

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: Jim Inch

Dated: 25/4/17

**THE EDINBURGH TRAM INQUIRY**

**Witness Statement of Jim Inch**

Statement noted at 0900 hours on Wednesday, 27<sup>th</sup> April 2016 in Edinburgh in the presence of Chris Philips, Solicitor, Clyde and Company, Edinburgh by Gordon Mitchell, Statement Taker, Edinburgh Tram Inquiry.

My name is Jim Inch. I was the Director of Corporate Services for the City of Edinburgh Council between 2002 and January 2011.

**Introduction**

1. My training and degree was in Economics and I was a Fellow of the Institute of Management Services. I started working for a number of years in the private sector before moving to local government around 1973/74. Prior to 2002, I was City of Edinburgh Council's Head of Personnel, Management Services. For a period of about 6 months I was the interim Director of Corporate Services until I was confirmed in the role in late 2002. That is quite an important point. Consequently some of the questions directed towards 2002 or even before 2002 I have no knowledge of. I retired from the City of Edinburgh Council in January 2011. As Director of Corporate Services I was responsible for all back office functions, namely, Legal, Licensing, Member Services, Administration, HR, Management Services, IT, Corporate Communications, Policy Planning, Registration Services and the District Court. I also had three business units to manage, namely Transport, Cleaning and Catering (including school meals and "meals on wheels") I was also the Council's Monitoring Officer. At a later stage I also acquired responsibility for the Culture and Sport functions. Finally I was Monitoring Officer for the Lothian Valuation Board and for the Fire and Rescue

Service. I don't think my services were ever called upon by the Fire and Rescue Service or the Lothian Valuation Board. These were the general duties of the job I was not the tram Monitoring Officer, that was the responsibility of the Head of City Development.

2. The Monitoring Officer had responsibility for investigations into all sorts of matters. In particular, if there was an accusation made against an elected member, the Monitoring Officer was the person who would have to step in to investigate
3. As Director of Corporate Services I was responsible for all the back office functions for the Tram Project and I provided support to those Council Officers who were working on the project. Legal Services staff were seconded to the project and occasionally there would be communications staff, HR or other staff who would be deployed to do a particular job in relation to the tram project, however, I had no direct responsibility until 2007 when the Internal Planning Group was set up. I was then asked to participate in this group. My involvement with the tram project increased at that particular point in time. Prior to that my involvement was limited to matters concerning remuneration and bonuses and other HR related issues. The Chief Executive consulted me on these matters.

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

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

4. **USB00000228** is a report to Council which Andrew Holmes, Director of City Development, submitted on 18 October 2001 seeking the Council's 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 part. The report proposed the creation of a wholly owned Council company to deliver the projects forming part of the NTI. The draft application in principle, appended to the report to Council, noted that one of the issues leading to the creation of TIE was "public and stakeholder scepticism about the ability of the local authority to implement the initiative".

The application for approval in principle to develop the projects in the NTI was duly submitted to the Scottish Executive. Members were subsequently provided with an update by a report to Council on 2 May 2002, (USB00000232) The report appended a letter dated 28 February 2002 from Wendy Alexander, Minister for Enterprise, Transport and Lifelong Learning, which supported private sector involvement and the principle of an off balance sheet company. However this all happened prior to my appointment therefore I was not involved. As Director of Corporate Services I was a member of the Council's Management Team and had an oversight of the business of the Council. Before that, I did frequently attend the Management Team Meeting but I wasn't a standing member of that group. I had very little awareness of that particular report and the detail behind it. Having said that, I can understand and recognise what was happening.

5. The reason for setting up TIE was that the Council had assessed that they didn't have the capacity, or the expertise in-house, and this was a very specialist area. We had long lost our capacity for that sort of activity through various reorganisations and adjustments. I can perfectly understand why TIE was set up and we definitely did not have resources in-house. There would be other reasons for setting up TIE in terms of an arms-length organisation and trying to compartmentalise the project and give it a home. The options were to buy-in that expertise and keep it in-house or to set up an arms-length organisation. Buying in the expertise would have been very difficult because the salaries that we would have to have paid to bring in the expertise that was needed would be cost prohibitive. There were lots of practical reasons for keeping it at arms-length and the notion was that we could second people into the organisation so that we could still keep an interest and a momentum. I think that was the main reason.
6. I understand the main advantages of an off balance sheet company. The Director of Finance (Donald McGougan) and the Director of City Development (Andrew Holmes) would have a very clear understanding as to why they set things up in this way. Donald McGougan and Andrew Holmes would predominantly do the reporting on this matter. The advantages of an off

balance sheet company would be partly to do with risk control. It would be about trying to move some of the risk, however as it transpired this was unsuccessful because the risk still sat with the Council. At one level it was expected that we wouldn't be able to shift risk, the whole thrust of the Council's approach to the project was to try and move risk out of the public sector and into the private sector and try and hold it there. Initially TIE's thinking was that they would be part of that and as it transpired that didn't work. It was a very complex project that required lots of other connections to be made and to ensure that we differentiated between peoples' day jobs and their 100% commitment to the project. That was another important factor. It certainly was a factor in relation to the Directors of City Development and Finance in as much as they had executive responsibility for most of this and they also had a day job to do. TIE was designed to take responsibility for as much of this as possible without the Council losing control.

7. I have no idea why there was considered to be scepticism about the ability of the local authority to deliver the NTI. I didn't share that scepticism. Later on I thought we should re-think all of that. At the time I understood that we were talking about a highly specialised activity and it really did present a major challenge. Throughout we were dealing with a very negative media campaign which was highly critical of the Council.
8. I have no knowledge/view on the experience, at that time, that CEC had in procuring, managing and delivering major capital projects including, in particular, major transport infrastructure projects.
9. With regards to the extent to which the creation of TIE to deliver projects in the NTI reflects the views of CEC and the extent that decision was influenced by the views of the Scottish Executive, I would say that quite simply Transport Scotland insisted that it couldn't be held in-house, it needed to be placed in some sort of governance arrangement which didn't involve the Council taking direct responsibility. That was a condition of Transport Scotland's support for the project. This was not unusual and I think Transport Scotland were simply observing that it would be extremely difficult for a local authority to take on a

project of this scale and deal with the issues that would arise from it. I agreed with that assessment.. There are extensive questions on governance when we consider by what means, at that time, that CEC would exercise control over TIE and I will address these later in my statement.

10. I am aware of a report produced by TIE's Infrastructure Procurement Group on 8 April 2004, document **CEC01853647**, noting that, given its resources and experience, TIE was essentially a procuring body rather than a major project management organisation. At that time they needed to recruit expertise in Project Management. It was envisaged that the tram project, including the main contracts, would be managed by TIE.
11. I did not have any direct involvement with regards to any consideration given to TIE, or the Council, to instructing an external expert body, such as a firm of consulting engineers, to project manage the tram project or particular parts of it. I think it is also important to recognise the role of Transport Scotland in terms of having oversight of the project. Transport Scotland would undertake a number of "Gateway "reviews in compliance with the Green Book. All of these provided checkpoints in terms of progress and brought about a discipline around what was happening, when it was happening, where the risks were and how best these could be mitigated. Transport Scotland had a pivotal role in that monitoring and I am aware that there were frequent on-going discussions around how to fill gaps identified in the expertise needed. As a direct result other organisations were contracted at different times to advise or assist.

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

12. I am aware from referring to documents that various estimates for a tram network were produced between 2000 and 2004. In July 2001 a Feasibility Study (**CEC01916700**), reported that a north Edinburgh loop could be built for a capital cost of £191.m. A September 2002 TIE report, Integrated Transport Initiative for Edinburgh and South East Scotland a Vision for Edinburgh, (**CEC01623145**), considered that it was possible for the northern loop and the west lines to be built at a total capital cost of £355m and a south east tramline

to be built at a cost of £123m. A January 2003 report by Arup Transport Planning, Edinburgh, "LRT Masterplan Feasibility Study" (CEC01190799), estimated the total capital cost of all three lines would be £527.93m or, if built together, £465.55m. The 2003 Preliminary Financial Case for line 1, (TRS00000054), estimated the capital cost of line 1 as £287.3m. The 2003 PFC for line 2, (TRS00000016), estimated the capital cost of line 2 as £336.3m. The September 2004 update of the Preliminary Financial Case for line 1, (CEC01868590), estimated the capital cost of line 1 as £274m. The updated PFC for line 2, (CEC00642799), estimated the capital cost of line 2 as £320.9m. Council officers would be very much involved in these estimates. The Directors of City Development and Finance, in particular, because they had direct responsibility for the project. I had an awareness of these various reported estimates. I would read about them in media reports at the time and occasionally in Council papers. I would have seen these figures but I would have had no detailed knowledge of their calculation.

13. Occasionally a report would go to the Council's Management Team. If a report was going to go to members, it had to go to the Council Management Team prior to going to elected members and in that way I would have an awareness of it. This was such a complex matter and there was no way those members of the management team not directly involved could make a meaningful contribution. The reports were generally for noting but occasionally there would be something in the reports that someone could add value too. If it was to be considered by elected members, there would always be a discussion about "how are we going to position this with elected members". That wasn't the case in the early stages of this project however, it did become the case when the membership of the Council changed and we encountered a really difficult political situation. Estimates had to be reviewed, amended and adjusted to reflect the emerging situation. I don't think anyone was very surprised at that, although we did think it was going to even out once we had got to the point where we had contractual arrangements in place.
14. I have no experience of the Scottish Transport Appraisal Guidance and the calculation of a benefit cost ratio for a project other than an awareness of it.

knew that it existed in Transport Scotland and I knew a bit about the theory behind optimum bias. These were not techniques that I needed to know a lot about because they weren't needed in my role. At the time my experience and understanding of optimum bias, contingency and other methods of assessing and quantifying risk for infrastructure projects was limited. I had never encountered them in practice and I wasn't asked to comment on them. My experience and understanding, at the time, of any central government advice on these matters, such as the Green Book was simply that I knew that there were regular meetings with Transport Scotland on these matters involving the Directors of City Development and Finance and their representatives. I knew about the Green Book, and I became more familiar with the Green Book approach later in the project when I had a more direct involvement. I was aware of Transport Scotland setting funding conditions on the Council relating to the Gateway stages. That was quite a rigorous approach, a very useful approach, from the Council's perspective, because it introduced a third party to scrutinise what was happening, how it was happening, when it was happening and identifying any issues that might be arising. Some people might have regarded it as interference. I think TIE always saw it that way. Certainly the Council didn't see it as interference we saw it as very helpful support. It was part and parcel of our overall governance arrangements.

