

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: Jeremy Ross BALFOUR

Dated: 8/3/17

**THE EDINBURGH TRAM INQUIRY**  
**Witness Statement of Jeremy Ross BALFOUR**

My full name is Jeremy Balfour. I am aged 49, my date of birth being [REDACTED]

My contact details are known to the Inquiry.

My current occupation is a Member of the Scottish Parliament and Councillor of Edinburgh City Council.

Statement:

**Introduction**

1. I was elected to Edinburgh City Council in November 2005 as the result of a by-election. I represented the Corstorphine and Murrayfield ward. I was then re-elected in May 2007. In May 2010 I became group leader of the Conservative Group. I carried out this role until 2012. I then became convenor of Governance Risk and Best Value. I was a Director of the Transport Edinburgh Limited (TEL) Board. This was between 23 November 2006 and 2 May 2007.

**Duties and Responsibilities**

2. As a Director of TEL I think I only attended one Board meeting. My role as a Director was to scrutinise and carry out the role of a Board member. Whilst I was a Board member it was expected I would attend meetings, read the documentation and ask appropriate questions as you would expect from any non-Executive Director.

3. I do not believe that, in general, Councillors had the required qualifications or experience to assist them in making decisions relating to the Edinburgh Tram Project (ETP). I think that Councillors were, and I use the word carefully, amateurs in that respect. As Councillors we do not have the expertise in relation to transport. Certainly not within the contract role and that particular area. As a result we relied on officers from City of Edinburgh Council (CEC) and Transport Initiatives Edinburgh (TIE) to provide us with the information and detail. I think that it is our responsibility to ask the relevant questions. As far as I am aware, there were no transport experts who were councillors at that time. In addition there were no one with a kind of legal background. I have undertaken legal training but not in that specific contractual area.
4. As Councillors we did not receive any specific training in relation to individual subjects. We did receive training when we commenced the role. This was more about how to phrase and ask questions. I do not believe any more training was required. Councillors are expected to make policy decisions based on accurate information being provided to them. I think if the information in respect of the Tram Project had been accurate then everything would have been fine.
5. In the initial stages of the project there was more or less cross party support. The exception being the SNP who were against the project. Clearly later on when the SNP became the administration as a party they were a junior part of that administration. It meant that politically it became a bigger issue. Up until then I think there was a general consensus it was a good thing. Clearly politics came into play more post 2007 up to 2012. Over that five year period the project did become much more political because the second largest group in the Council was against it. There was one person within my group, Kate McKenzie, who was very opposed to the project. This meant votes were going to be a lot closer. I think that was in some ways not a bad idea because you then got all the parties receiving the same information. Clearly Phil Wheeler when he was transport leader and Jenny Dawe when she was

Council Leader, would receive more information. They were ultimately, leading the trams project at that time. I felt that the briefings given to us were sufficient. Whether the information given to us was accurate is another issue.

6. I cannot speak for other political parties but I know within the Conservative group there were a number of heated debates around the Tram Project. The party leader Iain Whyte and Councillor Allan Jackson were very much in favour for the tram. As I have said Kate was against it and the rest of us were very much in between these two views. There were some real concerns within the party about the Project. We based our decisions on the information provided. I think that it is fair to say we would have voted differently if we had received more accurate information about the Project.
7. As a Councillor I expect that the information I receive about any topic to be accurate. It is about asking the right questions to test the information that you are provided with. In relation to the Tram Project I do not think that we were provided with accurate information from CEC and TIE officials. It is hard to say if the CEC and TIE officials deliberately did not provide us with accurate information. It may have been the case that they did not understand exactly what they were presenting to us. What is certain is that the information we were provided at that time was inaccurate.
8. Later on when I was the party leader I think I was deliberately misled by certain individuals during Tram Project meetings. It is clear now that the information we were being provided with at these meetings was inaccurate.

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

9. I had no real involvement with the initial proposals for the Tram Project. I did however take a keen interest as a member of the public. Most of the information I gained was through the media. I did take an active part during the by-election campaign of 2005. I campaigned against the 1b line. This was the line that it was proposed would run between Granton and

Haymarket. This line would come through my ward. There was quite a lot of local opposition to that line. It was a kind of campaign issue rather than anything else. That was my only involvement until I became a Councillor in 2005.

10. In relation to the creation of TIE in 2002 I know now that this company was created by the Council. At the time however I would have not known this as it was not until 2005 when I became an elected Councillor. TIE was created as an arms-length Company to undertake various projects on behalf of the Council. Other than that I have no further understanding of what was behind the idea of TIE. For reasons I have already stated I have no knowledge of what means were employed to exercise control of TIE at the time of its creation.
11. When I became a Councillor in 2005 I developed an understanding of TIE. A number of Councillors, from all parties, were offered positions on the Board of TIE. Not all of these Councillors accepted the positions offered. I understood the role of the Councillors on the board was to ensure there was a degree of scrutiny in respect of TIE. In relation to the Tram Project I understood that TIE was the arms-length company to deliver the trams on behalf of the Council and the city.
12. I could not comment on the topic of road charging to finance any of CEC's proposals under the New Transport Initiative (NTI) including the tram network. What I can say is that in my opinion this did not make any difference to the Tram Project. The Council knew that they were going to receive the funding and it was not dependent on road charging.
13. Again as the road charging referendum was before I became a Councillor I could not comment on the affordability of the Tram Project without the funding from road charging.

