach which we agreed at the time that provision of the prior approvals was a manageable element to keep the project on time and avoid contractual claims. I think the outcome of the debate was that we stick with the approach and continue with the mitigation measures and deliverables to ensure that the approvals were reached.
302. In terms of mitigation measures, we were making sure that you have the staff resource in place to deal with that and also providing information constantly to ensure that people understood what was required. The parallel is probably like any other form of, let's call it planning application, if you have got an applicant who does their homework with the authority,

knows what is required, and submits an application in accordance with the requirements and on, it goes through in minimum time.

303. While I cannot recall any specific consideration being given to whether the Infraco contract should be delayed until all outstanding design, approvals and consents had been completed and obtained, it would have been discussed. The issue that was constantly lurking in the background was the issue of inflation and retendering. There were also background noises and things being made about, you would have been back in a year's time, with a year's worth of construction inflation and all the rest of it, and not necessarily back with an affordable project. The question of delaying the award of the Infraco contract until all design, approvals and consents had been completed and obtained, was never put to members for a decision because I think the view was probably taken that the issue of risk etc. had been exposed to the elected members the first time round. There was also still sufficient confidence that, by the time of formal contract signature, these issues would have been managed in the way in which members had originally been told which would remove any need to put it back?
304. I note that on 7 February 2008, TIE and BBS entered into the "Rutland Square Agreement" [CEC00205642]. I do not recall the need for and purpose of that agreement but cannot think of any other reason for it other than what is set out under the "*whereas*" part which lists issues around price, timescale and CAF joining the Consortium.
305. I cannot recall the email from Gill Lindsay to Jim Inch dated 11 February 2008 [CEC01406011], which noted that BBS had sought additional sums, which had been negotiated down to an additional £5 million, nor what my understanding was at the time. I probably thought that it was the contractor seeking at this late stage in the game to secure as much as possible in the terms of fixed additional sums. As to what we were getting in return, there was a continued offsetting of risk and that was what I imagine I thought at the time. I cannot recall the figures.

306. I have been made aware that there was a joint meeting of the Tram Project Board and TEL Board on 13 February 2008 [CEC01246825]. The fact that final design packages were now expected in late 2008 must have caused me concern at the time. I do not recall any of this as I have said but I would imagine that my concerns were probably, in part, alleviated by my understanding at the time of risk transfer and the awareness of all parties that this was the position.
307. I note that Donald McGougan is noted in the minutes (para 4.4) as having questioned whether it would have been possible to buy-out the design risk and was advised that throughout the pre- and post- preferred bidder negotiations neither consortium was prepared to accept this risk. The Boards requested a guidance document on the design delivery, risk transfer and potential programme slippage. The minutes also state that while the costs in the budget represented the full programme and scope of works (including a risk allowance), the budget did not contain allowances for stakeholder changes to programme or scope (para 6.1).
308. Mr McGougan was, from his perspective, looking for a particular figure. I think the issue was that he was looking to actually buy out all elements of risk including risk which would have been incurred by the client, for example, asking for a design change or acting unreasonably over the processing of approvals. My view was that you cannot de-risk a contract of this nature by assuming that the contractor will take the risk for what would be construed as unreasonable action. I use the word "*unreasonable*" not in the legal context but just in a lay context. The other elements of risk had been, based on all the information and assurances and legal consideration, sufficiently well dealt with.
309. I assumed that the transfers of design risk and the issues which we talked about in terms of approvals and consents had been sufficiently controlled so that we would not get a change in programme or scope.

310. I cannot recall my understanding of the extent to which the Infracore price included a contingency for design issues nor the design issues any such contingency covered.
311. I am referred to an email dated 19 February 2008 (**CEC01400919**) in which Colin Mackenzie advised Gill Lindsay that "The position regarding novation of the SDS contract to BBS was given next to no clarification last night [i.e. at the meeting of the Legal Affairs Group], with a contradictory explanation from TIE". Mr Mackenzie also noted, "I regret to have to record with you my concern about TIE's lack of transparency and co-operation with Council officers. I do not take this personally, but find it unacceptable that the Council is constantly having to press TIE for relevant information and face an evasive response. This is hardly conducive to a good working relationship".
312. I was not aware of Mr Mackenzie's email but am surprised that his comments were expressed so strongly. It might have been as a result of his discussions with TIE and DLA.
313. I cannot recall having received BBS's Design Due Diligence Summary Report [**DLA00006338**] which raised various concerns about design, including that "*more than 40% of the detailed design information*" had not been issued to BBS.
314. I cannot recall whether detailed design was incomplete, with approximately 40% outstanding. There is always the possibility that the figure was exaggerated. I am not saying that it was or that I know what the true figure was, but there is always the possibility that it is in Bilfinger Berger's interest to exaggerate the figure to help them in any future position.
315. An email dated 22 February 2008 [**CEC01474243**] **was** sent from Graeme Bissett to me and others attaching a paper [**CEC01474244**] on SDS Delivery and Consent Risk Management (draft v2). My understanding must have been to agree with what was set out in the report. I must have

assumed at this point that agreement had been reached, or was near being reached, with the exception of the issues which are specifically mentioned in the report. The report seems to reflect the various things that were being put in place in terms of process improvements, co-location, contract management, resolution, closing out agreements and there was considerable emphasis on a lot of those and particularly in closing out the third party agreements. I think, at that point, I would probably have agreed with Graeme Bissett's conclusion that there was sufficient confidence amongst the managers involved that the management process could be executed rigorously and manage those risks.

316. I note that a meeting took place on 28 February 2008 between me, Donald McGougan, Gill Lindsay and Alan Coyle of CEC and individuals from TIE (as referred to in an email of that date by Graeme Bissett of TIE, **[CEC01546728]** but cannot recall what was discussed. Meetings were taking place on almost a daily basis. I always found meetings with Graeme Bissett to be relatively refreshing because he was very good at putting the issues over in an understandable and non-obfuscated way.

317. I cannot recall the matters listed by Mr Bissett in his email in the four bullet points under "*budget*", including, in the last bullet point, the statement that "*overall we believe that the existing £498m budget remains within reach if it is accepted that the balance between calculated cost and risk contingency will change and that some areas will be controlled post-Close rather than negotiated into the ground now*". I assume, he is presenting it in the email to which I was not party to. He has presented it in a certain way, but I have no recollection of the meeting or whether or not these things were discussed, so I cannot say if I have any understanding of them because I do not recall them being presented in that way. I can comment now, but I think that is different to an actual understanding at the time. I would comment that BBS were tabling cost increases as part of the negotiations to close. Our understanding was probably along the lines of we would expect to buy off some of the risk by paying more money. In respect of areas which were not capable of fixity, we would know where they were

and had a good view of how to risk manage the subsequent process. I think I have touched on those, in terms of reviewing the risk contingency on a rolling basis so the negotiating teams have headroom.

318. I would have expected reviewing the risk contingency to be a continual process, as he says it is, and he is actually giving encouraging feedback. If that information was presented in that way the previous evening or whenever the meeting took place, I would have come away with a degree of comfort.
319. I am referred to an email dated 28 February 2008 from Colin Mackenzie to Gill Lindsay (**CEC01400987**) setting out Mr Mackenzie's view that there had been a number of material changes to what had been reported to Council on 20 December 2007. He noted, "*My concerns are around the robustness of risk and contingency as although I accept there are movements from risk to price and closing of some risks, I believe that the residual risk re SDS may be very significant and I understand we still have no figures to assess this*".
320. While I never saw this exchange of emails between Colin Mackenzie and Gill Lindsay, I was aware that discussions were going on. I was relying on the Legal Team to be able to close these out in sufficient time. I understand Colin's point and I think it goes back to whether there was a need to change the recommendation to Council. If you felt that things had changed Which, in this case, would have been an inability to proceed on the basis of the approvals that had been given before; you would have had to go back to the Council with another report. The only way you can formally report back to elected members is by another report to the Council given the Council had considered the previous report and come to a decision... There were certainly verbal briefings being given. I am not aware of but there may well have been other email or notes given to the Chair of the Finance Committee and others. I would expect verbal briefings to be given to the Chair of the Finance Committee by Finance staff. Committee Chairs would be getting briefings from senior officials who normally would keep in contact

with each other. The Finance Director would be aware of any briefings that would be given to the Chair of the Finance Committee. There would be something seriously wrong if he did not know about them.

321. I note that a Highlight Report was provided to the meeting of the IPG on 29 February 2008, which noted that the close out of critical issues had slipped **[CEC01246993]**. A number of outstanding issues were listed. I note that CEC required the terms of the SDS novation agreement, which was currently being negotiated with BBS/SDS. Once that had been received it would then go to CEC's Legal Department for consideration.