15. I was aware of STAG appraisals, benefit cost ratios for projects, optimism bias and the Green Book. At this stage I had an observational role only. I knew of these theoretically, but had never applied them. City Development would use these tools on a day-to-day basis. They are essential to the business that they are involved in. I am sure, the Director of Finance would have that same perspective.
16. Initially, I was not very surprised to see the increases in the varying estimates for the proposed tram network or the scope of the proposed network decreasing. There was an expectation that this escalating cost would peak when the contract agreements were signed.

## The October 2004 Arup Review

17. I recall that in October 2004, Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, produced a review of the Business Case for line 1, **CEC01799560**. While Arup concluded that, in general, the approach described in the Preliminary Financial Case was reasonable and robust given the stage of development of the project, certain concerns were noted. In November 2004 TIE responded to Arup's report, CEC01705043. I have no recollection of seeing that report and TIE's response. While sometimes it was a bit painful to have to go through some of these review procedures, I always thought it was a positive thing. I think any concerns that were thrown up by the Arup Review; we knew that we had to take very seriously. There would be action plans in place to address the issues raised in the review but as I was commenting from an observational role at that time I would defer to the Directors of City Development and Finance as the lead officers. I thought everyone was moving in the same direction in a positive way concerning the project and I was pleased to see these checks and balances were in place.

## The 2005 Road Charging Referendum

18. The New Transport Initiative (NTI) comprised of a number of proposed transport projects, of which a tram system and road charging formed part. The September 2002 TIE report, **CEC01623145**, noted that the financial strategy for the NTI required revenue funding from road user charging. In February 2005, following a referendum, the public voted against the introduction of road user charging. I have no idea how important a component the income was from road charging to the financing of CEC's proposals under the NTI including, in particular, the construction and operation of the tram network. I don't know how that played out and I am aware that clearly the intention had been to use some if not all of the proceeds to contribute to the tram project.
19. My only involvement with the referendum was that I was the Deputy Returning Officer. I was the person that organised the referendum. In light of the result of the referendum a funding gap was created. This informed the negotiation with the Scottish Government on their contribution. I suspect that the Council would

have been able to make a bigger contribution had road pricing been approved. There was then a negotiation between the Scottish Government and the Council to identify the resources that might enable the tram to proceed. The two Directors (City Development and Finance) would have led that negotiation. The Director of City Development would have been the responsible officer.

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

20. In May 2005 TIE produced a draft Interim Outline Business Case, document **CEC01875336**. I did not see, or seek, the May 2005 draft Interim Outline Business Case. I had no direct involvement or understanding of how, and by whom, the risks were to be aggressively managed.

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

21. Referring to a report to Council on 26 January 2006, **CEC02083547**, I note that it makes certain recommendations for funding and phasing the tram network. The first phase from the airport to Leith waterfront was considered to offer the greatest benefits. I know that a lot of work went on in terms of identifying the cost benefit of each of the different parts of the route and that would have been rigorously assessed and estimated. The determination was what was the best for the city in terms of the options that were around. Again, it does pre-date my involvement. I am certain that it would be very thoroughly researched. The need to restrict, or phase the scope of the tram network did not at that time cause me any concerns in relation to the reliability of the cost estimates and the affordability of the tram project. Concern over cost estimate and affordability was a constant that ran throughout the whole thing. It's odd to say I wasn't concerned, but it wasn't a particular concern at that particular time.
22. As to whether it was an important factor for the Council that the Council's contribution would comprise of only such amounts as could reasonably be expected to be funded from future tram-related development and receipts, rather than from general funds or from Council Tax, I understood that was

sensible given all the other demands on the Council's financial pot. It made sense to link it to something and that was a logical thing to do.

23. In a joint report to Council on 21 December 2006, **CEC02083466**, Donald McGougan and Andrew Holmes sought elected members' approval of the draft Final Business Case for the Edinburgh Tram Network (**CEC01821403**). There was always concern about the increasing estimates. I rationalised this by realising that these were increasing because we were getting much more accurate information. We were aware of issues and we were listening to what Transport Scotland were telling us in terms of some of the areas where we needed to add resource in order to mitigate risk. There were cost additions as a consequence of all of that and the detail of the works that needed to be done. I had no concerns that the Benefit Cost Ratio (BCR) of phase 1a was only 1.1. I did not give it consideration at that time as I wasn't directly involved. My colleagues didn't appear to be too alarmed and I trusted them because they were the people dealing with the day to day matters.
24. I thought the most significant risk affecting the timeous completion of the project within budget would be the Infraco works. There was quite clear evidence beginning to emerge at that time that this was going to be difficult and the utility works were representing a real challenge. At this stage I had thought that formal contracts were being developed and these would be robust.
25. My understanding of the steps that would be taken, and by whom, to control these risks and to maintain control over the capital costs of the project was that there was a range of governance arrangements in place that would effectively control the way in which the project was conducted. I was still confident at that stage that the governance arrangements looked as though they were robust. If we move on a year my views changed.

### **The Procurement Strategy**

26. I am aware that a procurement strategy was devised where there would be separate contracts entered into for each of the main works, the design and utility

works would be carried out in advance of the infrastructure works and that the design contract would be transferred to the infrastructure contractor when the infrastructure contract was entered into. I had no direct involvement in this although my Head of Legal (Gill Lindsay) would be very much engaged along with the Director of City Development in putting together contractual arrangements. Latterly the Head of Legal was very much more involved in keeping me apprised of what was going on. I still had no direct involvement at that time. However my understanding of the purpose and aim of that procurement strategy was that it was to try and limit risk. I think the fundamental approach was to try and transfer as much risk as was possible to the private sector both in terms of cost and timescale. I thought that this made sense.

27. As far as I can recall around late 2006/early 2007, I had no appreciation of the extent of progress made with design work or statutory consents and approvals prior to the infrastructure contract being entered into. Similarly I did not appreciate the extent to which the utility diversion works would be completed, at the time the infrastructure contract was entered into and infrastructure works commenced.

## **Design**

28. I note that the Systems Design Services (SDS) contract was entered into between TIE and Parsons Brinckerhoff Ltd around September 2005. I was not aware of the delay in completing design and in obtaining necessary statutory approvals being reported to meetings of the Chief Executive's Internal Planning Group (IPG) at that time because I thought that the Chief Executive's IPG was not formed until 2007. Members of that group included the Chief Executive, Tom Aitchison, and Directors of Finance, City Development and the Tram Monitoring Officer. At various times other individuals attended depending on the matters being discussed. The papers were all managed by City Development and the City Development officers, who were working with TIE, together with the Head of Legal and the Head of Corporate Communications. Delay in completing design and in obtaining necessary statutory approvals and

consents were regularly reported, but not through IPG. There would be a forerunner to the IPG, however, it was a much more restricted group. I think the IPG was created as a consequence of concern, but the concern hadn't arisen in 2005, and this is when the IPG was developed, or created. Tom Aitchison determined he needed to have this group in order to start to have a more direct engagement and more specific monitoring of what was going on. I think before that there would be a much more limited reporting and discussion but very much more focussed on the tram business and TIE would be involved. There were numerous meetings between Council staff, TIE staff and, indeed, at some stages, they were inseparable because people were seconded into TIE, some people were employed directly by TIE, others were not. It was a very complicated arrangement. I am absolutely certain that there would be a huge number of meetings and discussions concerning these matters.

29. I would agree there was significant delay in completing design and obtaining statutory approvals and consents. Design difficulty, delays in design and the problems associated with these matters were certainly reported to IPG. My understanding of the cause or causes of the delay could be attributed to SDS. We were advised of various excuses, SDS would blame the Council and the Council would blame SDS. A planner in the Council would argue that the quality of the plans being developed by SDS were inadequate and not fit for purpose, SDS would refute that and the resultant argument would be time consuming and costly. What was particularly alarming was the impact of the period of delays downstream.
  
30. My understanding of the steps taken to try and address the delay, and whether these steps were successful, was that a lot of additional resource was put in place by the Council both in terms of planning capacity and other staff in order to try and speed up the vetting of plans. Of course the plan was always to novate to the contractor and make the contractor responsible for the delivery of these plans. It was expected that that would bring a robustness to the process that was clearly missing up until a particular point in time. The IPG certainly was monitoring that issue very carefully and there were signs that there were improvements in terms of the throughput. However, there was an underlying

concern that the quality of the material was substandard and that in itself was going to lead to further difficulties.

31. The delay in completing design and in obtaining statutory approvals and consents, and knock-on effect on the infrastructure contract, did cause me concern. The Council put in more resource for example, more people were seconded to TIE from planning and additional resource was identified in planning to prioritise this work. We were also very aware of the day to day business in that department and all the other planning activity that was going on apart from the tram project and additional planning staff were recruited. So in summary in response to any such concerns more resources were targeted at that area.

### **Utilities**

32. I recall that in October 2006 TIE appointed Alfred McAlpine Infrastructure Services Ltd (AMIS) under the MUDFA contract to carry out the utility diversion works for the tram project. I understood that there were delays in carrying out the utility diversion works. Clearly, some of the delays were down to the quality of the plans and the poor planning around that. Also the poor records of utilities works street openings often revealed that what the utilities thought was there, was not there. It was a real mess. The quality of the records on which estimates had been made of the remedial works was very poor and the argument was "you won't know until you go in". This was one of the reasons for putting a sum aside for risk as it was a recognised risk, you go into the ground, and you had no real ideas of what might be encountered. That combination of factors; poor plans, delays in plans and the unforeseeable difficulties that were thereby created had serious consequences.
33. With regards to steps taken to address any such delays, Edinburgh is a difficult place from a traffic management perspective and traffic management was inevitably problematic at certain times and certain places and it did require quite a lot of residents' consultation. I think probably traffic management and the

associated difficulties of traffic management in Edinburgh would have been another factor.