14. I am aware of a number of draft Business Cases in respect of the Tram Project that were produced between 2005 and 2006. My understanding of these Business Cases were that the risk was going to lie with the contractor, the builder. I understood this to mean a 90% fixed contract. 90% of the risk lay with the contractor, 10% lay with the Council. I believed that this was a good place for the Council to be. In hindsight that was not the contract that was finally signed off. That was clearly not the case but that was the information that I was working on. So my view was the majority of the risk lay with the contractor not with the Council. That was when we could go ahead. It appeared to be a very good deal for the Council.
15. In terms of when the contract was signed this could only have been completed when the full Council had agreed to it. The full Council confirmed they were happy with the terms provided to them. It was then delegated to Tom Aitchison to formally sign the document. This was again on the understanding that the risk of 90% was with the contractor.
16. The decision by the Council to build the tram network in phases for me was a key one. This was us pressing the green button to commence the project. The reason that I went ahead with that was, as I have said before, because of the briefing that we received before that meeting. This is where we were informed that the risk was predominantly with the contractor. It was a fixed financial contract and the scope and preparatory work had been completed. However the utilities were still to be dealt with. Again from the briefing that I had received I was assured that we were going to get a lot of benefit from the utility work as a result of new components and that was all part of the cost. Therefore I believed it was actually a good deal, not only for having a tram, but actually getting the modernisation of some of the utilities within the city. It was a kind of win for me at that point.
17. The fact that the tram network would be phased in did not concern me. I think part of the reason for the restriction, which was not building 1b, was that it was more controversial politically. In addition there was still a case to

be made for the benefits of this line. At that time, 2005/2006, the whole development of the area had not really commenced yet. Clearly we now have colleges in that area. However at that point in the Tram Project there was not the same number of people who might have used the tram. Therefore the point was the tram would bring back business. So for me it was actually quite good news politically because it was not going to go through my ward. That was the area I was more concerned about but it was not anything to do with estimates or costs.

18. I refer to the document Office of Government Gateway Readiness Review submitted on 25 May 2006 (CEC01793454). This document was for group leaders only. I was not a group leader at that time. I have no recollection of ever having sight of the document and therefore can make no comment on its content.
  
19. At the time the procurement strategy was presented to the Council I did feel we were allowed a sufficient input into it. By this I mean we were provided with satisfactory answers to the questions that we asked of the strategy prior to the meeting in January 2006. My own personal view was that we were given good guarantees by the senior members of TIE and the Council that this was an infrastructure project that was fixed. In addition we were assured that all the utilities work would be completed. It was highlighted that there would be disruption but it would be managed disruption and would be for a fairly short period of time. This was clearly not the case. What I would say, and I have thought a lot about this, if I had been given what I think is now accurate information would I have still supported the project. I am afraid that I cannot answer that. What I can say, at that point in 2006, I felt we were signing a good piece of work off. Yes there was going to be bumpiness in this because any infrastructure project will have its ups and downs. However by and large I had no concerns that the project was something that was going to keep me up at night. I was satisfied with the project based on the information we had been provided.

20. The key decision for me was in January 2007. The Council was asked to approve, in principle, the whole tram project. This was to decide when we could proceed with the project. It would also decide what the basis for this would be. Senior city officers and TIE members attended a meeting of the Conservative Group. We had about an hour and a half asking quite a lot of questions. On that basis we went ahead or I went ahead and voted for it. In effect Edinburgh voted for it. I think in retrospect some of the information that we were given at that meeting was factually incorrect. We were not given the full disclosure of what we probably required to know at that time. I think that period was quite positive for the Tram Project. Obviously, that was when everything was being lined up. A lot of the decisions that were made at that point then had a consequence of what followed for the next number of years. I very clearly remember that meeting. I very clearly remember myself and other members of my group asking quite detailed questions of the Chief Executive of TIE. In retrospect, and clearly that is retrospect, the information provided to us was incorrect.
21. There were a number of Council and TIE officials at this meeting. The Council were represented by the Chief Executive Tom Aitchison, his deputy Jim Inch and Donald McGougan the head of finance. There were others from the Council, the Head of Transport and the female Head of the Legal Team. I cannot remember their names. TIE was represented by a number of senior officers. Again I am not sure of their names.
22. It was a joint presentation by the Council and TIE. I would say ultimately the Council officials presented the details as it would be a Council decision. The meeting was attended by all the Conservative Group. My understanding was that all the political parties received the same briefing but individually.
23. This meeting provided us with the basis for voting in favour of the Tram Project going ahead. All the Conservative Council group were there on the day. If not, the overwhelming majority were there because it was seen as

such a key briefing. I believe that all the individual political parties received the same briefing.

24. At this meeting we were assured by Tom Aitchison that the contract was fixed price. Tom Aitchison, the Head of Legal and TIE informed us very clearly that this was a 90% guaranteed contract. The price that we were agreeing on the day was 90%, signed, sealed and there might be a 10% variation that was being included. When we voted for that we thought we were voting for a fixed price contract. The contract was fixed and that was the reassurance financially that we took in regard to that. For me that was kind of a key thing because we had obviously seen the Scottish Parliament being built. There were concerns around that this was going to be the same type of project. We accepted the assurance that we were going for a pretty well fixed contract. We were informed that the utility movement was all going to be fairly straightforward. There would be no major problems and so I think we went ahead on the basis of those questions being answered.
25. All of the information was provided verbally there was no documentation other than that provided in respect of the presentation. Clearly you cannot guarantee everything but the 10% risk for the Council appeared acceptable. In respect of this we were informed at the meeting in reality 90% of this risk would probably not be required. At this time we would only be voting for line 1a, the Airport to Newhaven.

#### **Events between May 2007 and May 2008**

26. After the local Government elections in May 2007 the administration of the Council changed. The Liberal/SNP coalition replaced Labour. This meant that the SNP were the second largest group within the Council. The SNP were opposed to the tram and voted against the Tram Project. It left the Liberal Democrats, as the largest party, I suppose more volatile. They had to seek support from Labour, from ourselves and from the Greens. In relation to the Tram Project it provided political uncertainty. I would not be able to say



what effect this had on the Tram Project day to day. I cannot really comment further as my party was not in administration.

27. I refer to the minutes of a Transport Edinburgh Limited (TEL) dated 20 February 2007 (CEC01830675). As a director of TEL I was entitled to attend this meeting. However as recorded on the minutes I was not at the meeting and provided my apologies. As a result I cannot say or comment on what happened at the meeting. My understanding was that there would be an agreement between CEC and Transport Scotland that Transport Scotland, in principle, were actually still very much in favour of this Project. Again, on the bigger picture, and a number of times before we had a key vote, Transport Scotland provided the "Green" light or it suddenly did not give a "Red" light and said "No". For me that was quite important. As a third party Government agency who had no real political interest in this project that wanted to get it delivered. Transport Scotland were the experts. I placed a heavy reliance that Transport Scotland, not only here, but on a number of other occasions were satisfied the project could proceed. I think that was key for Councillors. We had our own officers, our own company, which has transport experts on its Board and the Scottish Government's Transport Scotland all satisfied the Project can proceed. Unless you are politically against the tram, which clearly the SNP were, there was no reason not to vote for it. I was asking what was in the best interests of the city. These three groups were all saying it was okay to proceed, therefore we went ahead and I voted for the project.
28. I cannot comment if there was a formal agreement reached at the meeting by CEC and Transport Scotland that identified risk allocation between stakeholders. I would not have received a formal briefing as to what occurred at the meeting. I did however receive a copy of the minutes a few days after the meeting.
29. Following the national elections in May 2007 a vote in respect of the Tram project took place. After this the SNP Government announced that funding from Transport Scotland would be capped at £500m. This decision affected