322. Also outstanding was a "*Letter required from DLA confirming CEC have best possible deal, warning of any caveats and including updated risk matrices*" (1.5). That again I would have expected, if coming from DLA, to be formally processed through CEC Legal.

323. I cannot recall the reference to "*TIE to provide details of exclusions from the BBS contract including financial values*" (1.7). I can only assume that it meant things like works, for example, which would be carried out by Network Rail and by their own contractor.

324. In relation to "*Residual risk relating to delays in Prior & Technical Approvals to be quantified*" (5.4), I assume that this is just as it says, namely, that a statement was required from TIE in terms of that particular area and again it comes back to what we needed to do to manage them out.

325. There is also a reference to "*Draft Close Report to be updated to include: analysis of prices, costs and risks; exclusions from BBS contract; statement on fixed/outstanding costs; details of design changes since BBS priced their bid; cost per week of not signing contract on time*" (7). This is flagging up points which to be incorporated in the Close Report.



326. In relation to Planning Prior Approvals (para 6.1), this was an area of concern that had been discussed. The reaction was that these were manageable provided that the Council put the resources in place it was moving from a process which had been expected to require a particular resource over a period of time to one that required a much greater resource in a more concentrated period. It should have been capable of being adapted. For example service might have suffered in other areas of planning but it would have been given priority over everything else. At that point in time, that was recognised and action seemed to be taking place. If it was not, then it was only because the resource was not applied or managed. My successor presumably did that if it applied in that time period but I can recall spending a lot of time myself in discussion with the staff involved in ensuring that we did have the resource in place and hauling people out of other jobs.
327. I am referred to an email dated 4 March 2008 from Colin Mackenzie (CEC01398928) which stated that, *"On the Prior Approvals, it was noted that the quality of submissions is still causing concern to CEC"*. It was further noted that myself, Donald McGougan and Gill Lindsay were to have a key discussion about the terms of any Council report, including the *"materiality"* question relating to changes from the 20 December 2007 report on FBCv2 price and risk.
328. The email from Colin Mackenzie was part of the process whereby management was trying to improve the quality of the submissions. This had been an issue for months and the problem was not going away. I think we must have been hopeful at the time and I think it was referred to in a couple of questions or a couple of issues ago, in terms of discussions with Graeme Bissett that improvements did appear to be developing.
329. It was a frustration that you had to spend an inordinate amount of time addressing a problem which should have been capable of being managed but you were still reasonably confident that the problem could be managed.

330. I think it was a management issue within SDS and TIE. They were not necessarily dealing with the particular issue. This is one of the few things I can recall from all this process of constantly raising this issue in Tram Project Boards and having discussions and having to put more people, and good people, onto the process.
331. I think the “*key discussion*” referred to by Mr Mackenzie would be to get all the principal protagonists concerning the terms of the Council report to meet to discuss this. I do not recall a meeting in that regard but I cannot imagine that the meeting did not take place in one form or another.
332. I have no recollection what was discussed and agreed other than the obvious which would have been the content of the subsequent Council report. Life seemed to be an endless series of meetings. At one level, it was ridiculous, I was trying to prepare for retirement but at the same time, I was starting meetings at 7.30 in the morning and going on until 7.30/8.00 o'clock at night to try and get things clear.
333. I am referred to an email dated 6 March 2008 from Gill Lindsay to Jim Inch (CEC01407509) which noted that SDS novation was agreed in principle, the sum of £498m was at present £507m, base cost had increased and risk sums had decreased from £49m to £31m (of which £3m was defined as SDS risk and a further £10m for delay in general). Ms Lindsay noted that I was supportive of this although I wished to be advised of the quantification of the SDS risk now being transferred to the public sector and not the private sector. I cannot recall this email from Gill Lindsay to Jim Inch. On 6 March 2008 [CEC01407509]. I have no recollection of the quantification of the SDS risk being transferred to the public sector or the sums in the risk contingency of £3m for SDS risk and £10m for general delay.
334. I am referred to an email dated 9 March 2008 from Gill Lindsay to Graeme Bissett, TIE, [DLA00006379] which referred to the need to obtain a letter from DLA on certain matters including the agreed position in relation to the SDS risk transfer. I have no recollection of this but it was obviously felt that

things were getting better and that we were moving towards a close. My assumption in term of Graeme Bissett's update is that the general tone of correspondence and feeling at the time was that things were rapidly moving to a close. I cannot recall what the agreements contained. It must have been something that was reported through one or other of the forums but I cannot recall any of the details.

335. I am referred to an email dated 10 March 2008 from Graeme Bissett which was sent to me and others, [CEC01393820] attaching drafts of the Close Report (v7 10.03.08) [CEC01393820], DLA Risk Matrix [CEC01393821], DLA letter to CEC [CEC01393822] and DLA Report on Infraco Contract Suite [CEC01393823]. I understand that this draft of the Close Report contained the same provisions as the previous draft in relation to "Risk assessment of in-process and provisional arrangements" and "Infraco price basis and exclusions" but that there were changes to the section on "Responsibility for consents and approvals" (pp25/26) and "QRA and Risk Allowance" (p28). I note that the risk allowance of £32 million included £3.3 million in respect of post Financial Close consents and approvals risks and £6.6 million *"to provide for the cost of minor Infraco/Tramco programme slippage of up to 3 months"*.
336. I do not recall what my understanding of these documents was at the time. I can only view the documents now afresh.
337. I am asked whether I had any concerns in relation to the suggestion that following novation of the SDS contract to Infraco, TIE/CEC bore the risk of the late production of designs and approval applications by SDS; that TIE/CEC had little or no control over the production of outstanding designs and approvals and that the Infraco Consortium (of which SDS was part) stood to financial gain from any delay to the construction programme caused by the late production of designs and applications. I cannot, however, recall any discussion about these matters around that time.

338. I have been shown emails from Colin Mackenzie dated 10 March 2008 [CEC01399012] and [CEC01399016] to Alan Coyle and others in which he advised that he could not support a letter from the Chief Executive of CEC that changes from the Final Business Case were within tolerable limits and that he was of the view that the Chief Executive should report to Council again on the various material changes. Neither of the emails were sent to me. I must have been aware that there were still concerns about the issues, I cannot recall being aware that they had been put in that form. By way of observation, I cannot imagine that the Chief Executive would have produced a letter without Colin and the Council Solicitor being satisfied. These things, as always, are a corporate effort but the charge was being led at this stage because it was primarily around documentation etc. by the Council Solicitor. Having not seen the crucial email there at the time I would not have had a view on it.
339. I cannot recall whether I attended the meeting on 11 March 2008 referred to in Colin Mackenzie's email to Graeme Bissett [CEC01393838]. My views on this matter are that the sense of the email was that things were moving in the right direction but there is still a lot to do which is listed in the email. I would have had confidence that Colin Mackenzie would iron them out and not make a positive recommendation without them being ironed out. I suppose I was confident working with Graeme Bissett, perhaps more than anybody else in TIE at that time. It is an observation that he would have presented information in an understandable fashion for the people that he was dealing with.
340. I am referred to an email dated 11 March 2008 [CEC01490289] from Alan Coyle advising TIE that in order for CEC to approve the Intention to Award (ITA), CEC would require a letter from Willie Gallagher on certain matters, including that "*the price is now fixed (excluding know (sic) estimated costs)*". I cannot recall what my understanding was at the time. That is different from looking at the correspondence now and thinking what I might have understood then. If the email crossed my desk now I would have

assumed that it was part of a process in which issues were being closed out in a series of intense meetings.

341. I would have had no understanding concerning the email dated 11 March 2008 [**CEC01407769**] from Alan Coyle because I was not copied into the email. Reading it now my understanding, again, would be, as I have said, that this is an update on a process to reach close or to reach a position to recommend award of the contract. However, I cannot answer factually the question that was put to me asking what my understanding of the email was because I was not copied into that email which I note seems to have been sent to Donald McGougan at home.
342. I am referred to an email dated 11 March 2007 [**CEC01544518**] in which Duncan Fraser advised TIE that CEC required a statement confirming the elements of the SDS designs that are being re-designed by BBS, if any, the working assumption to date having been that all of the SDS designs were to be adopted by BBS. I note that Graeme Bissett replied that “the information you want is embedded in the Infracore proposal ... As I think we discussed today, the liability would sit with BBS/SDS in relation to any redesign”. Although I was copied into that email, I cannot recall what I understood or assumed but, I suppose, in the context of the documents that were flying around at the time, I would have taken Graeme Bissett’s answer at face value.
343. I am referred to a progress report provided to the meeting of the Tram Project Board on 12 March 2008 (**CEC01246825**) which noted that “SDS submissions to CEC for their approvals are now timed such that, in some cases, construction is programmed to commence before approval has been completed” (p12) and “Design. The delivery of design to meet the construction schedules for various structures is causing concern and detailed reviews and discussions are underway with SDS, CEC and BBS to provide solutions” (p19).