34. Steps taken to address this, such as the additional resource allocated to it, were effective. Clearly delays here inevitably meant additional cost. Any delay would definitely bring about additional cost. For me that was the biggest concern, delay increases cost, however, it was maybe more than that in terms of infrastructure because it meant that the contractor would fall back on the quality of the contract and the ability to negotiate around it. I think all of that involves time and you then go into a cycle of constant renegotiation without coming out the other end with a definitive plan.
35. The IPG was, to my best recollection, started about that time in 2007 when the Chief Executive felt that there needed to be more scrutiny around the project. I think the Chief Executive was beginning to get more concerned about the emerging situation and the need for greater governance. Political changes reduced the support for the project and this was reflected in Transport Scotland taking a less supportive role. In addition we had an increasingly aggressive media campaign against what was happening and we therefore needed to put more effort into communications to try and portray the Council's activity in a better light. The media issue exacerbated difficulties at elected member level. There were increasing concerns that cost estimates were escalating while timescales were drifting and in addition there were a number of additional problems arising.

#### **The Infrastructure Contract – 2007**

36. I am now aware that from at least December 2006 TIE advised CEC that any infrastructure contractor would require some form of guarantee from CEC of TIE's obligations under the infrastructure contract. An example was given in email correspondence back in December 2006, document **TIE00064621**. I have no recollection of this.

37. 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 tram project from Transport Scotland was capped at £500m (letter dated 2 August 2007 from Malcolm Reed of Transport Scotland to Tom Aitchison, **CEC01666269**). A highlight report to the IPG on 30 August 2007 noted that changed the risk profile for the Council, raised the question of CEC obtaining independent legal advice on the risks inherent in the Infraco contract 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**. Around that time, Councillor Gordon MacKenzie, Finance Convenor, sought information from the Directors of City Development and Finance on a number of matters, including what contingency plan needed to be in place in case of a cost overrun (**CEC01556572**).
38. Steps taken by CEC following the changed risk profile to protect its interests including, in particular, to ensure that CEC officers understood the risks and liabilities arising from the Infraco contract and, generally, to ensure that the tram project was delivered within time and within budget, were that the Director of Finance was responsible for identifying contingency arrangements. I am sure he had a number of contingencies in mind and I am sure he discussed these with the elected members at the time. When the Government determined that the Council should be the funder of last resort, the situation changed significantly particularly in relation to risk. I think DLA, at that time, had prepared a risk allocation matrix that clearly tried to identify where the risks lay. I think that would have informed the Director of Finance in terms of what provision he needed to make. I think between them, that is the Directors of Finance and City Development, and working alongside TIE and the Council's Solicitor, they would have sought to address the changed risk situation. How they did that and what the options were in relation to managing the risk, I am not aware of.
39. With regards to which official or officials in CEC were responsible for ensuring the affordability of the tram project to the Council, it would have been the Council's Solicitor (Gill Lindsay), the Director of City Development (Andrew

Holmes) as the lead officer and the Director of Finance (Donald McGougan). The Chief Executive (Tom Aitchison) had an overarching responsibility for that.

40. It is very difficult to identify which official or officials in CEC were responsible for ensuring that the tram project was delivered within time and within budget because I guess they didn't necessarily see that as being their defined responsibility and I can understand that particularly given that we had worked so hard to set up an organisation with a professional project management arrangement in place. I think they would, quite rightly say "while we had obviously a major role to play sitting alongside TIE, TIE has got to be considered to be the organisation with that responsibility". The Director of City Development (Andrew Holmes) was the person who was the Tram Monitoring Officer and he had the responsibility to report back to the Council in terms of risks and liabilities arising from the Infraco contract and progress and difficulties in relation to the project. At one level there can't be any doubt that he is the one individual who had that responsibility. I explained that I would expect that contingency plans were put in place at that time in case of a cost overrun.
41. I note that on 18 September 2007 CEC published an invitation to tender notice for provision of consultancy services "to review the contract risk allocation matrix for the infrastructure and tram vehicle contracts and identify those risks that remain within the public sector" (**TIE00678245**). I understand that, in the event, CEC did not obtain independent legal advice on the risks to CEC arising from the Infraco contract. Who decided this and when and why, I can't say for certain. I know that the Council Solicitor was very much involved in that matter and clearly had the delegated authority to proceed and advise the Directors of City Development and Finance. I think it would have been a judgement call at that time, not just by the Director of City Development, but TIE as well because TIE would have had a major involvement in determining whether they were comfortable with their understanding of the risk associated with Infraco. I guess it is a combination; it's not one factor. I don't specifically remember that matter coming across the table. If that recommendation was made, I can't remember the timing of that. Having understood some of the difficulties around Infraco I had, by that time, begun to get quite concerned about this. We didn't have

enough comfort in terms of where we were going with this and TIE obviously reflected that as well. TIE insisted on having a guarantee from the Council in relation to this and that was beginning to sound difficult however, it seemed to me that we were holding on to risk which we had wanted to pass over. The Head of Legal Services wouldn't make that decision, it would be the Director of City Development advised by the Head of Legal Services.

42. I am aware that on 25 October 2007 the Council's approval was sought for the Final Business Case, Version 1, in respect of phase 1a, Airport to Leith waterfront. A joint report was provided by Donald McGougan and Andrew Holmes (**CEC02083538**). The report advised that the estimated capital cost of phase 1a was £498m and that there was a 90% chance that the final cost of phase 1a would come in below the risk adjusted level. Fixed price and contract details would be reported to the Council in December 2007 before the contract close (Final Business Case, Version 1 – document **CEC01649235**). My understanding, at that time was that it was described as a fixed price contract and that was what it was meant to be. I did have awareness that there were significant risks in relation to Infracore and the performance of the utilities. I really thought it was likely that there would be some residual risk sitting with the Council. But I knew that the Council had at that time a programme of value engineering designed to bring in income. While, at one level, I still thought that the contract was largely fixed price with some residual risk still unresolved, I balanced that off, that the residual risk would be covered by value engineering that was identified as part of the overarching programme.
43. With regard to which party would bear the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents, clearly because we were the funders of last resort, it would be the Council albeit it was entirely dependent on the robustness of the contracts that had been put in place.
44. I am aware that at the Council meeting on 25 October 2007, members were given a presentation by Andrew Holmes, Willie Gallagher and Neil Renilson (**CEC02083536**). I don't have a recollection whether I was present at the

meeting however, as Director of Corporate Services, I attended all meetings of the Council. I see that the slides for the presentation identify that there was a firm bid for infrastructure for phase 1a subject to due diligence and that 99% of the costs were now firm. The only thing I would say is that Willie Gallagher had an impressive CV with a huge amount of relevant experience in major project development and procurement. There wasn't any doubt, in my mind, that what he was telling us was accepted. It was very reassuring, if he said 99%, I don't recollect that, but it didn't raise concerns. If it had raised concerns, I suspect I might have remembered a bit more about it. I've no recollection of Mr Gallagher's presentation on capital costs referred to.

45. I am now aware of an email dated 28 November 2007 (**CEC01544715**) where Colin MacKenzie advised Sharon Fitzgerald that the recent meeting of the Legal Affairs Committee (**CEC01500853**) had noted that "DLA would report to the Council independently of Andrew Fitchie, who would be acting in his TIE Contracts Directors role". My understanding of these matters is that the Legal Affairs Committee was obviously set up to try and draw together the legal views of TIE and TIE's legal advisors and the Council and their legal advisors. I don't think I attended any of these committees although I was named as a member; I always gave my apologies because the Head of Legal Services, the Council Solicitor always attended or her deputy would attend and it was delegated entirely to them. I wasn't aware of Mr Fitchie's employment status however, in part, that was the reason for raising the matter with DLA. I just didn't know what DLA's position was regarding Mr Fitchie whether he had been seconded in or what, I was just not aware. Obviously, on reflection, there must have been a question of conflict of interest but at the time I must have assumed that that would have been thought through and a decision taken that there was no such problem present. I guess, what I am saying is, I don't have a lot of knowledge of what actually happened in that forum other than latterly I did know of issues arising in relation to DLA advice to TIE. The Legal Affairs Committee did not report minutes to IPG. I did see it as a conflict of interest for Mr Fitchie to continue to give advice on behalf of DLA to CEC. With regard to whether any advice from DLA to CEC should be provided by another solicitor in DLA, I can see that there was the prospect of that. It must have been and determined that

he did not have a conflict of interest in respect of his work with TIE. How that played out I am unaware.

46. Referring to an email dated 3 December 2007 (**CEC01397538**), Alan Coyle sent a Briefing Note (**CEC01397539**) to Donald McGougan and Andrew Holmes detailing a number of issues which could impact on the report to Council on 20 December and seeking guidance on how these issues should be treated in the report. The Briefing Note was discussed at a meeting of the IPG on 11 December 2007, and was within the Highlight Report to the IPG (**CEC01398245**) and in an Action Note (**CEC01391159**). Clearly the Briefing Note was very concerning, however, it was exactly what was needed at the time because it brought together all of the outstanding risks and exposed the linkages between them as they weren't risks in isolation. They were linked risks and that made it all the more difficult to find a resolution because you couldn't treat one without having to treat a combination of them. I don't recollect a discussion at the IPG, however, I am pretty sure the matters will have been fully discussed because it was, for me, alarming and concerning and I know it would be for the others round the table.
47. I think the task of dealing with these risks was an on-going matter and I think the report was accepted as being very useful in identifying what we needed to consider going forward that there was no solutions arising at the meeting other than acceptance that these were the things that we needed to do. The risks were seen together, they don't sit comfortably separately.
48. Regarding the outcome of the discussions of the meeting in relation to these issues, clearly the IPG was not an executive body so it wasn't going to come up with solutions, however, it was, a body that would give some direction to those officers that had a responsibility for taking these matters forward. The Director of Finance (Donald McGougan), City Development (Andrew Holmes) and other officers that were present would follow these matters up with TIE and, with the other organisations that we were dealing with to see if solutions could be found.
49. The IPG would expect to be updated on any follow up action.