the risk for CEC. Clearly, at that point, there was a steady increase in risk. Up until that point the whole project was going to be paid for by the Scottish Government, Transport Scotland. So, in theory, there was no risk at all for the Council. Obviously we now knew that after £500m we would have to secure any additional funding ourselves. The mitigation of that risk was, again, the information given to us by Tom Aitchison and Willie Gallagher. The information we received from all these individuals was that this was a fixed contract. That part of that £500m had a fairly large contingency fee within it which we were not going to have to use. My understanding from this was that we might be able to complete the project for less. At one point we were looking at figures of £424m, £434m and £440m. Those were the figures that were circulated round to us. The issue was, if it was clearly more risk, that would be mitigated by the contract and by the contingency fee that was within that.

30. We were presented with the Final Business Case for approval in October and December 2007. At the time I thought it was a good Business Case. I am no accountant but the figures were explained to us. The figures appeared to add up. The Business Case seemed to be one that was going to work for us. In retrospect it was not worth the paper it was written on. I think that you know that this was the second key date for me. You had one back in January; you had this one in October and December. The document was clearly not fit for purpose. By this I mean that clearly the risk was not all with the contractor. It is clear now that the figures were not correct. The scope and time for the utilities to be completed was incorrect. I think what we were given at that time, the questions we asked and the answers we were provided gave us the reassurance that the contract was fine. It is clear now that the information we were provided and that allowed the Tram Project to progress was incorrect.
31. The price for the contract started to increase gradually. Even by the end of 2007 before the contract was fully signed off the price had increased. I

trusted the officers who were providing this information. At that time I had no reason to believe that anyone was trying to mislead me.

32. I have no recollection of the Final Business Case making mention of a separate report or any detail that this would set out the result of the tender evaluation. Likewise I have no knowledge of any recommendations within the report as to the preferred bidder for each contract. I just do not remember that. My understanding would be that they were going to undertake this because that would provide us the price and the quality that was within the procurement process. That was signed off by our Head of Legal and by our legal team so; again, I cannot say I got into any great detail of that. At this point clearly the tram is important but it was not my area of day to day concern within the Council. I was in another area so I cannot say I got into these various details around these questions. Yes we asked questions but it was not something I was involved in daily.
33. I cannot remember being made aware that the INFRACO bids were based primarily on the preliminary design. I am not saying that I did not receive the information but it would be more likely that it would have been passed to transport. At that time I was not involved with the transport department. What I would say is that I do not think it came to a full Council meeting.
34. In respect of events at the end of 2007 I cannot comment on the extent that that design and utility works were complete. I was not involved in that. As Councillors we do not get involved in the day to day processes around this subject. The people involved in this from the Council would be transport and finance officials. We had signed off in January in relation to the project. Then later on the same with the Business Case giving it our approval. At that time I was satisfied that the project could be moved forward and completed. I would not expect to have received any further specific information about the contract. That is unless there was something going wrong. Clearly, although we did not know it at the time, something was going wrong. I had presumed everything was progressing without issue.

35. I have no recollection or comment to make on any difficulties that could arise from incomplete design and utility diversion works. In addition I have no knowledge of how any such difficulties would be addressed.
36. By the end of 2007 I was still under the impression that the infrastructure contract was fixed price. It was not 100% fixed but 90%. I thought at that time the contract would not allow the budget to exceed £500m, which meant that the Council would avoid having to pay any extra money. I based this on the information we had previously been supplied by Council and TIE officials. The most important factor for me was that the contract was fixed price. The fact that I had been informed and reassured that it was a fixed price contract was the reason why I voted for the tram project. I had seen what happened with the Scottish Parliament building. That was a big infrastructure project that had ended up way over budget.
37. I cannot remember the specific details in relation to the allowance of risk made by TIE and CEC. At that time we were provided with a lot of information about the risk allowance and the contingency in regard to money the Council had put aside. I would not want to be quoted on the actual figure. It was a reasonably large figure and it was a figure that we were told would be enough to cover unexpected problems that maybe encountered by the contractors. This was one of the reasons that I voted for the tram project. I think a lot of my colleagues voted for it for similar reasons to myself. This was one of the key questions that we, as Councillors, repeatedly asked of CEC and TIE officials. What is the risk and where is the contingency risk funding going to come from. We were told repeatedly that it was in place. That this had all been factored in to the contract. In fact we were actually assured that there would be money left over which the Council would get back. I do not have any information about possible scope changes in the contract price or potential changes to the risk allowance.

38. There were various price increases in the lead up to contract closure. My understanding of this was that we were going to pay more. However more of the risk was going to be transferred longer term over to the contractor. In effect we were going to pay £Xm more at that time but the risk was becoming less. From my perspective I had no issue as despite the Council paying a bit more we could reduce even more of the risk. This was particularly relevant in relation to unforeseen obstacles. The big risk was obviously was when street excavations commenced. There is a possibility that you will discover unexpected problems. At this time I was still receiving reports from Council officials. I was reassured that we were paying more but we were putting over more of a risk to the contractor.
39. The key point for me was that the reports I received were from senior Council officials. The Chief Executive, Director of Finance and Director of Transport. These were the people that would sign off the reports that provided us the information. The process was that the senior Council officials would receive the report from TIE. Most went to Finance and Transport as they were most relevant. When full Council decisions were required we would read the report. You would then have an opportunity to ask questions within a group situation. Once this process was complete a decision would be made as a group and we would vote accordingly. In effect I put a reliance on what these people said and in particularly the Director of Transport. The Director of Transport was assuring us that the risk was being transferred and there were no concerns.
40. When the infrastructure contract was signed in May 2008 my understanding at that time was that BBS bore the risks of the incomplete design and utility work diversions. I believed at that time the infrastructure was at least an 89% fixed price contract. Again from the information I had been provided I believed that the aims of the procurement strategy had been met and that these could be signed off. All of this information and reassurance had been provided to me by the senior Council officers I previously referred to in my statement.