344. I cannot recall the progress report provided to the meeting of the Tram Project Board on 12 March 2008. I would imagine I would have taken part in any discussion. I am not a contract expert but it is a fairly common sense issue to have flagged up. The question of the construction timing was an issue for TIE to resolve. Looking back at the notes, it is an issue for TIE to resolve in signing off the self-assured design package. I do not know how that one bottomed out. I do not have any recollection of that particular issue.
345. I have been shown a letter dated 12 March 2008 by DLA advising CEC on the draft contract suite **[CEC01347797]**. I am advised that Graeme Bissett of TIE appears to have had an input into the drafting of that letter (and I am referred to the following documents in that regard, namely, **[CEC01551064]**, **[CEC01551066]**, **[CEC01541242]**, **[CEC01541243]** **[CEC01474537]** and **[CEC01474539]**). I cannot recall the letters between DLA and CEC. These would mainly have gone through the Council Solicitor and I would not have expected to have seen the totality of them or the background information. I would have been aware, obviously, that individuals from TIE would have been providing information for DLA. I would not have been aware that individuals from TIE were drafting sections for DLA.
346. I am told that the letter dated 12 March 2008 from DLA to CEC noted above **[CEC01347797]**, advised that "an agreed form of draft Novation Agreement has been negotiated to close today. The terms of the Novation transfer responsibility for design, as required by the procurement strategy, to BBS (subject to the above)" (para 4). I am also referred to a draft letter emailed the previous day by Graeme Bissett to Andrew Fitchie which stated that "an advanced draft Novation Agreement is in play for negotiation to close. The terms of the Novation ... result in retained SDS performance risk for TIE" (para 3.4) **[CEC01541242]** and **[CEC01541243]**. I cannot recall what my understanding was concerning these letters. I would not like to comment on them today because that would be a comment without any of

the surrounding information. The passages appear to represent completely different situations but I am not aware of why or how that changed.

347. I am referred to a letter dated 12 March 2008 from Willie Gallagher to Tom Aitchison confirming TIE's view that it was now appropriate to issue the Intention to Award letters [**CEC01399076**]. I note that Mr Gallagher's letter also noted that the Tram Project Board had met earlier that day and had concluded that the final negotiated Infraco terms were consistent with the terms of the Final Business Case approved in December 2007. I cannot recall what my views were concerning this letter. I imagine that I would have been aware of these matters but I cannot honestly recall either the letter or the background information.
348. I am referred to the minutes of a joint meeting of the Tram Project Board and TIE Board on 13 March 2008 [**CEC00114831**] which note Willie Gallagher as having explained that "the position with BBS was settled in terms of price, programme and scope for Employer's Requirements, however two key items were awaiting resolution: a) Network Rail issue on the cap on economic losses; and b) SDS novation" (para 3.2). The minutes also note the following matters, namely: there had been an increase of the Infraco price from £498m to £508m; Mr Gallagher explained that the buy-out of the risk of SDS non-performance was considered good value for money; key items in the risk allowance included significant sums for programme delays, unforeseen delivery issues, design and consents issues and MUDFA related issues; 95% of the combined Infraco/Tramco price was firm and the remainder had been reviewed by both TIE and BBS for adequacy; and the boards expressed the desire to stress the achievements of the proposed deal in all communications, including the fact of fixed pricing.
349. I cannot recall the joint meeting of the Tram Project Board and TIE Board took place on 13 March 2008. While I cannot remember the tenor of the discussion, the questions asked and the assurances sought, I cannot imagine that it would simply have been rubberstamped from the people

there. I cannot say what my understanding was concerning neither the meeting nor the papers. What would have driven my understanding at the meeting was a check against all the issues that had been raised before by me, Donald McGougan and others on our side of the table. What I cannot recall is how they were dealt with. The people, who were sitting at that meeting, leaving aside myself for the moment, the Councillors, Director of Finance and others, would have been consistently homing in on what they were being told in terms of price fixity. I must have considered that it was fixed, bar the caveats around Council non-performance in dealing with the approvals and consents. The Boards were very keen to ensure that there was fixed pricing.

350. I am referred to a Note by myself, Mr McGougan and Ms Lindsay advising the Chief Executive that we considered it appropriate to accept TIE's recommendation to authorise and permit them to immediately lodge the Notice of Intention to Award [CEC01386276]. I cannot recall what was discussed with Tom Aitchison around this time but I imagine we would have given him a briefing on what had occurred at the joint meeting of the TPB and the TIE Board. The Council Solicitor would be the person that would be able to provide more context behind the matters in the Note.
351. I am referred to three emails from Colin Mackenzie on 13 March 2008 setting out certain concerns ( [CEC01399075] , [CEC01401032] and [CEC01401628]). I was not party to these emails, which were internal to the Legal Team. I can see that the emails are fairly strongly worded and I am not aware of the fact of why they were either disregarded or overtaken by events. It is disturbing for me to see these emails now.
352. I note that a full meeting of the Council took place on 13 March 2008. I am told that from the agenda (CEC02083387) and minutes (CEC02083388) members do not appear to have been given any update on the tram project. If members were not given an update on the tram project at that meeting, I suspect it was because there still was not a fixed position and the Chief Executive did not want to brief on a changing situation.



353. I am referred to, but cannot recall, an email dated 13 March 2008 **[CEC01474537]** from Graeme Bissett advising Gill Lindsay that only a few important matters remained to be concluded, including Schedule 4, the pricing schedule of the Infraco contract. I suppose I may have been aware that Schedule 4 was the pricing schedule but I honestly cannot recall what the various schedules were and how much of the Infraco contract documentation I was actually called upon to see and agree.
354. I cannot recall any discussions concerning pressure to issue the notification to award the Infraco contract (and to enter the contract) due to the funding position from Transport Scotland although, at that stage of the financial year, I imagine the loss of £20m of unused grant would have made a very significant difference in the finance of the project (I am also referred to the discussion of that matter in documents **CEC01541278** and **CEC01430090**).
355. I am asked about my retirement from CEC. I was entitled to retire any time from June 2007, my 60th birthday. I left officially on 1 April 2008 and the difference between the two dates was a feeling *at the first date* that the tram project would be in a better position to hand over at the latter date rather than the first. I gave my Chief Executive due notice as to when I was leaving the in summer 2007 and *submitted the requisite 6 months' notice*.
356. I would have taken my successor as Director of City Development, Dave Anderson, to the relevant files and shown him. He actually was in a handover position for ~~two~~ three weeks prior to my departure and had taken over the reins by the end of March.
357. I am asked whether I have any views on why the tram project (for a shorter section of line) ended up costing so much more than the estimate (of £498m) contained in the December 2007 Final Business Case but as I have had no contact with the Council or TIE since 1 April 2008, it would be wrong to express any view.

358. I have been asked, with the benefit of hindsight, whether I consider that the risks arising from the tram project were (i) adequately recognised and quantified and (ii) adequately reported to the Council members. My reply is, obviously not *in hindsight*.

## TIE

359. I am asked whether I had any concerns, at any stage about TIE. I think that, along the line, there were concerns about the performance of TIE on various occasions and particularly in the earlier part of its existence there were concerns about some of its senior employees who subsequently left.

360. In terms of remembering particular names, the only one whose name I recall which gives an indication of how it stuck in my memory, was Ian Kendall. He was extremely difficult to deal with, could not understand the environment that the public sector was obliged by statute to work in and appeared to be a disruptive factor amongst others in the organisation.

361. I am asked by what means the Council's senior officers received information and updates from TIE. I not recall there being regular formal meetings or any formal structure, other than ~~that was the purpose of the~~ Tram Project Board. The TPB seemed to provide pretty full information on a formal and recordable basis and crucially provided an opportunity to ask questions. In a project of this nature there were huge amounts of secondary information, flowing through staff, and through conversations. I would not have accused TIE of wilfully misrepresenting information but it sometimes did require a bit of questioning to get the information out of them.

362. It was common with all of the Council's arms-length companies that there were huge tensions between the Executive of the companies and the Council and a reluctance to accept that the Council was the shareholder. The shareholder was a democratic organisation that required certain information. The tensions were always there with all the Council companies, but you reached a working agreement *with most of them*.

363. I cannot recall to what extent information and reports produced by TIE were checked or validated by the Council or by independent external advisors on behalf of the Council. We would not really have done so given that TIE was wholly owned and was meant to be working in the Council's best interests. It certainly would not have been appropriate or cost-effective to have a parallel organisation sitting there and checking it. I cannot recall whether there were individual bits of comfort sought on individual bits of work but certainly there was no intended systematic use of an external advisor to check on a body which had been set up by those whom it was advising. In the later stages there was a reliance on the OGC reviews.