50. My views on the extent to which Council members should have been advised of the concerns in the Briefing Note and whether it was appropriate for there to be a report to the Council on 20 December 2007 was that I always had the view that we should provide elected members with more information rather than less. This was difficult because there had been a change in political control so we had this very unusual situation where the administration, which was a Lib Dem/SNP administration, had a sizeable group of members who were against the tram and in order to get business through on the tram, the Lib Dems had to form an alliance with the Labour group. The SNP were then able to protest. It was a really awkward political situation, therefore, giving more information rather than less, proved to be difficult. The more information you gave, the more opportunity you were providing for political point scoring. The SNP Government in Holyrood was controlling what the SNP members in the Council did. My own view was that they were given all the information and at least two Councillors were Board members of TEL, so they had access to even more information. There was no way that they were short of information. My point is that the situation was complicated, and this added complication to what was already a pretty complicated situation.
51. The minutes of the meeting of the Legal Affairs Group on 5 December 2007 noted that there would be further negotiations between TIE and BBS between the Council meeting on 20 December 2007 and financial close on 28 January 2008 (**CEC01500867**). With regard to the further negotiations that would take place after the Council meeting on 20 December 2007, my understanding was that there was no point at which you could bring closure and say "that was it". While the Council meeting on 20 December was a commitment and had to go ahead, we had to reflect the position at that point in time. There was on-going and constant negotiation, with associated activity and so there was no stage at which that stopped. At no stage did anyone, other than maybe those looking at it from their side, thought that that was it, that's the end of the story.
52. I sent my apologies in regards to a meeting of the Legal Affairs Group which took place on Monday 17 December 2007 (**CEC01501051**) I note that at that meeting a paper (**DLA00006313**) was tabled by Susan Clark setting out

deliverables (due diligence) that were required to enable Tom Aitchison to be satisfied that it was appropriate for the contracts to be awarded. I was not made aware of that paper at that time.

53. With regard to my understanding of the extent to which the Infraco price was fixed, the matters that still remained subject to discussion and whether agreement had been reached on which party bore the risks and liabilities arising from incomplete and outstanding design, approvals and consents, I would advise that I did understand that the Infraco price was referred to as a fixed price arrangement. I understood that the remaining risk, in terms of price movement from overrun and design delays, would always be a contention unless the contract had specifically dealt with that matter, then that would result in some further negotiation. At that time I had no problem with a paper setting out the matters in respect of which the Chief Executive of CEC required to be satisfied, drafted by an employee of TIE rather than by Council officers.
54. I wasn't involved and had no engagement in discussions that took place between 17 and 20 December 2007 at Wiesbaden, Germany, between representatives of BBS and TIE. I likewise I have no knowledge of an agreement on 20 December 2007 termed the Wiesbaden Agreement.
55. I am aware that on 20 December 2007 Donald McGougan and Andrew Holmes presented a joint report to Council (**CEC02083448**) seeking members' approval on the Final Business Case, Version 2. The process for these reports did vary, there wasn't a fixed process for the preparation of tram reports; they were prepared, or drafted, by those responsible people and they gathered contributions from many sources as you would in any report of that sort. These were generally drafted and were vetted by the two lead Directors or, if there was a legal content, the Council Solicitor as well, before being released by the Chief Executive. There was a thorough vetting of any drafts coming forward from TIE, however, any draft that was produced by TIE, would have had a major contribution from CEC staff in its production. The same steps were taken to confirm the accuracy of information in the report provided by individuals' outwith CEC.

56. An email dated 14 December 2007 from Gill Lindsay to Alan Coyle (CEC01397758) noted, in relation to earlier drafts of the report to Council, "that the version of the report I had been working on was much more explicit regarding risks current and those to be contained. Has all this text been removed and, if so, why please". I wouldn't say it was unusual for provisions to be revised or removed. A number of drafts were prepared, they went back and forth, changes were made and I would not be involved in that process. I would see the final version before it would go to a Council Committee or to full Council. Final sign off always had to be by the Council and that is why there was a need to add the qualifications noted in relation to giving approval to TIE to award the contracts. I wasn't aware at the time of what the remaining due diligence matters were that required to be resolved.
57. Regarding approval of a Final Business Case being sought at a relatively late stage in the project, when considerable expense had already been incurred (ie in respect of design, utility and project management etc costs), this was no surprise; we were always running against the clock. The whole thing was up against it in terms of timelines and, as we discussed earlier there was never an end point,
58. The approval of the Final Business Case was not sought at an earlier stage in the project because we didn't have the confidence to do so. It does come down to two things: a) have you got the confidence and b) have you made a commitment? If a commitment is made to elected members and then not delivered that causes all sorts of difficulty and, exposes us to challenge in the media, therefore, the two factors were confidence and what the level of commitment that had been entered into in relation to delivering at that point in time.
59. The Final Business Case, Version 2, dated 7 December 2007 (CEC01395434) noted that the level of risk allowance represented 12% of the underlying base cost estimates. I was not specifically aware how, by whom, and when, the 12% allowance for risk had been calculated. However I was aware of it. I recognised the 12% had been vetted and agreed by Transport Scotland and that gave me

quite a lot of confidence because of the rigour with which Transport Scotland would review these things. It would be, obviously, prepared through the process of very detailed analysis and I would have absolutely no doubt that it would have met all of the criteria set out by Transport Scotland.

60. I have already clarified my understanding of the extent to which the Infraco contract would be a fixed price.
61. With regard to my understanding, at that time, of whether agreement had been reached in relation to which party bore the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents. This became a really difficult issue, clearly because it exposed the vulnerability of the Council which probably hadn't been as clear and while CEC was always referred to in the general, this was becoming more specific, it was beginning to unravel. I certainly wasn't aware of the scale of the exclusions that TIE asked for, or indeed their value, and we did think that all the provisional sums would be small; however, we needed to be surer of that. We did have some mechanisms in place to deal with a little bit of drift and, as long as it was in that ballpark, then things were still okay. I understood that there was to be a negotiating process to move these provisional sums to fixed costs, however, I was not in any way involved in that process.
62. The process involved the Director of City Development, Finance and their nominees. All of these people still had their day jobs. So there would always be Alan Coyle, from finance and then various people depending on when it was and of course the Director changed as well at some stage in this process. I just use the titles, it would be the Tram Monitoring Officer who was in various guises at various times, that person definitely had a major role to play.
63. In relation to which party bore the risks arising from utility diversion works not being completed before the Infraco works commenced my understanding was that it would be retained by the public sector, including, in particular, any risks and liabilities arising from incomplete and outstanding design, approvals and consents.

## January to May 2008

64. **CEC01398148** is the report to the IPG on 18 January 2008. I see that it noted that TIE was to provide a list of exclusions from the Infracore contract. I don't know specifically of the works that were excluded from the Infracore contract and the value of these works.
65. With regard to the percentage of costs that were fixed, the percentage outstanding as provisional sums and the process whereby provisional sums would move to fixed costs, I understood there would be a negotiating process moving provisional sums to fixed costs. That was just an on-going negotiating task which was an on-going piece of work. Because there was never an acceptance of taking a composite approach, it was always driven down to individual detail.
66. The minutes of a meeting of the Legal Affairs Group on 21 January 2008, in relation to Consents and Approvals, noted that Nick Smith had asked who would be liable if SDS does not work to the programme and Matthew Crosse noted that the SDS Novation Agreement would take care of this. At Nick Smith's request, Matthew Crosse was to confirm that the agreement contained details of who would take the risk of knock-on effects of delays (**CEC01476409**).
- My understanding of these matters was that he was trying to do his job to ensure that the SDS Novation Agreement dealt with the issues arising out of the delay and the associated costs from delay. There was a quality issue too caused by the poor quality of the material coming forward. The intention throughout was to transfer risk to the private sector and this was an illustration of that.
67. Gill Lindsay sent Tom Aitchison and me an email on 23 January 2008 (**CEC01402692**) with a closure programme (**CEC01402693**). Gill stated that BBS were advising that they needed a further period of time for their own due diligence, focussing on employers' requirements and the novation issue from SDS to BBS. I didn't know the specifics of the due diligence exercise being

undertaken by BBS at that time. I had no difficulty with them asking for more time, because they had to deal with quite difficult matters themselves so I personally had no difficulty with that. I think probably TIE was less comfortable with them asking for more time but I certainly wasn't. I thought it was perfectly reasonable and it gave us a bit more time and breathing space because up to that point issues had begun to mount up and accumulate and we were being pushed quite hard to make changes to the way in which we operated and a bit of breathing space was no bad thing for us in my view. At this time the Media and elected members were becoming alarmed and were not at all happy. Partly because of the media campaign we were getting a whole lot of stress with public complaints concerning the impact of the project on the street increasing dramatically. Our capacity to deal with some of the emerging issues was being really hard-pressed.

68. I note that the report to the IPG on 30 January 2008 (**CEC01246994**) contained a table that listed activities and deliverables that were to be achieved by 9 February 2008 to allow formal award of contracts by TIE on or around that date. Most of the activities and deliverables were coded as red and outstanding. I was obviously sceptical, however, by that time as there was a pattern emerging of promises being made and not delivered. I saw this as being, potentially, part of that same pattern. We introduced all sorts of checks and balances because the IPG took up quite a lot of our time and for those of us that had other things to do, potentially the IPG could have swallowed up all of our time. We devised ways, such as the traffic light system, whereby we simply flagged up issues that needed immediate attention and we just focussed on the reds and worked our way through them and allocated out tasks to our people in order to address them. That worked well, it was helpful, and it helped us get through the business a bit more efficiently. As I have mentioned before though some of these red issues were more complex and had resonance across a number of issues and you could spend a lot of time discussing each and every one of them. It wasn't possible to dedicate enough time to go through these things thoroughly and there was, I guess, a trust that they would be followed through by the individuals who had the responsibility for them. I didn't have ownership of any of the red status issues. None were given to Director level.