### **The dispute (May 2008 onwards)**

41. After May 2008 I cannot recall being made aware of any reports in relation to progress being made with the design, utility diversion and infrastructure works. At that time I believe that Finance and Transport continued to receive reports from TIE. I had no concerns about the Project at that time. I do not remember being provided with any updated information about revised estimates of risk.
  
42. Through an article in the Edinburgh Evening News I first became aware of a dispute between TIE and BSC. This was in relation to track laying works due to commence within Princes Street in February 2009. Thereafter I was further appraised through Council meetings and briefings by senior Council officials. The information I was receiving was that the design had not been agreed. This had led to disputes as to how this was going to progress. At that time I was still a backbencher and consequently not involved in a lot of briefings. Most of the information was going to the party leaders, Councillor Whyte. The group leader would disseminate the information the party members. One of the difficulties for the group leader was that they were being provided information in confidence. This meant that we were obviously not being told everything but that was the way the political system worked.
  
43. It was obvious that the dispute was with the major contractor. My understanding was still that we had a contract where the risk would follow the contractor. I believed this would all be worked out contractually; clearly this was not the case. I would say that at that time I had a limited understanding of what was actually contained within the contract, other than what had been informed about. Initially my views remained the same about the contract and I had no concerns. Later on this changed when work stopped and I realised we were definitely in a dispute.

44. I have been referred to an email dated 27 February 2009 from Councillor Phil Wheeler to Council leader Jenny Dawe, which informed her of his meeting with Richard Walker BSC (**CEC00868427**). In addition an email from Mike Connelly of TIE to David Mackay dated 11 March 2009 (**TIE00446933**), which advises of Mike Connelly's meeting with Margaret Smith MSP and Alison McInnes MSP. I have no knowledge of these emails and have not seen them before. My understanding would be that the content relates to administrative meetings. As I have said Group Leaders would receive more information than me. At this stage of the Project I would not say that it was appropriate for elected members to be meeting with BBS directly. It would be different if Jenny Dawe as Council Leader or Phil Wheeler as leader of the Transport Committee had met with them. For anyone else to have met with them would be undermining the role of that elected Council officers are paid to do. It would appear that MSPs are raising major concerns about TIE and how it is operating. I did not know any of this at the time but now that I do have knowledge of it there are clearly aspects of the correspondence that are worrying.
45. I note emails from Marshall Poulton to Max Thomson dated 12 December 2008 (**TIE00887286**) and from Julie Smith to Nick Smith dated 12 April 2010 (**CEC00356396**). I have not previously had sight of either of these emails. The reference in the first email that the contract was not fixed price concerns me. It would appear on the email trail for the 12 December 2008 that Councillor Whyte was unaware of this. He was the group leader at the time therefore I would certainly have no knowledge of this if he did not.
46. It is clear now that the Council should have sought independent legal advice about the contract. If I had of been in administration at that time I would have requested that a senior QC review the contract. If this had been undertaken the Council would have been in a much better position much sooner.
47. The initial strategy in dealing with the dispute appeared to revolve around high level discussions. Subsequent to this the formal dispute process

started. My understanding was that this was what the contract allowed for this and TIE would deal with it on behalf of the Council. The aim was to ensure that the Project progressed as soon as possible. I assumed that the strategy was agreed by senior management at the Council, the Council Leader and TIE. I do not know whether individual Council group leaders were involved. This was not something that the full Council was ever asked to approve. If approval had been sought I would be able to remember this. This process is not unusual as there is quite a lot of delegated authority given to senior Council officers and to the Council leader.

48. When I became Group leader in May 2010 I had more involvement with Tram Project presentations. These occurred every two to three weeks. Group leaders were provided with presentations by senior officials from both the Council and TIE. When I was present at these meetings and dispute resolutions were discussed we were informed that everything was progressing with these satisfactorily. I was informed that there was a lot of success for TIE and they were winning the majority of these disputes. I now know that this was not accurate and we were being misled during the presentations. There is no covering that up. As group leaders we were simply misled at that point completely by Richard Jeffrey from TIE. Whether Dave Mackay knew about this I am not sure. Richard Jeffrey was certainly aware. I do not know what Tom Aitchison, the Chief Executive, knew at that point. Richard Jeffrey was the one providing the presentations and information. He was the one who answered the questions that were asked. Richard Jeffrey was the person that informed us that the majority of the disputes were going in our favour. Richard Jeffrey assured us that this was a really positive process for the Council and that we were going to win them. I understand from Richard Jeffrey that there was no reason to have any concerns. I felt that this was one of the biggest misleads that occurred when I was a Councillor. I believe that Richard Jeffrey deliberately misled the Council. At that time I felt that we could only ask the questions we thought were relevant and trust that we would be provided with honest answers. I



think that if Richard Jeffrey did have the information provide by him was correct then he was acting incompetently.

49. I note a report by the Directors of City Development and Finance dated 30 April 2009 (**CEC02083772**). I also note the Princes Street Agreement document dated 20 March 2009 (**TRS00016944**). In respect of the agreement I had no involvement in relation to the negotiation or approval of this document. It would have been senior Council and TIE officials that would have responsibility for any negotiations. In relation to the report this came to us to consider and comment on. Subsequent to this the report was approved. The Council did not have the opportunity to comment on or approve the Agreement. My understanding of the Agreement was that it provided an opportunity for the Project to start again. This was after an extensive period of nothing happening.
50. I refer to the Princes Street Agreement Report dated 24 March 2009 (**CEC00934643**). The rationale behind this agreement was to ensure that the tram track was laid along Princes Street.
51. I am not able to comment on whether the Princes Street Agreement paved the way for BBS to claim further costs for additional on-street work. Looking back retrospectively I do not think it was fixed price contract even at that stage. It was explained to us, as Councillors, that it was a fixed price contract. I later learned from Alastair Maclean, legal adviser with CEC, and others that it was not a fixed price contract. This was a change from what had been explained to us in respect of the original contract.
52. I have no knowledge of any letters that were sent by BSC to Council members in 2010.
53. In late 2010 Council members were provided with a refreshed Business Case. This recommended building a line from Edinburgh Airport to St Andrews Square. This raised concerns with me and my political party. What

was proposed was substantially less than originally planned. However the Business Case was presented in a way that assured us the original budget would cover the cost of the reduced line. It was a big disappointment and there were a lot of questions asked. I believed that we had been let down by the Council officers. At that time we were still receiving very little information from Council officials. I believe now that Councillors were not being told the truth because in reality it was bad news. Again it was Tom Aitchison and his senior colleagues who briefed us about the revised line. As before questions were put to them about the options and risk. The question of the utility work was also put to them. The officers provided reasonably positive answers to all of these questions. I cannot remember if we were provided reasons as to why the scope of the Project had changed.