364. In relation to the various transport initiatives that TIE were initially responsible for, there were dedicated staff on individual projects. TIE's original set up was to develop the "New Transport Initiative", which was a basket of projects for the City. Transport Scotland was sufficiently impressed by TIE to ask them to get Transport Scotland and Clackmannan together to take on board the project management of the Stirling/Alloa/Kincardine Railway. Things like the one ticket scheme was pretty small scale, maybe one member of staff. Ingliston Park and Ride was quite useful because that in itself was linked with tram and physically contiguous. The cross Forth Passenger Ferry, I think would have been more of a watching brief on somebody else's proposals rather than developing them themselves. I do actually recall discussion that Transport Scotland, or the relevant Minister, were, at one time, interested in the concept of TIE managing projects across Scotland. *I can recall discouraging this approach on the grounds of finite delivery capacity.*

365. I am asked whether any consideration was given by the Council in 2007 to winding up TIE and delivering the project itself, with the assistance of an external consultant (e.g. a firm of engineers) as project managers. I think the Council would probably have been reluctant to do that because of the size of the task that would have then reverted back to mainstream Council departments at a time when the Council was rapidly losing what expertise it had. It would have required a major funding shift by the Council and a

major recruitment drive. *There would also have been the costs and project delays (which at that time would have brought cost inflation) of shutting down TIE and losing its project knowledge.* TIE was seen as a better way of doing it. I think that is the only way it can be described, keeping the major project management issues and pressures in a separate arms-length organisation that could better respond to them. Also, as a factor, the simple cost of winding up TIE.

366. I am asked whether any consideration was given to the fact that instructing external consultants as project managers may give the Council additional protection (because external consultants would have professional indemnity insurance). The fact that instructing external consultants as project managers may have given the Council additional protection may have been at the back of peoples' minds but nobody envisaged that we would get to the position where TIE was going to cost the Council money. Given the degree of control and liaison through the Tram Project Board etc, it was not a healthy state of mind to employ consultants in the knowledge that you are insulating yourself against things going wrong. Also, Transport Scotland's view was that *it still wanted an arms-length delivery organisation and grant moneys would have had to be re-negotiated* I think at that stage it probably represented still the only realistic option.

367. I am asked about a draft paper on governance produced in July 2007 by CEC Legal (the paper is **CEC01567396** and the accompanying email chain is **CEC01567395**).

368. I agree with the statement in the draft paper that "the Tram Project Board is not a legal entity, and there must be some doubt as to whether the Council can competently delegate its functions to said Board". However, I believe that the Tram Project Board had full delegated authority from CEC because it would have given it a whole range of delegated authority for things like initiation of statutory processes and contract acceptances which *lay within the delegated powers of the Council officers attending it.* I saw the Tram Project Board as being just that, it was a

369. Board to expedite the project by bringing together the necessary decisions and approvals which lay within the powers of those attending, not having the powers in its own right.
370. I think the author of the draft governance paper was not really aware of how the Tram Project Board was actually operating. I do not think it was trying to exercise any delegated powers. I am not aware of any claim in that regard.
371. I am asked whether I was aware of any concerns in relation to TIE's project management of the Stirling-Alloa-Kincardine ("SAK") Railway but am not aware of any such concerns. I can only suggest that, if there had been the concerns, I would have expected to have heard about them from Transport Scotland. I can recall the issues around Stirling/Alloa/Kincardine but I am not aware that there were project management issues as such as *rather* than Network Rail issues.
372. I am asked about TIE's risk register and CEC's risk register. I think the CEC's own risk register was produced by instruction. This is one of the things that they should do as they are useful. At the time, you would expect risk registers to be hierarchical and, perhaps, to have hundreds of risks. If you are actually seeking to make management decisions you would want to have them graded and use a traffic light system – red/green/amber – you do not really want to see the risks which are green, you want to concentrate first on the red ones and secondly on the green/amber ones and to that extent they are not just useful, they are essential. CEC's risk register would probably have been overseen by Duncan Fraser in discussion with others.
373. I cannot recall my views concerning the quality of the information recorded in the risk registers. I was probably constantly challenging them because I like the way it presents information. I suppose to a considerable extent, I must have relied upon them but not exclusively.

374. I am asked about the treatment of Council staff working on the tram project and have been referred to a Discussion Paper, "*CEC Resources and Funding*", [CEC01053743] in that regard. I note that the paper states (page 2) that "*Normal practice for CEC staff working on any capital project would result in their time being recharged to the project, an exception has been made in relation to tram*". In relation to Council staff who had left the Council's employment and were employed by TIE, *because they had local knowledge, this caused quite a few tensions. They were employed by TIE at considerably elevated salaries compared with what they had been earning before. A limited number of CEC staff were seconded to TIE. The core CEC staff working on the tram project, however, remained directly employed by CEC and were clearly responsible to CEC. Staff seconded from CEC to TIE might have been given a modest upgrade in their salary to reflect that we were expecting them to work pretty intensively. Council staff were either continuing to work on their own project or where it was felt that they had additional responsibilities they may have been given a temporary additional allowance.*
375. I would imagine the costs of Council staff that were employed by CEC and seconded to TIE would be agreed between TIE and CEC and were charged in the general Council budget. I would imagine that ~~it would~~ their salaries would be capital charged to the project through TIE.
376. It would have been reported to Council at some point that these staff were being charged to the tram project because they would have been covered in the main Council approved budget. The Council would have been aware of where the different charges were being made.
377. I do not know how costs associated with CEC staff that were directly employed by the Council but were not getting billed to TIE were recorded. However, it would have appeared in the Council budget as a cost to the Council of the tram project, except it was coming from the Council's revenue budget rather than being charged *against the capital for the project*. If you go back far enough, it was the way that it was always done.

The charging of staff against capital projects has only come about because of pressure on revenue budgets. I am still of the view that it was a healthier position. If you are not getting a direct capital result on that person's activities *eg at the time of construction* then you do not charge them on the capital budget. There was agreement reached, eventually, in relation to the recharging of CEC staff working on the tram project. It was not just my own staff involved, it was Legal and Finance staff as well. If you look at the draft paper for the TPB on 9 January 2008, "CEC Tram Staff Resources Report", it discusses the sums involved (**CEC01398007**)).

378. With reference to my views in general concerning the use of wholly owned companies by local authorities, I think in the particular circumstances in Edinburgh at the time it was a beneficial arrangement, particularly for the property companies and their ability to do their own property borrowings and to react to market forces. *It did give* rise to constant difficulties. In terms of the shareholder control and also difficulties in terms of the Boards not necessarily always having the capabilities that one would have liked in discharging their responsibilities.
379. In many respects, the whole working relationship in the tram project was considerably better because of the existence of things like the Tram Project Board and others where there was a constant dialogue. At the same time, as all this was going on, I was the Council nominated Director together with elected members of a regeneration company for Craigmiller. I used to come out of the Board meetings after what seemed to be like three hours of conflict. Lothian Buses was a nightmare and had kept the shareholder completely at arms-length.in terms of agreeing operating agreements etc.
380. I am referred to a document prepared in late 2007/early 2008 by Nick Smith [**CEC00478443**] in relation to the drafting of a new Operating Agreement between CEC and TIE, which noted (page 3), "As a general comment, it is fair to say that the last few weeks have seen a dramatic and systematic weakening of the Council's control and comfort in terms of this agreement.

The Council report in August noted that the Operating Agreement with TIE would be 'robust'. With the recent watering down of the Council's rights and apparent lack of insurance availability, the agreement is certainly not 'robust' given that it provides no effective remedies. This may have to be accepted by the Council as being the position, but the members should perhaps be made fully aware of this risk". The document further noted that "[AH] noted the above general comments but was of the view that TIE was established to run trams and accordingly was not in a significantly different situation from a Council department. Therefore the level of oversight and control had to be viewed against that background". Whatever I said to Mr Smith seems to be only in terms of general comments and not on the specific clauses and I cannot recall if I said that. If you took at that at face value, it would appear to read that I do not think it is necessary to have an Operating Agreement at all. That was certainly not my view for TIE or any other Council company.

#### **Appointment of Chairman and Chief Executive of TIE**

381. I cannot recall any consultation concerning a report to Council on 23 February 2006 by Tom Aitchison on proposals for filling the post of Chairman of TIE following the resignation of Ewen Brown [CEC02083493]. He may have explained his reasons but I do not honestly recall but in
382. general I was not aware of all the discussions that were going on between the Chief Executive of CEC and the Chairman and Chief Executive of TIE and TEL in particular. I cannot remember what my views were at the time.
383. I am not aware *and was not aware* of a letter dated 28 February 2006 from John Richards, on behalf of the independent directors of TIE, to Tom Aitchison in relation to the forthcoming appointment of the new Chair of TIE which noted that "demonstrable experience in large scale infrastructure or construction projects businesses should be an important qualification" [USB00000376].