Generally speaking it would be City Development staff who were interfacing with TIE or Finance staff who were interfacing with TIE. There would be occasionally, something that cropped up that would be given direct oversight, for example, there might have been an issue arising on communications, my Head of Corporate Communications would be present and I obviously had to direct what she did about the tasks, she would have the task but I would certainly be involved. Latterly, when I had the responsibility for culture and sport, when we had issues arising, for example, Princes Street opening for festival purposes, cavalcades etc, then I would have the responsibility for taking that forward. It was these sorts matters that I would have direct involvement with. The IPG met very frequently. I did deputise for the Chief Executive on occasions and I had a lot of contact with elected members. I had a good feel for gauging the temperature of the elected members; therefore, I could contribute views as to what absolutely needed to be shared and what needed to be managed before sharing.

69. I am now aware in an email dated 7 February 2008 (**CEC01508412**), Colin MacKenzie advised Susan Clark that he was aware of a serious debate on-going 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. I was aware of a serious debate on-going at that time about consents and risk. Colin MacKenzie was very good at copying me in on a lot of that correspondence. I also agreed with Susan Clark, that it wouldn't have been possible to assess the cost with any level of accuracy. He was suggesting we delay in order to get to a firmer position with cost and I took the same view as Susan that it just wasn't going to be possible to do that. Given that we had already made a risk provision, I took the view that as long as we were within the parameters of that risk provision, then we should just carry on. Colin was a member of the Legal Division and he reported to Gill Lindsay. Colin would have reported to her with these concerns. He quickly spotted that there were some difficulties around this and I don't think Colin was comfortable that Gill was following them through as robustly as he would have liked. I detected a bit of friction between them in terms of what should be done and Colin was quite clear that we should take a more stringent

approach more quickly and Gill was more moderate than that, thinking we should work along and try and deal with matters in a different way. Colin often was able to make his views known, this can be deduced from the correspondence he often copied me and also the Director of City Development and the Director of Finance. Consideration was given to whether the award of the Infraco contract should be delayed until all outstanding design, approvals and consents were available but as long as the view from those directly involved was that the problems arising were not significant, then we should just proceed because we had made provision so we anticipated that there would be some fallout, but that we could cope with that.

70. I am aware that on or about 7 February 2008 TIE and BBS entered into the Rutland Square Agreement (**CEC00205642**). I think the purpose was to draw a line in the sand and reset the programme. I had no involvement in that process at all, I knew it was taking place and I thought it was a good idea because it was necessary to have that reflection and bring things back to try and set them off again on a more even keel.
71. I note that by email dated 11 February 2008 (**CEC01406011**) Gill Lindsay advised me that Willie Gallagher had called her to advise that BBS had sought considerable additional sums which had been negotiated down to an additional £5m and that the novation of SDS to BBS would now be subject to a cap on BBS's liability. By email dated 12 February 2008, in the same thread, I advised Gill Lindsay that I had some concerns about these late movements both in cost and risk. I wasn't clear about what the proposed cap on BBS's liability related to and I didn't know how the cap had been arrived at, I was never made aware of that. I wasn't surprised by it because it was inevitably going to happen and I considered it would be very unlike BBS to accept an unknown liability. BBS wanted to know what the figure was and have a hard figure so it couldn't be open-ended; it had to be a hard figure. I was reassured, to some extent, by the fact that Willie Gallagher had indicated that the £5m cap could be contained I think what I have just said was generally known, it was up to those key individuals primarily, or their nominees, to understand what Willie Gallagher was saying. It was the Director of City Development, Finance and the Council

Solicitor who needed to understand what that £5m was about and how Willie Gallagher felt that it could be contained. My own acceptance came from the fact that I had a high regard for Willie Gallagher.

72. I am referred to a Design Due Diligence Summary Report, produced by BBS on 18 February 2008, based on design information received by them by 14 December 2007 (**DLA00006338**). That document raised various concerns about design, including that more than 40% of the detailed design information had not been issued to BBS. I don't recollect seeing this report at that time but I was aware of the controversy over the design information. I was surprised at the 40%, as I thought it would be a marginal figure and 40% took me aback. I think that 40% figure would have been the subject of much of the discussion at the IPG.
73. I am aware that on 22 February 2008 Gill Lindsay forwarded me an email of the same date from Susan Clark (**CEC01406669**). Susan Clark's email noted that principal areas were proving more difficult to expedite than planned, namely: SDS Novation Agreement, alignment of SDS design (and related warranty) with the Infraco proposal and alignment of employers' requirements. The email noted that the threats of project termination, bidder de-selection and impending Council meetings had not proved to be wholly influential with the bidders and that there is little alternative but to plan and drive the process as hard as possible to an acceptable conclusion. I understood and I thought they were right to flag up the concerns by Susan Clark. I think what she said was that they couldn't be treated separately and that none of these things sat in isolation. That they were all interdependent and dependent on all the parties playing their part simultaneously and that was not something that often happened in this project. She made the point that we didn't have any leverage to force them to conform and that drove them to the conclusion that we should just battle on because there was not a lot more we could do. I agreed with her assessment.
74. In an email dated 26 February 2008 (**CEC01400974**), Colin MacKenzie noted that I had advised that the SDS claim settlement, having been made of necessity last year, should now be reported to the Tram Subcommittee for

information. SDS were the organisation we were having the greatest difficulty with at that time. We were pushing hard to get TIE to deal with it because it was up to TIE to bring that to an end. TIE attempted to settle the matters with SDS and we were aware of that. The Tram Project Board was the forum through which that could be done because it had executive responsibility and obviously it was about the delays in designs and the consequential prolongation of street works. TIE must have conceded in order to avoid further delay and there was a self-interest involved in getting SDS's affairs in order before novation. Clearly delay was something that we didn't want so anyone that was coming up with a positive way forward was going to get a pat on the back. There was always the issue of going to dispute resolution but that process was inevitably going to lead to significant delay, claims, more work distracting from the core business and increasingly more and more time being spent in fire fighting and not spent on delivering. That was the cycle we had started to get into. I think this matter went to the Tram Subcommittee. The Tram Subcommittee is different from the Tram Project Board. The Tram Subcommittee was made a subcommittee of TEL, We had oversight of TIE but it was time for TEL to start to take the role.

75. I note that a Highlight Report for the IPG on 29 February 2008 (**CEC01246993**), gave an update in relation to planning prior approvals and technical approvals. The Highlight Report included a draft report on Terms of Financial Close dated 21 January 2008. The draft was to be updated to reflect current negotiations. The draft Close Report stated that "Infracore has a substantive responsibility in relation to consents and approvals but there is a critical interface with TIE/CEC. I think the reference to "critical interface" refers to existing third party agreements and the presence of these provisional sums. I note that there is also reference to on-going design work and this was referring to what is quoted as "normal design development"; this didn't encompass changes and so there was a fine point which wasn't so fine at the end of the day in that some people regarded normal design development as incorporating changes and others said "no – design development doesn't incorporate changes". That was a major issue going forward. It wasn't seen as a major issue at this particular point, however, but it definitely emerged as one.

76. The risks associated with design and associated liabilities remain unclear to me. I wasn't sure exactly what they were and certainly couldn't put any measure on them. I understood that TIE and CEC bore risk and there were a number of exclusions to the Infracore price, however, as I have stated, I thought that these were on the margins and that most of the work had been included and completed and that anything that was slipping through would be dealt with through the risk allowance that had been made. I was beginning to get more concerned, of course, about the level of the risk allowance having seen the 40% and other figures mentioned at different times and this was beginning to emerge as a much more problematic matter than had first been thought. Throughout all of this we were constantly being given reassurance by TIE who said that it's all being dealt with and they had it in hand. Initially that was accepted. As time went on I certainly was beginning to question that. I didn't understand, at that time, whether or not agreement had been reached in relation to which party bore the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents.
77. Gill Lindsay by email dated 6 March 2008 provided me with an update (CEC01407509). My understanding at that stage of what the £3m contingency for SDS risk and the £10m for delay in general covered and my understanding of the SDS risk now transferred to public sector and not private sector was that the SDS risk was the risk associated with design delays and design delays as a result of poor workmanship and capacity issues at SDS. Another factor was the third party complications associated with design delays, so you have delays and you have the knock-on effect. I took this to mean that these were the consequences of the difficulties that were being experienced with SDS and the consequential costs downstream of these. I thought the SDS risk was being transferred through novation and I thought these were on-going matters being negotiated at the time.
78. On 11 March 2008, Gill Lindsay forwarded me an email from Alan Coyle giving a further update (CEC01407769). The price was now £508m with no anticipated changes and that novation was on-going. I understood that the Council remained at risk for delays of approvals only and I thought that we were

at risk if we delayed approvals unreasonably. When you start to interrogate this, other reasons for delay emerge. I certainly was unsure what this meant in practice and, indeed, I had no idea what the scale of that was, I knew there was risk and I knew some of that risk would inevitably fall to the Council. I just had no idea of the scale. I was always assuming that what we were being told by TIE was correct and, that this was not a thing to be concerned about and that it was being managed.

79. A full meeting of the Council took place on 13 March 2008. From the agenda (**CEC02083387**) and the minutes (**CEC02083388**) members do not appear to have been given any update of the tram project despite the Highlight Report to the IPG on 29 February 2008 envisaging that a report on the tram project would be provided to members at that meeting (**CEC01246993**). If it is not minuted it didn't happen. As I recollect, I think there was an intention to go at that time, it was simply too difficult to achieve that timescale and, it was important to ensure the report contained all of the necessary information, and that was simply not possible by 5 March and we would have had to have reported in an ineffective way. That would have led to a huge range of additional questions which we couldn't have answered because of work in progress. It was a very pragmatic decision to not waste people's time basically because that's what we would have done. In addition to that, we would have created extra work which might not necessarily have been required. That decision would be made by the Chief Executive but it would be on my recommendation. You could have tabled this on the day but tabled reports are not a good idea. We had obviously thought about these things, particularly on the tram, tabled reports would have just been unacceptable to elected members.
80. I am aware that on Friday 14 March 2008, an email was sent to Alan Coyle (**CEC01386275**) attaching a note that had been approved by Gill Lindsay (**CEC01386276**). The note, to be signed by Donald McGougan, Andrew Holmes and Gill Lindsay confirmed that it was appropriate for Tom Aitchison to authorise TIE to immediately issue a Notice of Intention to award the Infraco contract to BBS. My understanding at that time of whether agreement had been reached in relation to which party bore the risks and

liabilities arising from incomplete design and outstanding statutory approvals and consents, was that it was a shared risk but the Council would carry the bulk of the risk regarding incomplete design and consents. I understood that due diligence had been undertaken to assess the level of this risk and that it concluded that the risk could be contained in the new price. I think that the assessment of risk would have largely been the Director of Finance's responsibility.