54. At a Council meeting in December 2010 the Council passed a motion for a review of the updated Business Case by an independent specialist public transport company. This company had no previous involvement with the Tram Project. The reason for this, I believe, was that we did not now believe the information that TIE were providing us. This was the start of the breakdown in the relationship between TIE and Councillors. There was a feeling that we needed someone to come in and audit the Project and contract. This would allow us to develop a fresh understanding. There was a belief now that the Project was out of control.

#### **The Mar Hall mediation in March 2011**

55. The proposals for mediation occurred at Mar Hall in March 2011. As a Councillor I did not have any involvement in the actual mediation process. There was a new Chief Executive, Sue Bruce in place. Alastair Maclean was the main legal adviser for the Council. I believe that the mediation progressed well behind closed doors. I can only presume that Sue Bruce was talking to Jenny Dawe as Council leader. I would also assume that Sue would be liaising with the Convenor of Transport. Sue Bruce had a meeting with Council leaders prior to Mar Hall. It was not a debate; Sue informed the

leaders of what she was going to the mediation to achieve. Ultimately this was reflected in what was agreed at the conclusion of Mar Hall. The agreement was signed off around April or May 2011.

56. At this time I had no concerns that there was no consultation with Councillors about the Mar Hall mediation. The Project at that time was in disarray with no obvious way forward. Reflecting on the issues at the time before Mar Hall I do not understand why the Council leader, Jenny Dawe and Convenor of Transport did not travel to Germany. This would have afforded the opportunity for earlier discussions with senior BSC officials. Mar Hall was the first occasion when senior officials from all interested parties got around the table. I think that this was eight or nine months too late. The new Chief Executive, Sue Bruce, was more proactive and she acknowledged there was a big challenge when she started in the post.
57. At the conclusion of the Mar Hall mediation there was a report produced. This was presented to the full Council on 16 May 2011. There were a number of recommendations contained within the report. These were agreed by the full Council. There was a further report to follow in June and then August, which would provide further information.
58. The main thing for me after the Mar Hall mediation was that a relationship had been established between our Chief Executive and the Managing Director of BSC. This meant there was a high level association between the two groups that were actually talking to each other. This allowed a commencement of the Project and a long term strategy on how this would be achieved. I still cannot understand why this could not have been achieved earlier by the previous Chief Executive or Jenny Dawe. I do not know if this was through a lack of political will or a lack of ability. If there had of been a high level agreement and relationship nine months or a year earlier a lot of issues that were encountered would not have occurred. I believe that this was as a result of political leadership from the Council leader, Jenny Dawe.

59. I think both before and after the mediation process we were adequately briefed. Both Sue Bruce and Alistair MacLean met with the Council group and provided us with relevant information. Carol Campbell, Head of Legal, from CEC provided us with information as to the legal aspects of the contract and negotiations. At this time I felt that there was a much better sharing of information. The legal briefings at this time compared to the start of the Tram Project were far more professional and comprehensive. I now know that the original contract was "*a piece of mince*". Not my words, but that of Alastair Maclean. There is no other way of describing it. There was no way forward with that contract and it was inevitable that renegotiation would be required. It is clear that all the benefits of the original contract lay with the contractor not the Council. That still appeared to be the case with the new contract but at least progress was being made. It was not going to be pretty and it was not going to be cheap.
60. It was obvious now that the initial information provided to Councillors, and especially group leaders at the start of the Project was incorrect. I felt let down by the TIE and Council officials who I felt had deliberately misled us. As Councillors the decision to go ahead with the Project lay with us. However this decision was based on both bad and incorrect information. The difference between the information provided by Richard Jeffrey and what we were receiving now was as night is to day. I believe that the desire for the Tram Project to progress meant that Councillors were not provided any information that would stop this. As the Project progressed TIE and CEC officials realised that it was not progressing well. They clearly did not want Councillors alerted to this. Thereafter there was a lack of transparency between Council officers and Councillors.
61. On 25 August 2011 I was present when the Council voted to construct a line from Edinburgh Airport to Haymarket. Shortly thereafter a decision was taken that the line would terminate in St Andrews Square not Haymarket. I was also present at a meeting of the Council on 2 September 2011(CEC01891529). In August we, the Conservative group, successfully

moved that the tram would stop at Haymarket. This had the support of Labour and the Greens. The Scottish Government were not satisfied with this and we were informed that all funding would be removed if the line terminated at Haymarket. That was why there was a further meeting on 2 September. This was the meeting where I moved the project should be stopped completely. Although the Mar Hall agreement was in place I had to consider that all the risk and all the financial costs was moving away from Scottish Government to the Local Council. I thought that this was an unacceptable place for us to be in as the Council. Therefore if the tram was going to be built all the way to York Place my group would not support this. I believed that we should be looking to obtain best value for the tax payer. For me that meant that the Council had to exit from the contract as soon as possible. My motion was in effect to curtail the Tram Project and then look at reviewing the governance structures in place. In addition to look at a package for exiting from the current contract and methods to be used for further funding in relation to future tram projects. The motion was successful at the first vote but was defeated in the subsequent round of voting. As a result we, as a group, voted for the tram to continue to York Place. My thoughts were that if we were to pay for a tram system we should ensure it went as a far as possible. I still believed that my amendment would have been the best way forward for the tax payer. The Council were looking at bringing in independent legal advice in the form of Turner and Townsend. In my view this would be more unnecessary expense for the Council.