384. I cannot remember at any time seeing any record of Mr Gallagher's qualifications and experience. I do not recall being involved in that process. I am quite happy to say that I definitely never saw that letter. The report to the Council on 1 June 2006 would give the composition of the Recruitment Committee and the answer to whether this was a competitive appointment.
385. I did not have any discussions or involvement in the appointment of Mr Gallagher as Chief Executive of TIE.
386. If I had any views at the time they would have been based on my views on the need for a separation of the roles and the Cadbury report. . The Cadbury Committee on good governance *which* says it was a bad idea to have the Chairman and Chief Executive roles combined.

### **Bonus Payments**

387. I am referred to a report to Council on 26 June 2003 (CEC02083550) which noted, when considering TIE's draft Business Plan that a performance related bonus scheme had been introduced for TIE staff. TIE introduced a bonus scheme for their staff because that at the time it appeared to be the norm within the private sector in the construction industry and it was felt to be the sort of thing that was necessary to recruit and retain experienced staff, which was a big problem that decade.
388. The bonus scheme did not apply to any Council staff who were involved in the process. It may well have developed into people seconded to TIE from other organisations but not seconded from the Council. I have no knowledge how the bonus scheme operated. I am asked what was the formal means by which it was intended that the Council would exercise supervision and control over the TIE bonus scheme (and am referred, in that regard, to the Operating Agreement between CEC and TIE dated 16 September 2005 (CEC00478603) which does not include any provision in relation to bonuses). I do not think that Council officers saw themselves as responsible for signing off TIE bonuses. It was an internal matter for TIE

and for the TIE Remuneration Committee. We neither controlled bonus payments or salaries nor were we necessarily aware of them, other than the remuneration for Board members.

389. My view at the time was not in relation to the TIE bonus scheme, but the issue of whether the remuneration of TIE staff and staff in the private sector was causing me concerns because I was losing staff to the private sector and also remaining staff within the Council were obviously dissatisfied. They were working alongside people who were being paid more than them, and were subject to a bonus scheme, but that was the nature of life and I tried to offer some comfort to Council staff who were being asked to work similar hours and conditions in terms of temporary upgrades.

390. I regarded the existence of bonus schemes as an industry norm *whether* or not I agreed with the concept. TIE had their own HR staff, as any employer would and, from memory, they had a Remuneration Committee which would have signed these things off from the non-executive members of the Board.

391. A report to Council on 29 April 2004 [CEC02083576] noted "*In response to the concerns over the impact on the Council's budget that were expressed by the Directors of City Development and Finance, TIE has proposed several efficiency savings, including "a reduction in the budgeted staff bonus level"* (para 3.17). My concerns were the cost of operation of the project. I was looking for savings across the piece and to keep it within the budgets that we had available. I presumed that TIE offered, at that point, to come back with a reduction in the level of bonuses which would have been picked up in terms of their overall salary costs. My concerns at that time, along with the Director of Finance, were simply that we would, in whatever context it was, be looking for reductions in operating costs.

392. There may well have been a reduction in TIE bonuses at the time. I would assume that there was although I think our concerns would have been more about the headline costs and less about how TIE arrived at them. I

would have expected them to control the bonuses along with other salaried staff to keep within the budgeted levels but I do not know how much of it was bonus and how much was base salary.

393. I cannot recall a report to Council by Tom Aitchison on 29 June 2006 on the subject of a Code of Guidance on Council companies **[CEC02084254]**.
394. I think I was Company Monitoring Officer for TIE at one point but normally the Monitoring Officer would be a middle manager within the Department with some direct relationship. *Given* my position on the Tram Project Board there were obvious conflicts in respect of being monitoring officer I cannot remember any names but their duties for the companies would be at a bottom line level because they were dealing with 14 companies. One of my staff was the principal drafter of the report for the Chief Executive. The principal purpose was because of problems which we had been having with some of the property companies and with Lothian Buses. I think that the recommendations were approved by the Council but a lot of the things, in terms of appointing Directors, never stuck. This is because the Council in appointing Directors was not prepared to go along with it or see any diminution of the role of Councillors on Boards.
395. Some Monitoring Officers might have covered several companies. Their basic role was to ensure that the simple things like a Remuneration Committee were in place. They met regularly and they satisfied the financial reporting requirements that were incumbent upon them at the time. Their duties would be in receiving copies of all the papers and, even then, some of the companies were refusing point blank to give Board papers to their Monitoring Officers. It became very frustrating because I felt that I was not necessarily getting the back-up from the Council as a whole and the Chief Executive to stamp your foot on these matters. We struggled along. It was not a satisfactory or a healthy relationship and it caused all sorts of issues inside the companies.

396. I think elected members were not prepared to dilute their own Board position. It was more of an issue around the property companies than it was for TIE. With Lothian Buses, the Chief Executive was the official shareholder. I think he probably regarded that as being sufficient. We did monitor reports but they were sometimes just paper exercises.
397. As far as I am aware TIE had a Remuneration Committee. I cannot recall who was on it. Normally Remuneration Committees within a company operate on a pretty high level of delegation of functions, that provided they are keeping within a budget they have a degree of independence.
398. I have been shown a new Operating Agreement between the City of Edinburgh Council and TIE Limited that was entered into on or around 12 May 2008 [**CEC01315172**] and am advised that it appears that previous versions of the draft Operating Agreement contained provisions giving the Council greater control over proposed bonuses (I am referred, in that regard, to emails by Nick Smith dated 19 November 2010 and 10 December 2007 (both included in **CEC00013392**) and Mr Smith's December 2007 Commentary document (**CEC00013393**), para 14). I cannot remember what control we had over bonuses or how that was discharged. If the signing off of the Operating Agreement came after my departure and was not finalised or issued until May 2008, I would not have had a view. I wouldn't have signed anything after March 2008 with them. If the Operating Agreement was not finalised or was not issued until May 2008 I may only have been involved in a very early draft of it or not at all. I have been asked if I considered that TIE's incentivisation arrangements were aligned to appropriate project milestones. If the signing off of the Operating Agreement came after my departure I would not have had a view.
399. Council members would be made aware of these matters if they were in the Council reports.

## Governance

### General

400. In respect of governance arrangements at the time, I must have been content that we certainly had plenty of bodies latterly. First of all, if I can go back, TIE was an arms-length company with a Board which was a mixture of Council elected members and externally appointed Board members who were, leaving aside the Chairman's issue for the moment, I think subject to external recruitment. I am less certain about what the arrangements were for Transport Edinburgh Ltd. The core working body, the Tram Project Board, did not have specific powers delegated to it other than the powers which were delegated by their own organisations to the individual members. However, the TPB should have been capable of exercising effective governance and control. We also had the various specific bodies which emerged around everything from legal affairs to lesser issues such as design matters so all the parts should have been looked at.
401. My views concerning the governance model were that it seemed to me that the *necessary* things were in place at the time.
402. Independence and objective oversight should have been coming from the Council side. There was no appointment of a third party plus of course there was the scrutiny for their interests from Transport Scotland *which at times was quite intense*.
403. I am asked whether the governance structures allowed CEC officials and members to exercise effective control over the project. TIE was set up to do a particular job and CEC officials and members could not and should not have had a role in TIE's technical and operational matters. It had its own Board structure and was properly constituted. Given that the main decisions had to be subject to a sign off by the Council, and decisions made by Council officials, the structure should have allowed effective control over the project.

404. I am referred to a report by myself, Jim Inch and Donald McGougan to the Executive of the Council on 20 December 2005 [CEC02084258] in relation to the governance of Council owned companies, taking account of a recent review by Audit Scotland. The report to Council **refers** to the Council having established a Companies Unit in 2001 (**paras 3.7, 3.32, 3.36-3.46, 4.8**). I think the Company's Unit, probably for most of its time, was just a couple of people. A man called Colin Hunter was manager of the company's unit for much of the time. He also had other responsibilities, so, a couple of full time equivalents. This was all the resource that could be assembled for doing this plus other people from time to time on specific issues. I think, as I have mentioned earlier, that a lot of the issues were arising over failures in some of the property companies. They were not there to control the local authority companies. However, they were there to ensure that local authority companies were meeting the basic requirements of good governance. I think it is a very important distinction that the control of a company is, under company law, down to its Board. The Company's Unit was there to ensure that the companies had the proper headline governance structures in place and that there was a way of monitoring the shareholders' interests.