81. My understanding at that time of the additional risk in relation to design, referred to in the note, being passed to the public sector was the area, with hindsight, that we should have examined in greater detail. My understanding of the statement in the note that "In essence, the contractor, BBS, will accept the design risk for delay by SDS to a high financial ceiling, whereas the Council and TIE must remain financially liable for delay by SDS in relation to the provision by them of information for a range of consents and approvals" was that I understood that BBS had accepted SDS novation but only on a qualified basis. I knew that this was the outcome from a long and tortuous negotiation between TIE and BBS. The IPG would have been briefed on all of this by the Directors of Finance and City Development.
82. I refer to an email dated Monday 17 March 2008 sent to myself (**CEC01407951**) where Gill Lindsay advised that following a detailed meeting with all relevant officers in the morning of Friday 14 March, all issues then known to CEC were closed, in preparation for signing by CEC's officers of the note to the Chief Executive discussed above. As I have mentioned before, it was the nature of the development of the project that we encountered last minute shifts and changes in mind set and in practical terms, just because of the pace at which things were being carried forward, particularly in areas of financial consideration. I am not hugely surprised at BBS because they had been working on making an assessment of the risks that they were going to take on but, more importantly, the risks that they were not going to take on. I don't think TIE appeared to grasp the potential seriousness of the shift and I wanted this matter to be agreed and signed off and we were pushing for that. It added to my frustration, both with BBS, maybe more importantly, with TIE, who were

expecting us to take a very difficult decision effectively blind and that was unacceptable. The discussions that I had with Gill Lindsay when I got this email was around the fact that I told her that there was no way we could go forward on that basis and so, she had to take that into her discussions with the others because there was no way I was going to sign off on this and I was quite sure the Chief Executive wouldn't sign off on a report which was open-ended.

83. On 18 March 2008 (**CEC01390847**) Gill Lindsay sent an updated authorising letter to Donald McGougan and Andrew Holmes for their consideration and signature (**CEC01390848**). A new paragraph had been added on the issue of indemnities but there were no other changes. By email dated 19 March 2008 (**CEC01408044**), Gill Lindsay advised me that agreement had been reached with BBS on liability for uninsured consequential loss arising from third party claims and that "Andrew, Donald and I have now signed off for Tom who confirmed the Intention to Award may be released by TIE, following a discussion with the Leader and Councillor Buchanan". This letter I think was signed by the two Directors and the Council Solicitor on behalf of the Chief Executive. I thought there was consistency, at that time, of the Infraco price and terms with the terms of the Final Business Case approved in December 2007. I understood that quite a lot of due diligence had been done in relation to the Infraco price.
84. My view, at that time, on whether all remaining due diligence had been resolved to the satisfaction of Tom Aitchison was that I thought it had been. I certainly understood that there was also uncertainty about who bore the risks for design and approvals and that remained an issue. Having worked through this process with due diligence we were reassured allowance had been made for outstanding risks.
85. As to whether the Infraco price was fixed I understood that the Council still carried some risk in relation to that, though it was a measured risk, it had been through a huge amount of consideration and we had been assured that it was at a manageable level. My understanding of whether agreement had been reached in relation to which party bore the risks and liabilities arising from incomplete design and outstanding statutory approvals and consents was the

same answer. Basically I recognised that we thought we had passed the majority of the risk to the private sector, but we also recognised that we were still carrying risk. I suppose, the other point to make is, by passing the risk to TIE, we were simply passing risk back to ourselves. My understanding of the main risks retained by the public sector, including, any risks and liabilities arising from incomplete and outstanding designs, approvals and consents, was that the public sector risk seemed to have increased. That was my feeling over that due diligence process and that was logical to me. I was a little surprised to learn that the risk allowance had been reduced and the two numbers didn't balance however, I was reassured that the risk allowance was covering a whole variety of things, other elements of the risk allowance had been treated. Either the Director of City Development or the Director of Finance would give me that assurance. I can't remember when the change took place and if it was the new Director of City Development.

86. Without reference to the minutes, I can't recall what was discussed and agreed at the IPG meeting on 19 March 2009.

87. I am aware that an email dated 31 March 2008 (**CEC01493317**) from David Leslie, Development Management Manager, CEC, to Willie Gallagher, included a letter, **CEC01493318**, expressing certain concerns in relation to prior approvals. On 3 April 2008 Duncan Fraser (Planning Officer) sent a letter to Willie Gallagher setting out similar concerns by the Transport Department relating to technical approvals and quality control issues (**CEC01493639**). I was aware of these letters and the concerns noted in the letters. Clearly problems were emerging with the quality of prior approval submissions from SDS and, indeed, of accusations that delays were being created by planning staff. That was the substance I think of Duncan Fraser's note that he was wanting to put the planning staff point of view that the submissions were of an unacceptable quality. Clearly, as a consequence of that, we agreed that the capacity of the planning team needed to be increased to deal with the volume of these documents. This was regarding the standard and quality of the designs that were being submitted to the Council and the timescale within which they were

being submitted. Not only were they of poor quality, they were not being done as quickly as they needed to be.

88. My understanding of how the pricing provisions in the Infracore contract dealt with any such difficulties was that I thought that there was a real possibility that BBS would not make adequate provision for all of that risk. I had no idea about the quantification of the risk to TIE/CEC arising from these difficulties. While I didn't know, I am quite sure that none of the professionals knew either because the situation was constantly changing. It was one of these situations where you couldn't anticipate what was going to be acceptable and what was not going to be acceptable going forward. It was a really difficult thing to assess and, I guess, that was why no one attempted to put a firm price on it.
89. **CEC01401109** is an email dated 11 April 2008 in which Colin MacKenzie advised Gill Lindsay of a difficulty that had arisen with the "Russell Road Bridge prior approval" and which raised the question whether the sum allowed in the quantified risk allowance for SDS delay (£3m) was sufficient. Colin MacKenzie noted "this is getting very close to calling upon the Monitoring Officer to become involved". I did agree that these matters should have been drawn to the attention of the Tram Monitoring Officer. I guess they were but Colin was so concerned that he wanted to raise the profile of it and, I wasn't sure there was £3m in reserve to deal with matters like this, and I wasn't sure how robust that number was given that I had heard very scary numbers about this particular location and the possible cost associated with it. It raised alarm bells for me. I certainly had discussions with Gill Lindsay about this and it was a matter that was discussed at the IPG that we needed to get a grip on SDS prior approvals. I was beginning to think that planning were waiting on SDS making their submissions, instead of getting alongside them to make sure that what SDS was submitting was going to have a chance of success. It's a classic planning situation because they don't like getting alongside the clients, they want the client to submit and then they will consider. In these circumstances, it was causing real problems and we all had the same outcome in mind. Despite adding additional capacity into planning and despite everyone's efforts this remained an issue.

90. I have no idea why there was no meeting of the Legal Affairs Group between April and October 2008 including, in particular, why there was not a further meeting of the Group after the Infraco contract was in its final negotiated form but before it was signed.
91. **CEC01256710** is an email from to me from Colin MacKenzie on 14 April 2008 setting out certain concerns. I suggested to Tom Aitchison that it might be prudent to have a short meeting with Gill Lindsay to confirm the present direction of travel. I can't remember in detail whether a meeting took place or not but what I am sure about is discussions took place and Colin's concerns were taken on board. I agreed with Colin that there was a fairly rapid shift emerging which tended to call into question the robustness of some of the conclusions arising out of due diligence. We did seek assurance from TIE on some of these matters and reassurance indeed was given by TIE and the Director of Finance and the Director of City Development. I definitely felt Colin was on the right track in terms of flagging up these issues. Colin would also have flagged them up to Gill Lindsay.
92. A report provided to the IPG on 16 April 2008 (**CEC01246992**), noted that the Planning and Roads Departments had written to TIE recording their concerns about the delay and quality of submissions for approvals and consents. There was concern that prior approvals may require to be revisited if there were substantial changes in design. My understanding of what, if any, agreement had been reached on how these issues would be resolved would have been detailed in the contract. These concerns were worrying and it was certainly my understanding that action was being taken by the appropriate people to address these. Inevitably it was recognised, certainly by me, and I think by everyone else, that delays equated to increased cost and I knew that BBS would not accept an open-ended risk. By appropriate people I mean those officers directly involved and liaising with TIE and the senior TIE personnel. I am not sure whether Willie Gallagher was still involved by this time. It would be the person that took his place, Richard Jeffrey in due course.