62. The Council reached a settlement agreement on 15 September 2011. The agreement was in my opinion the best that we could achieve. The Council was in a difficult place. The contract had been signed off by Audit Scotland, Transport Scotland, along with senior officials from TIE and the Council. It was not as if we were going against the best advice. We were following the best advice that we had been provided with. The Chief Executive, Sue Bruce, and Alastair Maclean had informed us that the settlement agreement would be the best that we could hope for. It was the best alternative on the table and we had to ensure that the tram was built at that point. The only

other option would have been for the Council to take the whole budget on ourselves. Every time you make a decision you think of your constituents. However, sometimes constituents, for right or wrong reasons, do not know all the facts behind the decision. I think at this stage most of Edinburgh was against the tram, I do not think there was any dispute about that. I listened to constituents all the time, I think all Councillors listened to constituents but, sometimes, you do have to go with what is actually best for the city long-term. That is what I believed I was doing at that time.

63. I refer to the roles of Turner and Townsend along with Transport Scotland. Due to the passage of time I cannot recall fully what their exact roles were subsequent to September 2011. What I do remember is that Turner and Townsend were involved with the day to day management of the Project. Transport Scotland had responsibility for signing the Project off. They both had important roles to play.

64. In November 2012 I was appointed convenor of the Governance, Risk and Best Value Committee. As a result of the vote on 2 September 2011 to progress with the Project for me there was no alternative other than to carry on.

### **Project Management and Governance**

65. In relation to delivery and governance I do not believe that the roles and responsibilities of each of the main Tram Project stakeholders were sufficiently clear. I think that there was too many parties involved without any clear understanding of who was making decisions. As a result of the number of organisations involved there was no clarity as to who had responsibility individually for who was doing what and when. Ultimately it was the 58 Councillors who made the decisions and who were responsible for them. I do not think that this model would be used again in future projects. I do not know how many organisations were involved as this decision would have occurred before I became a Councillor in 2005.

66. There were a number of organisations involved in the Tram Project. The Council made the decision to build the tram. Our role thereafter was to monitor and intervene when required. TIE and TEL were both set up by the Council. They were ultimately to represent the Council's interests. Their role was to provide specialist expertise. These specific areas were construction and finance. Areas where the Council did not have specialist knowledge in relation to a project such as the trams. This gave us legal protection. On reflection I think the Council should have let these companies deal with the construction of the trams and report back when it was completed. This would have allowed them to carry out the project with the budget provided without political interference. I would not have allowed any politicians on the Boards of either TIE or TEL. The fact that politicians were on the Boards did not work. Transport Scotland's role was to keep a watching brief on the Project on behalf of the Scottish Government. Transport Scotland had sight of the contract and they had the lawyers to assess it. They did not however raise any concerns. Neither Transport Scotland nor Audit Scotland ever highlighted any concerns to us as Councillors. That gave us the reassurance that there were no issues.
67. I cannot say what impact the election of the SNP administration in May 2007 had on the involvement of Transport Scotland with the Tram Project. I was not involved directly with the processes involved at that time. I would offer my opinion that as the SNP were not in favour of the Tram Project they decided not to take up posts within TIE. I do not think it would have made a difference if they had occupied posts within TIE. The information they would have received would have been the same we, as Councillors, received. If the posts had been occupied by the SNP it might have assisted in presenting a united front to the contractor. Instead it was clear that all political parties within the Council were not in favour of the Tram Project.
68. I would say that Council members and officers should have definitely been more involved in the Tram project. In particular the Council Leader Jenny

Dawe and the Transport Convenor. Neither of these individuals was sufficiently active in relation to the Project. When the work stopped and it became clear that there were major issues they should have been on a plane to Germany to try and resolve matters through negotiation with the contractor. I am not sure Councillors should have had more involvement. Our role is to make decisions, policy decisions. I believe that there was too much reliance by Councillors on the information provided by TIE and TEL. I think that when it became apparent that there were major issues with the Project Councillors failed to react. They avoided the issues and used TIE as an excuse. This was not my view at the time but later when matters became clearer. I do however believe that as Councillors we undertook our duties as best we could, based on the information we were provided with. I do not believe that the same can be said for senior officers from CEC.

69. When I became the group leader I attended a number of briefings specifically for group leaders. As a result of these briefings I became more concerned with some of the information being provided. In particular the information shared by Richard Jeffrey did not appear to be sound or robust. I believed at that time that the information from Richard Jeffrey at TIE and David Anderson from CEC was not credible. I raised these concerns with Alastair Maclean who was at that time part of the Council. I believe that Alastair had concerns as well. However at that point he was not a senior officer. Alistair was Head of Legal and his loyalty was to the senior management team at CEC. These were private conversations with Alastair MacLean. I raised some points and he provided me with some answers. I think that Alastair understood there were on-going issues. However he did not necessarily have the power at that point to actually do anything about it. The discussions I had with Alastair were not recorded officially they were private conversations.
70. In reference to a Council meeting on 23 August 2007. I have no recollection of this meeting. As a result I could not comment on any discussions that occurred in relation to a revised governance structure being required for the



Project. I would offer that I was not involved in any of these discussions. At that time I was dealing with education.

71. I note the minutes of a Council meeting dated 28 May 2009 (CEC01891438). I do not remember this meeting. I do know that as a group this review was supported by us. It was however not something which I was directly involved in. I would say that finance would have dealt with this review.
  
72. I refer to a meeting of the Audit committee on 26 January 2012. At this meeting it was noted that a further revised governance structure was to be implemented. This was part of the decision to continue the tram to York Place. I was aware that a key feature of the revised structure was that there would be a political overview. This would be by means of separate monthly and quarterly meetings. I was part of the All Party Oversight Group which met monthly. The quarterly meetings involved the Audit Committee. The monthly meetings that I was involved in provided an opportunity to obtain more regular information about the Project. I would not say that this changed much. We tried to provide a bit of guidance on occasion. During the briefings hand outs were provided but a stipulation was that they had to be handed back after the meeting. This was to ensure confidentiality. I have recently asked CEC officers if copies of these notes are still available but apparently they are no longer in existence. I asked Carol Campbell and Alastair MacLean before they left the Council. Most recently it was Andy Nicol I asked. Andy had been Jenny Dawe's office manager and was in attendance at a lot of the meetings. The documentation would have evidenced what information we were provided rather than it being presented orally by myself.
  
73. There was also representation from Transport Scotland at all levels of the Project. I would say as a Councillor it never became clear to me what the actual role of Transport Scotland was in relation to the Project.
  