405. The report noted that "*There is currently a dearth of independent non-executive directors with the range of experience and expertise required by the major Council companies*" (**paras 3.20**). It was resolved better for TIE and TEL than it was for any other companies in the Council's portfolio. This is because there were recruitment processes and the people that were attracted thought that it was an attractive project to be associated with. Crucially, because we were starting from scratch, it was possible to get a grip of Board appointments, whereas for the property companies that involved loosening the grip of 100% elected member Boards.

406. I cannot remember ever seeing the Briefing Paper for Tom Aitchison on TIE – Governance Arrangements produced in July 2007 (**CEC01566497**) and which appears to have been circulated for the meeting of the IPG on 27 July 2007 (**CEC01566495**). Two or three times I have been shown

papers referring to my role and referring to issues around it and I do not recall ever seeing them. The Briefing Paper flags up that the Liaison Officer at that particular point in time was somebody called Jim Grieve who, for a few months, acted as interim Head of Transport.

407. The Briefing Paper stated that "It's now vital that rigorous financial and governance controls are put in place". The Chief Executive would have been well aware of that because he would have seen it.
408. The December 2007 report to Council recommended changes to the governance structure but I do not know to what extent it came into being.
409. I have been shown a report by Ian Stirton, Chief Internal Auditor, to the Audit Committee on 31 January 2008, "*Updated Local Code of Corporate Governance*" [CEC02084259] which noted one of the core principles of good governance as "The decision-making process will be informed, transparent, subjected to effective scrutiny and demonstrate effective risk management" (para 3.3). I am also referred to a letter dated 22 August 2007 from Jerry Morrissey of Transport Scotland [TRS00004727] which noted that one of the variations to the grant conditions (para 19) was that "The Council shall ensure that robust, transparent and externally verifiable project controls are in place for the project and that these controls are applied to all those involved in project implementation". I must have considered that the requirements were met and in place in relation to the tram project having regard to the Tram Project Board, the existence of Boards containing non-Executive Directors from a variety of backgrounds and things like the production of the risk registers.

## The City of Edinburgh Council

### Council Officers

410. In relation to the responsibilities of each of the senior CEC officers in relation to the tram project, the Chief Executive would expect to be seeing regular reports and, in addition, as I have said, he was the one who was principally in dialogue with the Chairs of TIE and TEL.
411. The Director of Finance was responsible for signing off all the financial management issues. I, as the Director of City Development, was responsible for matters that would fall within my Department, including issues arising from transport projects and technical issues. The Director of Corporate Services was responsible, through his legal staff, for the legal issues.
412. I think there was a difference between governance and control. You do not control a company as a shareholder. You ensure as shareholder that it actually has the governance structures in place. I suppose in part through myself and in part from the Chief Executive and Director of Corporate Services. A lot of the discussions and agreements around this were done between the Chief Executive and the Chairmen of the companies.
413. The different issues were shared between different Council officers. I think you would have to say that the ultimate responsibility for ensuring that the tram project was delivered on time and within budget was shared between the Chief Executive, the Director of Finance and the Director of City Development.
414. I cannot recall the exact role of the IPG and its responsibilities. I believe that it was set up by the Chief Executive and was intended to ensure that, within the Council, there was the necessary flow of information to all the relevant Council Directors.



415. I am asked for my views on the comments of Mark Turley on the IPG as set out in his emails dated 12 May 2010 (**CEC00236984**) and 15 June 2010 (**CEC00241274**). Mark Turley was the Director of Community Services who subsequently, after my departure, took over a lot of the roads responsibilities. My understanding is that the IPG had an oversight role. The detailed operational monitoring of the programme, budget and timetable was the responsibility of the Tram Project Board.
416. I think Mark is coming into the process later on and not fully understanding the role of the IPG although I am not sure, over the passage of time, how well that was defined *and how it might have altered between March 2008 and May 2010*.
417. I am asked about the Tram Monitoring Officer but cannot recall the role and responsibilities of that individual.

### **Council Members**

418. I am asked how members were advised of developments in relation to the tram project. At one level, there would be actual formal Council reports. At another level, the Council Leader, the Finance and Transport Convenors and the Group Leaders would get weekly briefings on all current issues within the Council by the Chief Executive or the Director of Corporate Services. On top of all that, I can recall that there were a number of ad hoc presentations made. It would be done on the back of programmed meetings for these people throughout the year. On a Tuesday morning the Chief Executive and Director of Corporate Services would meet the Council Leader and Deputy Leader, who in this period, would be from another political party, and go through all the outstanding issues and I would imagine that the tram project would be included. On top of that, there would be ad hoc briefings on particular issues and ad hoc presentations to wider groups of members.

419. The Transport Convenor was changed during my term. I think the reporting to the Transport Convenor was a bit more flexible than with the Council Leader. There was a regular briefing slot. There was also, for much of this period, I recall being there for part of that, a regular weekly meeting with the Council Chief Officers on one side of the table and the administration office bearers, that is Committee Chairs and the Council Leader on the other side of the table, with a circulated agenda and papers.
420. The meetings were called the Policy Forum at the time. It would be Corporate Services plus the Council Leader's Office that would work together to assemble the agendas.
421. I am referred to the minutes of the meeting of the Tram Project Board on 9 August 2007 [CEC01561047] (para 3.9.11) in which I am noted as having stated that there was a need for "*greater support from TIE/TEL to provide information to the Councillors*". I cannot remember that particular incident but it was a fact that there was a need, and a continued need, for briefing of elected members. I think there was a feeling amongst some in TIE and TEL that this was just another piece of unnecessary bureaucracy whereas from our side of the house it was a necessary part of democracy.
422. I think I felt that I did get support from TIE and TEL depending on what the issue was. I would tackle Willie Gallagher or one of the other senior managers about the need to make presentations to the Council and Willie did for some of them as did others. Transport Scotland worked to some extent through Finance over grant details and conditions and other things. They would then speak directly to TIE.
423. There was a need for confidentiality for things like salaries and, I suppose, bonuses. Commercial confidentiality would have arisen when contracts were being negotiated. I do not recall it being a big-issue in terms of withholding of information.

424. I am asked whether I consider that members were in a position to take informed decisions in relation to the tram project. The whole purpose of the reporting process to Council was to ensure that members were in a position to take informed decisions in relation to the tram project. Some members were both members of the Council and members of the TIE and TEL Boards. I was happy at the time that members were in a position to take informed decisions as, ultimately was the Chief Executive who has overall responsibility for ensuring that members are briefed.
425. The report noted above by myself, Jim Inch and Donald McGougan to the Executive of the Council on 20 December 2005 [CEC02084258] discussing the governance of Council owned companies, noted that good corporate governance recommended that there should be a formal selection process for elected members acting as non-executive directors on the boards of Council companies, with non-executive directors selected with the same impartiality and care as senior executives to demonstrate that they have been appointed on merit and not through any form of patronage (para 3.14). There was a formal selection process for elected members who acted as non-executive directors of TIE. To the best of my recollection, which is a bit hazy, there was a formal selection process for external Directors but the elected member Directors were just nominated by their respective party groups. It was actually a better recruitment process than for any other Council companies that I was associated with.
426. The report also noted that all directors appointed by the Council should be given appropriate training, across a full range of issues, at the time of their appointment, and/or subsequently as appropriate (paras 3.15, 4.2). I cannot recall what training was given the systems in place should have ensured such training.

## Tram Project Board

427. The Tram Project Board was created so that the relevant Council officers responsible for various things, which obviously impinged upon the project and were necessary for the project to succeed, could sit down with TIE and at the same time it provided a vehicle for the information flow back from TIE to the Council on progress, budget and issues.
428. I do not know where the formal role, responsibilities and remit of the TPB would be laid down.
429. I cannot recall whether any powers were formally delegated to the Tram Project Board because basically it was a vehicle where people who had their own delegated authorities could come together and make informed decisions. The Tram Project Board decided lots of operational matters, as such, but core things obviously, like contracts etc., *permanent* Traffic Regulation Orders and all the rest of it, would have to go back through a democratic process.
430. The papers of the TPB would have been seen by the Boards of TIE and TEL but I do not think it actually had a remit of formally reporting to anybody. As I said, it was there as the opportunity for the various interests to come together and to ensure that everybody was on top of the case and that the necessary decisions were either being made or would be set in train.
431. The Tram Project Board agendas improved over time and the business probably got a bit crisper. -
432. Like every organisation I suppose I have been in, there seemed ways in which the TPB could work better. It seemed to be there for a very necessary reason like timeous circulation of papers and production of papers. Certainly you could not complain about the amount of information that was provided. At times, individual members of the Board, at least the

individual members on the TIE side, came and went but most of them, with one or two exceptions, seemed to be doing their job.