93. The IPG members were updated on 16 April 2008 to enable the Chief Executive to use delegated powers to approve TIE to sign the contract with BBS. I wasn't aware of the details of the agreement that had been reached but, clearly, how design issues were to be dealt with had been negotiated out between TIE and the BBS. I did obviously realise that BBS would not accept their responsibility for all of that and the Council, in some way or other, was going to have to deal with the consequences of any design delay.
94. With regard to the version of design that formed the basis for the Infraco price and how the pricing provisions in the Infraco contract addressed any change from that version of the design. I didn't have knowledge of that detail. I wasn't involved in that. Pricing schedules were unknown to me.
95. My understanding, at that time, of whether agreement had been reached between TIE and BBS in relation to which party would bear the risks and liabilities arising from incomplete and outstanding design, approvals and consents and how that was, or would be reflected in the Infraco price and pricing schedule was that it was, a matter of some concern and raised questions over TIE. This is because TIE negotiated these matters with BBS and gave the Council reassurance that they were negotiated in a manner that limited the Council's exposure to risk. That was the position that TIE adopted and, the message that they gave us. Intuitively I could not see how that was going to be the case given there was much talk about difficulties and other issues arising from the designs.
96. It would be up to the Head of Finance, Head of Legal Services and the Head of City Development to consider and manage the Infraco Pricing Schedule (Schedule 4). I didn't see or seek it. I have no way of knowing whether any other CEC officer saw, or sought, the Infraco Pricing Schedule (Schedule 4) at any time.
97. The Action Note (**CEC01228374**) produced following the IPG meeting on 16 April 2008 noted, under the Communications Plan, that the risk had been transferred/tied down and that it was the most audited public project ever in

Scotland. My understanding at the time of these matters, including the extent to which risk had been transferred/tied down including the risk to the Council arising from prior and technical approvals, would be that I thought it was going a bit far to say that this issue could have been transferred/tied down. At the time, however, there was a feeling that risk had largely been transferred to the private sector and that feeling was based on TIE advising us that that was the case. The difficulties over planning and the pressure that this had on prior approvals was recognised, as were other difficulties associated with SDS in terms of quality and standards but all of that was under scrutiny and remedial action was in hand. While, with hindsight, you can question whether it was really believable the reassurance given by specialist staff in TIE was quite convincing. There are issues around checks and balances that will come out later in terms of governance.

98. **CEC01241689** is an email on 30 April 2008 from Colin MacKenzie to Gill Lindsay stating "You may know this already, but BBS have increased the price by a significant amount. Urgent discussions underway at TIE this afternoon. Wonder how this leaves the report to Council tomorrow!" When, and how, I first became aware that BBS had, again, increased the price by a significant amount I cannot say for certain. I have a recollection of it and it did create a stir, no question about that. I know that the Chief Executive of CEC immediately sought reassurances from TIE and they intimated that we weren't to get over-exercised about it, because they would be able to negotiate out the suggested increase. They were suggesting that it was an overstatement and we shouldn't be too worried about it because they were confident they could negotiate it out. Consequently the advice was that it was not appropriate to withdraw the report to Council on 1 May because this was still in negotiation so there was no hard and fast position. It would be dealt with going forward.
99. I do have an understanding now for the reason for that increase but I didn't at the time. Clearly BBS had been doing their own due diligence in parallel and had been taking on board some of the information just as we had in the earlier stage and had begun to rethink. There were other issues because we had hit the global financial crisis at that time and they had price pressures on raw materials and other matters. There was a variety of possibilities some of which

were very understandable because, clearly, they did have a problem with the price of steel and other requirements. There was a story to tell.

100. I am aware that the meeting of the Council on 1 May 2008 was provided with a report dated 23 April 2008 by Tom Aitchison (**CEC00906940**). The report sought refreshment of the delegated powers previously given to the Chief Executive to authorise TIE to enter the contracts with the Infraco and Tramco bidders and advised of changes to costs. As I have stated these reports go through quite an elaborate process but someone would initially draft the report. I think in this instance it was probably Alan Coyle that would draft the report, along with Guy Conway, so it would be the Directors of City Development and Finance's nominees who would draft the initial document and it would be widely shared by all the various parties, including the Directors, Council Solicitor, TIE officers, Chief Executive before it was completed. It would quite probably, emerge quite differently from the original draft.
101. With regard to my involvement in drafting that report, (**CEC01228603** and **CEC01228604**) and why I asked if it was possible/appropriate for the report to include a reference to the previous firm costs, was because there would have been price movement and I always believed in giving elected members more information rather than less. In this case it was easy to anticipate that the question would be asked and, in my view, it was better to present the information in the report.
102. Members were advised of a final price and they noted the increase of the price at the meeting on 1 May 2008 (**CEC02083356**). The final price was £508m and that had moved from £495m and it was signalled to elected members at that stage that this movement was beginning to put at risk line 1b. That was the first intimation that these price movements were beginning to make it difficult for us, in the context of the Scottish Government cap of £500m and it was making it increasingly difficult to see how the Council could achieve the extension.

103. My understanding at that stage of the risk and liabilities that had been retained by the public sector in relation to design, approvals and consents remained the same. Risk had been estimated and provision made for it.
104. With regard to whether I considered that the risk retained by the public sector in relation to design, approvals and consents was consistent with the statement that there had been a "crystallisation of the risk transfer to the private sector as described in the FBC". I think there had definitely been a crystallisation but there hadn't been a bottoming out. It was all down to semantics and, for me, there certainly had been progress in terms of identifying risk and there was greater transparency round the risk, but it had definitely not been put to bed.
105. My understanding of the Infracost costs that were provisional was just that, they were provisional. I couldn't see how they could be anything else given that we had this on-going issue around designs and consents and difficulties with quality and standards. It just keeps going back, to the fact that the Infracost in the first place needed to adopt, or make a presumption, around these matters and it would be a brave person to have done so. The provisional sums mainly related to risks and liabilities arising from design and consents.
106. I think there is a reference to a new risk area and I thought that related to congestion which created parallel working. What I mean by that is working on site while, at the same time, designs were created so the parallel working created even more of a problem because people were trying to get on and build and were sometimes having to go back because of the design changes produced; or they start to build only to find that they couldn't comply with the design and so had to go back into the design change. TIE was confident that they were managing the risks. I suspect that they thought they were managing risk by being really hard-nosed with the contractors and dumbing down their prices and I suspect that's where TIE thought they were going to manage this. What they hadn't banked on was BBS weren't good at dealing with the risk. Within my own organisation to reduce the risk at that time we increased staff, increased focus, introduced constant monitoring and ensured that there was no blockage on the Council side in relation to all of these matters. That became

really difficult when we got to that congestion period when changes were coming through the planning process in great numbers.

107. I am referred to an email on 7 May 2008 that Rebecca Andrew sent Gill Lindsay (**CEC01222074**) attaching a draft report by the Chief Executive for the meeting of CEC's Policy and Strategy Committee on 13 May 2008 (**CEC01222075**). The report advised of the further increase in cost (from £508m to £517.2m) and sought approval for the Chief Executive to instruct TIE to enter into the relevant contracts. Gill Lindsay's response the same day noted "Appropriate forum re Committee choice was discussed today with Council Secretary and Jim Inch, this will likely lead to discussion with Tom" (**CEC0124898**). By email dated 8 May 2008 (**CEC01248988**) Stan Cunningham, Committee Services Manager, advised Ms Lindsay that the current plan for tabling the report meant that "it may be the first time that many of the members are aware of this matter. This is not satisfactory ...". With regard to discussions I had with other Council officers about these matters the advice I gave was that we needed to report this to members and, taking into consideration the time, the only committee we could report to was the Policy and Resources Committee. The problem was that the report was still in drafting at that stage, so I hadn't even seen the report. The urgency of the situation, however, dictated that we just had to accept that we had to go to the P and R Committee, much against my better judgement but, I think on balance, it probably needed to go. Of course it also had to go on to the special meeting of the Council and it was deemed to be a matter of such importance that it needed to be given special treatment.
108. With regard to who decided, and why, that the further increase in price, and authority to enter the contracts, should be reported to and sought from a meeting of the Council's Policy and Strategy Committee (P and R) rather than being reported to a full meeting of the Council, eg by convening a special meeting. I have explained that and subsequently there was a special meeting of the Council anyway.
109. The pattern of Council reporting required the matters considered at P and R Committee to go to full Council. A subject like this was obviously very very

important and consequently it did eventually go to the full Council. It was my decision to go with the report to the P and R Committee and we would manage the difficulties that were suggested in terms of some of the members coming across this matter the first time. Reports like that (in relation to additional information), where you would have quite a large number of members who didn't have awareness we would use the individual political group meetings to brief. Political groups who are on the P and R Committee would have separate meetings prior to the P and R Committee and those individuals who didn't have awareness, would simply accept that their colleagues, who did have awareness, would be given the lead and would take the matter forward. All of that was done before it got to the P and R Committee that was the usual way of dealing with this kind of business. Clearly, because it was being rushed as well, it was important to speak to the leaders of the groups informing them of what it was and what it was about.

110. **CEC01258101** is an email dated 9 May 2008 which Gill Lindsay forwarded to me setting out her views on a paper by Graeme Bissett on the evolution of the Infraco contract. I am now also aware of an email dated 9 May 2008 from Willie Gallagher noting that contract signature was agreed for 2.00 pm on Tuesday 13 May 2008 (**CEC01231125**). With regard to members of the Policy and Strategy Committee having sufficient time at their meeting on 13 May 2008 to consider whether approval should be given for the contracts to be entered into given that contract signature had been arranged for 2.00 pm that day, clearly this presented a risk and a problem, in terms of achieving the necessary authorities to proceed. Again, it was just a risk that had to be taken in terms of the timeline. Fitting a big major contract like this into the straightjacket of Council reporting, which is what we had to try and do so as to avoid stimulating a lot of unnecessary concern, was a challenge. I thought it was necessary to go to the P and R Committee and agree the report. I continued to have concerns about the Infraco contract, however, I continued to rely on Willie Gallagher in terms of his recommendations and, indeed, TIE and Transport Scotland. Transport Scotland was still keeping a brief on this and they agreed that the Infraco contract represented value for money. The Policy and Strategy Committee would probably not have been aware that the contract signature had

**CEC01258101  
should be  
CEC01258010**

been timed for 2.00 pm on the same day. I suspect that would be the sort of thing that the Chief Executive would have mentioned to the Leader and Deputy Leader in his regular advice to them. I suspect they would know, but not all the members would, just the Lead members would know that. I was still concerned about whether it was appropriate for the Infraco contract to be entered into but, as I said, I was accepting of the specialist views from specialist staff, Willie Gallagher, in particular, whom I had a great deal of regard for.