74. In June 2007 and February 2011 Audit Scotland produced reports for the Tram Project. These reports were important as they had been produced by

professional independent auditors. The June 2007 report was particularly relevant as it provided a clean bill of health to the Project. As a Councillor I put a lot of reliance on the content of these reports. The report in February 2011 although not as positive as the previous one, it was not negative towards the Project. The information provided in both these reports provided me with confidence that the Project could progress. Council officers provided Audit Scotland with the relevant information concerning the Project. However Audit Scotland had the authority to request anything that they felt was important and relevant.

## **Reporting**

75. The Chief Executive of CEC had ultimate responsibility for advising and briefing Councillors of any developments relating to the Tram Project. This was initially Tom Aitchison and then Sue Bruce. Sue Bruce and Tom Aitchison were obviously advised by senior members of staff. Relevant senior member of staff would be Donald McGougan, the Head of Finance, the Head of Transport and the Head of Legal.
76. When Council meetings occurred there were obvious a number of matters on the agenda. At times these would include matters relating to the Tram Project. There were also separate meetings held that would deal with solely tram issues. On occasions meetings may have taken place before a Council meeting started if there were matters relating to key decisions that were to be discussed. I would say that there were fairly regular separate tram briefings. When Sue Bruce and Alastair MacLean were in post there were regular tram briefings. In my opinion there was sufficient time set aside during Council meetings for discussions around the Tram Project.
77. On any occasion where a vote on a matter was required the Conservatives would vote as a group. We would meet as a group debate the subject and then agree on what way would vote. As the party whip it was my role to ensure that all members voted in line with what the group had agreed.

Councillor Kate MacKenzie defied this process on a number of occasions and that is why she was disciplined by the party. Ultimately Kate was suspended from the group for three months.

78. As a Councillor I was kept informed of Tram Project developments mainly through Council reports. As a group leader I would hold a number of informal discussions with senior CEC officials about the Project. This allowed me to be presented with additional information when required.
79. I am certain that the Council leader, Group leaders, the Finance and Transport leaders would have received separate briefings on the Tram Project. I know for a fact that Councillor Whyte and myself as group leaders received briefings where all group leaders were present. I also, on occasion, received separate briefings. This did not relate exclusively to the Tram Project. Any major project would have been subject to the same procedures in respect of briefings. In relation to the individual briefings where I was not present I believe I was only provided with the information that the recipients wanted me to hear.
80. As I have previously stated as a group leader I had private and confidential briefings relating to the Tram Project. As these were confidential briefings they were not to be shared with anybody else. So I had information which other people did not have. The purpose of these briefings was an attempt to have all the parties working together. The SNP as opponents of the Tram Project did not engage with this philosophy. The briefings were not to make decisions but to provide information and afford the opportunity to ask questions. As the meetings were confidential I could not discuss the content with any of my group members. I did feel that at the time that it would have been beneficial to discuss some of the matters raised with my colleagues.
81. When I was making a decision in respect of the Tram Project I always thought I had all the information I required. The problem was that the information I was being provided was wrong. Anytime that a decision was to

be made there was never any instances where people involved would not speak with you. They were always able to answer any questions that you had. There was no shortage of written reports and PowerPoint presentations. The key for me was what was contained within the information I was provided with.

82. As a Councillor I believe that we were provided detailed reports in respect of the Tram Project. On occasion the information could have been provided earlier. An example of this is when it was apparent that there were problems with the contractor we should have been informed sooner. This goes back to the issues of information sharing. Members were provided with guidance in relation to financial and technical matters in a form that was both understandable and intelligible. If required we had the opportunity to ask further questions. If further information was required there was always an opportunity to request this. This could either be verbally or in writing. When I became group leader I had the opportunity to have specific meetings with Sue Bruce, Alastair MacLean and Carol Campbell. These senior officers were always approachable and available. When I met with the three officers I have mentioned I think that the information I was provided with was both accurate and transparent. This is contrary to what I received before, which as I have detailed I am of the opinion was wrong. The difference when Sue Bruce came in was that her team were far more open. If there was a problem it was highlighted immediately and through open discussion an opportunity was provided to ensure a solution was achieved.

83. I had a number of concerns over commercial confidentiality. In particular the apparent withholding of information due to commercial confidentiality. I believe that this was a major issue for Councillors. This was not just in relation to the Tram Project. In general terms it was mainly lawyers informing us that we could not have access to certain items of information. This came down to a lack of trust and using confidentiality as a smoke screen. It is still in existence today. I understand the reasons behind this in certain matters in relation to potential leaks to the press. When Alastair Maclean and Carol

Campbell arrived it was dealt with in a more professional manner. You would be provided with the information within a room then sign a confidentiality document. You were not permitted to remove the information from the room. It highlighted the serious nature of what we were being informed about. I am not sure whether this method mattered or not. The concerns around commercial confidentiality I would say affected the decision making process of Councillors. If we did not have all the information it was difficult to arrive at the right decision. I do have the opinion that senior officers used commercial confidentiality as a way to withhold information from Councillors.

84. I am not sure exactly sure what information provided to Councillors derived from TIE. In addition the extent to which information was produced and verified by CEC. I believe that the Council reports originated from Council officers. My understanding was that Council officers received information from TIE and other sources. An officer's report would then be produced to allow it to be read over by Council members. Ultimately decisions based on the information received would be the responsibility of the Council.
85. I was not informed of any concerns raised by CEC regarding the contract. I had no knowledge at that time that CEC officials had any concerns about the contract. From what I was told CEC officials and including the Head of Legal were satisfied with the contract.
86. I produced regular newsletters that detailed information about the progress of the Tram Project. People corresponded with me by letter and email and I would respond with the information I had at that time. The only concerns expressed to me by constituents were in relation to line 1b. This was a concern for a number of people resident in the Murrayfield and Craighleith areas. This I would say was a separate issue from line 1a although I did respond to the correspondence I received about this. I did receive some concerns from constituents about the Tram Project. This was more to do with the trams in principle rather than anything specific. The concerns that I had received I raised with Council officers and provided feedback where

necessary. I made it clear during my election campaign that I was against line 1b and this was something I would not vote for.

87. As a backbencher I would say that a lot of my views in respect of the Tram Project were formed by what was reported in the media. At that time I was not on specific committees. I know that some people within the Council used the media a lot. Therefore there was a source to what was reported. I was first aware that things were not going well when I read about it in the Edinburgh Evening News. It was obvious as a result of what was being reported that the Evening News, Scotsman and the Herald they had some very good sources. My opinion was that it was clear the media was very much anti trams. Looking back in retrospect the media were actually very accurate in their reporting. I think that they were trying to put a spin on the whole issue. There is no doubt though that what they were using was factual.