433. I cannot recall when the Tram Project Board actually formally started. There was a core membership and other people came in for issues such as Partnerships UK, for example, coming in from time to time and Transport Scotland and there were different periods with different roles. It was a necessary place where everything was brought together and presented where people could gain understanding and where if a decision was required it could either be made or it could be set in train to be made by the relevant body.
434. The Tram Project Board did not have any authority delegated to it from the Council side. In some cases the Director of Finance and myself could use our own delegated authorities. The role of the TPB was to provide a collective and objective oversight of the project.
435. There may have been delegation from the TIE and TEL Boards to the TPB (which would be reflected in the TIE and TEL Board minutes) but there was not delegation from the Council to the TPB.
436. I am referred to the Progress Report produced by TIE in September 2005 for the Scottish Parliament [CEC00380894] which noted that "*The members of the Tram Project Board act as champions of the project within their respective organisations for the progression of necessary permissions and approvals. The TPB operates under delegated authority from the Board of TIE Ltd and in turn provides the Tram Project Director with delegated authority to deliver the project*" (para 1.9) (see also para 9.2). Part of my role was to make sure that the project completed either through my own delegated authority or other peoples' decisions or through a report to Council or a relevant Council committee. "Champion" in the context of a report to Parliament can be a fairly broad term; it does not mean that you take leave of your senses.

437. I cannot recall seeing any documentation which set out how the Boards of TIE and TEL had delegated authority to the TPB or how the TPB had delegated power to TIE's Tram Project Director.
438. I note that on 14 June 2007, the minutes of the meeting of the Tram Project Board [CEC01565576] recorded a concern by James Stewart (of Partnerships UK) about the lack of detail of the issues available to the TPB, a seeming discrepancy between the SDS progress chart and the progress update and a lack of transparency on programme and key decision making milestones presented to the TPB. I would probably have shared James Stewart's concerns that it was less about the issues not being presented as about the details around some of these issues. I would have expected, as he did, to have probed on these. In fact some of the minutes I mentioned previously suggest that I did.
439. I note that on 20 February 2007, the minutes of a meeting of the Tram Project Board [TRS00004079] recorded, under Decision making process, "*Serious concern was raised about the speed and efficiency of decision making, particularly by stakeholders, in relation to the project. AH stressed that a robust and practical programme which takes account of stakeholder time-requirements is essential to ensure informed decision-making*" (para 5.1). My concern was primarily that there was a timescale for the preparation, circulation and decision making process when something was to be reported to a Council Committee or to the Council. The Council Executive could be called in by a scrutiny panel and challenged so all that had to be recognised at the time. Secondly, there had to be an understanding that if, for example, a Traffic Regulation Order was required, the necessary steps about pre-consultation, advertisement objection and the like would require to be followed and the extent to which, depending on the nature of the proposals, those timescales would change. It was not unique to TIE, I mean a lot of outside bodies that I dealt with just did not get it in that respect.

440. I note that on 26 September 2007, in an email to Rebecca Andrew [CEC01561555], Colin Mackenzie expressed certain concerns relating to the lack of accountability of the Tram Project Board to CEC, that TIE were responsible for the delivery of the tram project (and were accountable to CEC) and that the proposal that the TPB set up various committees ran the risk of further weakening the accountability of TIE to CEC. Colin's view is a little legalistic in that respect in terms of officials must take a much closer and proactive role in seeking to protect the Council's influence. I do not think he actually fully understood the nature of what the Council would be drawn into doing. You cannot, for example, insulate the Council's Finance staff from being drawn in and I think the issue, as the project developed, it required a greater and greater involvement from Council staff at all levels.

441. On 20 December 2007, the joint report to Council [CEC02083448] sought approval for the proposed new governance arrangements. The report explained that the TPB would be formally constituted as a committee of TEL (para 4.2). I do not think that the TPB had delegated authority from CEC, any delegation of authority must have been through TEL.

442. I am asked to explain the diagram, "*Tram Organisational Structure*", contained in Appendix 1 of the report to Council. The core point seems to be, firstly, in parts of it, to formalise the less formal structures which had been used and secondly, to make it quite clear what was the remit of, if you like, the democratic end of the structure in that a Tram Sub-committee of *Councillors* would be set up operating under delegated powers. If quick decisions were required from the Council end they could be made properly and legally by that sub-committee, which would contain members familiar with the issues around trams. That is the core of it.

## TEL

443. TEL was created to act as the overall vehicle for the operation of the trams and also acted as the parent body for TIE in whatever respect, but its core long-term role was to ensure that bus and tram were properly integrated.
444. I do not recall what powers were formally delegated to TEL and by whom and when. The Council decision itself delegate's general authority to the Tram Project Board through TEL and TIE. Delegating some responsibilities you would have to look back to Lothian Buses, which in turn, would have given certain responsibilities to TEL.
445. TEL was an arms-length company. It would have its annual report and its shareholder would be, I suppose, the Council. I presume it would do an annual report which would be presented to the shareholder but I cannot remember it.
446. I think the role of TEL, as the project went on, became clearer and harder. Its role was to *ensure* that there was an integrated transport system for the City and to ensure Lothian Buses network and the tram operated as an efficient partnership.
447. I note my report to Council on 30 June 2005, [CEC02084688] on Transport Policy and Delivery – The Next Steps. At one level, it was ludicrous but it was a constant struggle to get Lothian Buses to co-operate with the idea that the City was going to have a tram system and even to
448. stop conspiring against it. I think the concerns were that on things like tram/bus integration and the rest of it, TEL just was not being as aggressive as it could be on producing the best form of integrated service.
449. The concern in relation to individual employees would be to the Chief Executive of TEL, Neil Renilson. He was the standard bearer for the bus-



related issues. Appointing him as the Chief Executive was to ensure that he was inside the tent.

450. I do not think there is any doubt, TEL was set up to ensure the integration between trams and buses. There was a pretty strong view in Lothian Buses that they would prefer to have nothing whatsoever to do with integration.
451. Lothian Buses was a major organisation and you had to handle it very carefully. The concerns in that respect were to ensure that it was quite clear that this was TEL's responsibility and not TIEs and that TEL, in turn, had a very strong membership from the bus side.
452. TEL was created because if you had two Council owned transport companies operating in the City, they required to be integrated to be complimentary rather than competitive. Creating and staffing TEL, accordingly, was intended to sweep up the concerns of Lothian Buses. I do not think it ever did completely sweep up the prejudices of some of the individuals involved.
453. I note that in August 2003 [CEC01883094], a draft report to the TIE Board on DPOFA Procurement noted, "*TIE's objective to achieve bus-tram integration requires commitment from LB to treat the introduction of the Edinburgh Tram Network as an opportunity, not as a repeat of CERT*". I think that meant that Lothian Buses had to see it as an opportunity to grow the market. The CERT proposal was a proposal for a Busway within the City and to provide a rapid link-in from the Airport. The Scottish Office at the time imposed a completely irrational competitive structure upon the project and Lothian Buses ~~who~~ chose not to get involved. The comment is that they have got to get on board the tram project and not oppose it and brief against it.
454. I do not think anyone from Lothian Buses had any input per se, and they would not have expected to have any input in anything to do with TIE. I

think there were individuals, senior members of staff within Lothian Buses who had a prejudicial view of everybody connected with the tram project.

### **Transport Scotland**

455. In terms of regular reporting to Transport Scotland (TS), project reports were provided to TS, which I think was probably swept up with the financial reporting which was required for draw down of the grant.
456. I am asked whether Transport Scotland's changed role in the project from summer 2007 had an adverse effect on the management, oversight and /or delivery of the tram project. Transport Scotland were providing £500m and were walking away from the governance structures. There was still informal contact but there was no formal role. In part, you have a party who can talk around some of the issues on funding but is also a party who is heavily involved in the management of other major transport projects. This obviously added value to the project. There was informal contact but they were not part of the governance of the project and were deliberately choosing not to receive detailed information.

### **Partnerships UK**

457. I cannot remember what advice Partnership UK were giving in relation to procurement and governance but their general role was to maximise the role of the private sector.

## OGC Reviews

458. I cannot recall the *content* of the Office of Government Gateway (OGC) Readiness Review in May 2006 [CEC01793454] but I would have seen it. I note that the overall status of the project was assessed as "Red" (meaning "To achieve success the project should take action immediately").
459. It would have caused me considerable concern even though I cannot recall the specifics. I think what I would have done, although I cannot recall it, would be to ensure that whatever was called for in the report to be done was done because, as happened, the follow-up review gave a slightly healthier view of it.
460. I would have seen the second OGC review carried out in September 2006 *but again* cannot recall the content which resulted in an "Amber" rating [CEC01629382]. I would have been part of the interviewing and consultation process on the review. I would have had further, albeit lesser, concerns which I would have expected to have picked up, or ensured that others picked up, through the Tram Project Board or elsewhere.
461. A third OGC Review was carried out in October 2007 [CEC01562064] and resulted in a "Green" rating (i.e. "the project is on target to succeed provided that the recommendations are acted upon"). A Green report would cause considerably less concern than the others. It was moving in the right way, and a Green report also should signify that the issues that have been identified are being managed out otherwise it would continue to be Amber.