#### **Cost overrun and consequences**

88. I first became aware that there was likely to be a significant cost overrun to the Tram Project when again I read an article in the Edinburgh Evening News. I then had a conversation with Iain Whyte and Alan Jackson about this topic. There was subsequently a report on the matter submitted to the Council. It became apparent that it was not a fixed price contract and there were significant delays with the utility work. This was a massive shock to me as I had not expected this. My understanding was that the main reason for the overrun was unexpected difficulties with the utilities work. I had been under the impression from previous briefings that this risk had been transferred to the contractor. It transpired that this was not the case. All the issues that now presented themselves went against the information I had been provided with at the start of the Tram Project.
89. After the Mar Hall mediation process Councillors received a number of briefings and reports. I do recall that these were very detailed. However I

cannot recall what the actual content and detail was. What I did understand was that the overspend would have an effect on the Council budget. This was going to increase our borrowing. This would result in less capital being available. The inevitable consequence of this would be an impact on the budgets of other services. This was regrettable but I believe this was the only financial solution to the Council given the circumstances.

90. As a Councillor I do not think I was provided with accurate or sufficient information in relation to the risk that the Project would have a cost overrun. I think this information was hidden from Councillors. Later when it became clear there would be a cost overrun the actual implications of this were still not fully disclosed to the Council. We were relying on the Chief Executive and the Director of Finance to provide us with accurate information throughout the Project.
91. The failure of the Tram Project to deliver the trams on time, within budget and to the extent projected has consequences politically. It is clear politicians and Edinburgh Councillors are less trusted than they were before the Project commenced. There has clearly been a financial implication. Any overspend over £500m then £545m is basically taking money away from other services. There has been a significant impact on businesses. This was especially evident on Leith Walk and the Shandwick Place area. The whole Project has had an effect on the reputation of the city and the Council. An example of this was when I was down south a few years ago. There was a television report highlighting the inefficiency of Edinburgh Council. This demonstrates that it has had an effect on our reputation. I think it raises the question whether Councils can produce large infrastructure projects such as the trams and if they cannot who would be able to. I do not think that there is any great resentment of the tram system from the public now that it is operational. I am of the opinion most people are indifferent towards it.
92. I think that we failed to properly inform people why there was a requirement to build the tram. People still do not understand why the tram line was

constructed. Again this was a failure of the Council. There was a need for a Public Relations exercise that would show the public both the need for a tram system and the benefits. Council constituents could not understand why it was being built, particularly if you lived in the south of the city, Fairmilehead, Morningside or Colinton. The question from these constituents would be what benefit the tram would have for them. These people were still affected by the Project if they used public transport to travel to the city centre where the tram works were on-going.

93. I believe that failures of the Tram Project had a greater effect on Councillors rather than TIE employees. This is demonstrated with the election results five years ago. At that time the Liberal Democrats were the leaders of the Administration. After the election the Liberal Democrats lost a large amount of seats. Constituents were clearly holding them accountable for the tram project. This was not accurate as clearly it was a Council decision but the Liberal Democrats were the Administration Leaders. Obviously there would be other reasons for their demise. The fact was the Liberal Democrats went from approximately 18 seats on the Council to three. I believe that for the same reasons the SNP did well because they were known to be opposed to the Tram Project.
94. I would say that constituents had no knowledge of the governance structure in place in relation to the Tram Project. They would in general have no understanding of how TIE, TEL, Transport Scotland and Audit Scotland operated. Constituents would have the opinion that the 58 Edinburgh Councillors were responsible for the failure of the Tram Project. Constituents would also be aware that the SNP were opposed to the Project. As a result they did not appear to receive the same amount of criticism as other political parties.
95. The shortened tram line demonstrated that the Tram Project had failed to meet the objectives and benefits of the Final Business Case. One of the main reasons for the tram system was to provide a link to Leith and Ocean



Terminal. I believe there was a requirement to provide a better transport system for the north of Edinburgh. This would have supported regeneration of the area. I would say that the tram system is now more for tourists looking to travel from Edinburgh Airport to the city centre.

96. The effect of the additional borrowing undertaken by CEC was actually limited. The Council was fortunate that when the extra borrowing was sourced the rates were low. There would obviously be a clear reluctance by the Council to engage in any projects similar to the trams. In any case the economic slowdown and reduction of budget imposed by the Scottish Government has had a greater effect on the financial position of the Council. I do think that constituents have a different view. I have overheard numerous conversations from members of the public. The general statements made are that services have suffered as a result of the Tram project. I do not personally believe that this is the case.


97. I refer to the minutes of the Project Delivery Group dated 24 January 2013 (CEC01891346). It was discussed during the meeting if governance was the best value. This was discussed under what is known as a B item. This could be disclosed into the public domain. The answer I got from Alastair MacLean after the meeting has never been in the public domain. This is all confidential. During the course of the meeting Alastair MacLean advised me that I would be expected to ask a question at the Governance, Risk and Best Value Committee later the same day. This question would relate to the recovery of damages connected to the Tram Project. I was to ask the question as to whether there was an opportunity to recover money from a third party due to the advice we had been provided with. As I have detailed within my statement I am of the opinion we were provided with incorrect information in respect of the Tram Project. This misinformation was provided by both Council officers and the CEC legal team. I believed that if this could be evidenced then there was an opportunity to recover damages. I was exploring the possibility of the Council suing both groups and individuals. My

understanding is that a legal action has already commenced although it has been put on hold until the conclusion of the Edinburgh Tram Inquiry.

**Final Comments**

- 98. Ultimately I believe CEC were responsible for the delivery of the Project on time and within budget. However there were other individuals involved and who I have referred to throughout my statement.
  
- 99. The main reason the Tram Project failed to deliver on time, within budget and to the extent proposed was the contract. The initial contract that was signed was flawed and so bad we were never going to achieve our goals. I do not think that is a good thing for politicians to be involved in extensive structural projects.
  
- 100. The failures of the Tram Project may have been avoided if other individuals had been in place. My opinion is that many of the problems were as a result of the individuals involved with the Project.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 33 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..... 7/3/14.....