## Consequences

462. I am asked what I consider to be the main consequences of the failure to deliver the tram project in time and within budget, including, in particular, the consequences on residents, businesses and others and am also asked what I consider are the continuing consequences of the failure to deliver the tram project within budget including, in particular, on the money available to the Council to spend on services and capital projects etc. Since I left the Council on 1 April 2008, I have had no contact with *either* the project or the Council and neither the Council nor the tram project have sought any contact with me and it would be completely wrong of me to come to any conclusions on these matters.

## Lessons Learned Document

463. I cannot recall the Lessons Learned document [CEC02084810] dated 4 June 2008 by Dundas & Wilson *and* given the date I would certainly not have seen the final document. But looking at it now, I can say that the pre-Parliamentary stage and feasibility stage have been checked. There may not have been a formal audit at the pre-Parliamentary stage. I can agree with it because I recall considerable consultation. This is looking at the minutes of the Parliamentary Committee changing the Standing Orders in respect of private Bills. The project was following best practice at the time. I think as the note says there has been a whole cultural change in terms of consultation and community engagements of best practice itself has changed over time. I can certainly recall that there were vast amounts of documents produced, public and local meetings held. It would not necessarily fit with current guidance and even when this was written it was seven or eight years after that process had taken place. It is a constructive criticism in that respect or a constructive comment that consultation has changed. If Parliament had felt that consultation had been fundamentally flawed, we would not have approved the Bill.

464. There has obviously been some information that I was not aware of in relation to the nature of the TIE bonus scheme and its link to progress. I do not support such bonus schemes and this *reinforces* my view
465. Under Engagement (page 3) the document states that, "*There should have been greater engagement with the Council and key stakeholders from the outset of tram lines 1 and 2. In the Council's mind, TIE was delivering the project however the project lacked strategic guidance and input from the Council throughout the Parliamentary stage and the preliminary design stage.*" I think there are two points. There were many people from the Council who were involved in the Parliamentary process, including giving evidence on the Parliamentary process. This was very much a team effort. TIE was a different creature at the time of the Parliamentary process with different staff including staff who had recently been working for the Council so the governance structure was not the same. I cannot comment on timescales but the project changed over time, peoples' perceptions of consultation changed over time. I think I would refute the claim that the Council had not been involved in the Parliamentary process. I have been involved in Parliamentary processes in different places and the Council was deeply involved in this one.
466. The initial designs and feasibilities were done by the Council prior to the establishment of TIE.
467. The document states that, "*The contractual framework did not help as all of the contracts were with TIE, who in turn were not engaging with the Council*". This is talking about the early stages of the contract. I do not know where this report originated but if it was written for Dundas & Wilson they were not involved in those early stages of the project. In relation to the Parliamentary stage, from memory, there was plenty of involvement, witnesses were provided as part of the same team, and there should not have been these kinds of issues.

468. The document also states that *"In our view this lack of engagement may have cost the project 9-12 months during the design stage - had the Council agreed design objectives/principles with the designers at the requirements definition stage this would have informed the preliminary design. As it was the majority of the preliminary roads design was not acceptable to the Council and much of it had to be re-designed adding delay and cost to the project"*. I do not know what evidence this statement is based upon or where the figure of 9-12 months came from and I think the response of my staff who were involved in this was that they were fairly specific about the roads design. What came back was basically not compatible with current design standards or even common-sense in some places. This document was produced after my retiral and after the departure of those Council staff who were involved at that stage. The document has therefore not been challenged and relies on post hoc *justifications*.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 125 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.....

*16<sup>th</sup> May 2017.*

**Andrew Holmes – Amendment to statement provided by Mr Holmes via email 23/11/17**

Council staff seconded to work with Tie were selected for their ability and energy and willingness to engage with the project and worked well beyond any contracted input. They also through the length of time they were associated with the Tram provided a valuable continuity of experience for the Council.

### Comments on Neil Renilson`s witness statement

#### CERT (City of Edinburgh Rapid Transit) (paras14-18)

This was a proposal for a mostly segregated busway serving the Airport to City Centre route . The funding came from the the Scottish Executive via a complex PFI structure overseen by Partnerships UK. Prior to the bidding period I had a number of informal meetings with Lothian Buses emphasising our desire to see CERT as part of the City network and urging them to become involved. Lothian Buses were one of the tenderers but submitted a very poor non-compliant bid. Several other companies tendered and First Group were selected as preferred bidder. After some time in project development it became clear that they were going to face hostile reaction from Lothian Buses and withdrew.

Around the same time a group of development interests had commissioned a short study into the viability of a tram network that would serve the development areas in the west and north of Edinburgh and sought wider public and private sector support for the project. This coincided with the Councils own assessments of transport need against growth forecasts and led to the subsequent project development. This was not, as claimed due to the existence of a transport corridor from CERT but in the earlier phases was focussed on Leith and Granton and North Edinburgh.

I believe this was the genesis for the Wendy Alexander decision on making funding available. The involvement of an “arms length” body was less a dissatisfaction with CEC than the desire to see some form of private sector engagement and Partnerships UK was heavily involved at the start.

#### Comment re Tie Board members

These were selected after extensive open public advertisement making clear the nature of the projects Tie was expected to undertake. All were experienced in non-executive roles but no candidates with related construction backgrounds put themselves forward.

#### Comments on “agenda” (para 31)

I was not aware of any extensive recent unemployment amongst Tie staff or a fear of job loss. The issue that emerged seemed to be their ability to obtain alternative employment and move on.

I do not recognise any of the comments on myself or Keith Rimmer suppressing information.

#### Comments on CEC staff attitudes,(para 41)(para 106)

There were differences in salaries, a factor which was causing staff losses generally at that time. Where I felt it appropriate I agreed modest temporary enhancements in pay to recognise the additional workload and responsibilities. There were no recognisable grievances nor can I imagine staff voicing these to Mr Renilson.

In terms of wider animosities the Council staff promoted a large number of measures to improve bus travel. This included a city wide programme of Bus priority, complete replacement of all bus shelters, live bus information at all major stops, Bus recognition at traffic signals, improved disabled access at stops etc. Improving movement of buses was for a decade the principal activity of the CEC traffic section. This necessitated operational staff of both organisations developing good working relationships.

#### Comments on integration (para109)

An integrated network was seen as essential by CEC form the genesis of the project and it is inconceivable that any transport planner would see otherwise. I had wanted TEL set up at the initial stages of the project with clear oversight f integration and route development. Regrettably this did not happen, in part due to the negativity of Lothian Buses.

#### Comments on Architecture (para190)

The individual designer is Marini not Martini. His role was as an adviser on design. He had no role in prior approvals as set up prior to my departure but was concerned with design principles and was part of the preparation of the Tram Design Manual.



Comments on myself and staff (para 330 et seq)

As said above much of the workload of the Transport section of my department was made up of different forms of bus priority and passenger assistance and this had been a continuous feature. For example Barry Cross, who is cited as a "tram enthusiast" was the lead on the whole City bus priority programme for a considerable period and for 2-3 years this was a full-time project for him. I recall glowing tributes to him from LB management.

The remarks about myself I find offensive. The views attributed to Donald Anderson regarding myself are contrary to Para 9 in Mr Anderson`s statement.

I have confined my brief remarks to where there are factual issues around my own or my staff`s role. I do not endorse any other comments by Mr Renilson.

Andrew Holmes

27 November 2018

### **Supplementary Question for Andrew Holmes**

1. A City of Edinburgh Council (CEC) document dated 4 March 2008, "Summary of company secretaries, company liaison officers and company monitoring officers" (CEC01392168) notes (at page 3) that the liaison officer of Tie and TEL was "to be advised".

Can you advise the Inquiry as to the identity of the company liaison officer for each of TIE and TEL?

### **Answer provided by Andrew Holmes via email on 6 February 2018**

I cannot recall who was formally the liaison officer. I recall from evidence around the minutes of the Chief Executive's group reference to the inappropriateness of this falling on the Director of City Development. I cannot with certainty and over the passage of time recall whether either or both were formally assigned to me. A Head of Transport reporting to me was in post prior to the end of 2006 and tie may have fallen to him. For various reasons the post was unable to be filled until April 2008. The responsibility for Tel I cannot recall.