111. I am now aware that on 12 May 2008, Graeme Bisset circulated an email (**CEC01338846**), which does not appear to have been copied to me at the time, attaching a final set of TIE's internal approval documents; (Financial Close Process and Record of Recent Events dated 12 May 2008, **CEC01338847** and **CEC01338848**, Assessment of Risk of Successful Procurement challenge **CEC01338849** and **CEC01338850**, Report on Infraco Contract Suite **CEC01338851** and **CEC01338852** and the Report on Terms of Financial Close (the Close Report) **CEC01338853** and **CEC01338854**). I did not see versions of these documents, whether in draft or final form.
112. Whether I was aware if these documents were made available to members before or at the meeting of the Policy and Strategy Committee on 13 May 2008, I wouldn't be sure. I would think though that those members that were Board members of TIE and TEL could well have been informed and I wouldn't be surprised if the Leaders, as I've said before, had been briefed on that information. With regard to if it would have been usual practice to have made such documents available to members and how far in advance of any meeting, I think it would have been inappropriate to make them available to members without them being provided with some interpretation of the document from a suitably qualified member of staff because these were technical matters that were being dealt with and there was no way elected members would have been able to make sense of it.
113. I note that on 13 May 2008 the Council's Policy and Strategy Committee considered the report by Tom Aitchison, **USB00000357**. The report advised that the estimated capital cost for phase 1a was now £512m and that, in return

for the increase in price, TIE had secured a range of improvements to the contract terms and risk profile. That was when the Committee authorised the Chief Executive to instruct TIE to enter into the contracts, **CEC01891564**. I do not recall whether I attended the meeting of that committee and what was discussed. I did attend all Policy and Resources Committee meetings, unless I was on holiday, which is always a possibility, but I wasn't able to track back to see whether I was on holiday at that time. Normally speaking I would be at all P and R Committee meetings but I had no recollection of this particular item. After I left the Council the Policy and Resources Committee changed to Policy and Strategy. I can't recall how much time was spent at that meeting discussing the tram project and how much time was spent discussing the other matters on the agenda.

114. I recall that the Infraco contract suite was duly signed on 13 and 14 May 2008. With regard to the risks and liabilities in relation to design, consents and approvals that had been transferred to the private sector and the risks and liabilities in relation to these matters that had been retained by TIE/CEC, as I have said before, I understood the bulk of the risk had been transferred.
115. I always understood there was a residual risk to the Council, primarily regarding design. There was a sum allowed for these risks in the Quantified Risk Allowance in the paper by Gill Lindsay so that was the sum, I can't remember what it was, Gill Lindsay put a figure in the correspondence.
116. I am referred to the provisions of the Pricing Schedule of the Infraco contract (Schedule 4) (**USB00000032**), including, in particular, the fact that the Base Date Design Information was fixed with reference to the design drawings issued as at 25 November 2007, at which point detailed design was not complete and the majority of statutory approvals and consents were outstanding. We knew that there were designs outstanding. We knew that was a difficulty, we knew there were varying reasons for that but we weren't able to pin down a financial consequence.

117. In respect of Notified Departures; whether one or more than one Notified Departure was expected from BBS following the signing of the contract, the matter or matters that any such Notified Departures were likely to relate to, and the estimated cost of any such Notified Departures, it wasn't my area of business. I had no idea about Notified Departures or the base date design information, which is the other part of that. It would be City Development that would oversee this matter in the Council along with the Director of Finance and his team. I don't think the Council Solicitor would be so much involved in that it was a technical matter with which she wouldn't really have been involved.
118. The Base Date Design Information was defined in paragraph 2.3 of Infraco Schedule 4 as meaning "the design information drawings issued to Infraco up to and including 25 November 2007 listed in Appendix H" and yet Appendix H did not contain any list of drawings and, instead, simply stated "All of the Drawings available to Infraco up to and including 25 November 2007. This was a general frustration, and I suspect Graeme Bissett had now taken over, and I think this was an emerging frustration with TIE regarding deliverables. They obviously didn't see it as important and didn't accept that material was missing, which is what our people were saying and we began to get into arguments. Instead of working together we were beginning to start to work apart. Lots of factors would play into this and I suspect the fact that the media interest was becoming really very pronounced and criticism, sometimes very inappropriate criticism, was being levied at both TIE and the Council were important factors. In addition elected members were beginning to get very frustrated by the reputational damage and were tying up officer's time with questions. Our own staff, those that were working directly with TIE, were beginning to question the appropriateness of the work that was being done and the quality of that work. There was a combination of factors at play here and TIE seemed, to me anyway, to start to close ranks and become less responsive. For me, Willie Gallagher's departure was a factor in that. The lack of involvement by Transport Scotland was also a factor because I got reassurance from these parties involvement. Without these contributions I was less accepting of TIE's guidance.

## May 2008 Onwards

119. **CEC01246990** is the Highlight Report to the IPG on 11 June 2008 noting that the Council still awaited certain information from TIE in relation to the deliverables for award of the contract. The matter was raised again in the report to the IPG on 9 July 2008, **CEC01236707**. By email dated 9 July 2008, Stewart McGarrity queried the significance of these requests, **CEC01354778**. We did not believe all the deliverables had been obtained from TIE and that matter was picked up by the Director of Finance, and the Director of City Development who I thought had entered into correspondence with TIE on the matter, but they may just have dealt with it through other contact. I think it was a constant sore. My understanding was that there was a reaction and we did get some of that material but we were never satisfied that we had got all of it. I always had confidence in both Directors that they were actually pursuing it as aggressively as me. I had a very high regard for both of them. By that time Andrew Holmes, may have retired. Donald McGougan was the constant but Andrew Holmes probably had gone by this time.

## 2009

120. I was aware that a dispute arose between TIE and BBS prior to the planned commencement of works on Princes Street in February 2009. As to when, and how, I first became aware, my recollection was that this had been an on-going issue. The content of the Infraco contract, the difficulties with SDS, the novation, the transfer to BBS, all these were negotiations that had taken place at various times throughout the whole process. We were always advised that these had been successful negotiations, everything was fine, there was always an appreciation that there were some elements of the Infraco contract that could not be tied down but that these were relatively minor and that provision had been made to cope with them.
121. In relation to the dispute in relation to the works at Princes Street, including the cause of the dispute, I wasn't involved in addressing these matters. Of course I became more aware of this at a later stage when I had concerns about my

responsibilities in relation to festivals and events and the potential impact on these of the need to open the street for particular purposes at particular times. At that time, I believed that the Infraco contract was largely a fixed price contract.

122. I am aware that by letter dated 5 March 2009 to TIE (**CEC00870592**), Tom Aitchison set out a number of measures required to keep the Council updated about disputes. The letter was sent to try and deal with complaints that he had been receiving that people weren't being kept informed in an appropriate fashion and he agreed that we would put in place a number of measures to try and resolve that. That related to governance matters and other issues that were tackled at a later date and his great concern was that we weren't sufficiently involved in the processes around the disputes that had arisen between BBS and TIE and that we needed to have a better understanding of these. We did have an understanding through regular meetings with both the Chief Executive and the chairperson of TIE, Dave Mackay, and Richard Jeffrey. At these meetings they always gave, chapter and verse, their views of the dispute, whatever it might be. The IPG was given assessments from TIE of our chances of dealing with various disputes and they were itemised and, nine times out of ten, there was a very positive spin put on the prospects of being able to successfully deal with any dispute. We were getting a lot of information which was positive, what we weren't getting was the other side, the BBS side. I guess I understand why he set out these measures. I presumed that was why he sent them, he was feeling uncomfortable that we weren't really understanding sufficiently the core reasons for the dispute and, of course, TIE had kept us going, had continually suggested that we were in a good place and, I suspect at this time, we were beginning to see evidence that we weren't in a good place. Some of the disputes were going in favour of BBS despite us being told that there was no chance of this. This began to undermine our confidence.
123. In an email dated 11 March 2009, copied to myself, **CEC00869667**, Colin MacKenzie advised that Council officers did not know whether the Infraco contract was sound and that it was possible the contract was not robust enough. My views on Mr MacKenzie's concerns was that I agreed with all of them

although, because I didn't have direct involvement in the project, I didn't have all the information he had. I was certainly aware that other officers were increasingly concerned about the Infraco contract and so that was just building up at the same time, as I have said, we were constantly given reassurance from the TIE side that these concerns were not what they seemed and that they were being managed and dealt with. We were in that difficult place of being advised by the specialists that everything was okay but our own people who were in there were saying the opposite. It was beginning to question the relationship between TIE and the Council.

124. In relation to what I did in light of these concerns, some of it was really difficult to come to a view on. I had a great respect for Colin MacKenzie's views so I thought Colin had to be listened to carefully because his views could be relied on, particularly in relation to issues like this. However, we were being advised by, what I would describe as industry experts, and they were disagreeing with the notion that the contract was vulnerable or weak in some way or other. We got into this situation where we started to examine legal advice and, of course, the contract had been developed by DLA and, so the issues around the quality of the contract had been brought into focus. Clearly TIE were reliant on the advice, in contractual terms, that was being received from DLA and we, for our part, the Council Solicitor, was liaising with DLA in terms of the contract and, I would have expected the Council Solicitor to have "red flagged" the contract had she thought that it was deficient in some way or other. With regard to myself and other CEC senior officers actions in light of these concerns that Colin was highlighting, the Council Solicitor would have been asked whether we needed to have separate legal advice and certainly there was a lot of discussion about that and subsequently we did take separate legal advice and that did arise in due course, just not at this particular point in time.

125. I am referred to a report to Council on 12 March 2009 (**CEC01891494**) where Tom Aitchison gave members an update on the dispute. The report stated that a "fixed price" contract had been entered into for the delivery of the tram project and that, prior to Financial Close, TIE had agreed an additional sum with BBS which had "cemented the risk allocation position" agreed by the parties. With

regard to whether I was aware of the process by which that report, or other reports to members in relation to the tram project, was drafted, including which individuals, from which organisations, had an input into drafting the report, I have the same opinion as I stated before. In regard to the extent to which steps were taken to check information in the report that was provided by individuals outwith CEC, I have mentioned this before. My understanding, at that stage, of the matters involved in that report was that it was an updated report. Clearly every updated report was controversial because it was updating on an increased price and issues arising from it but it needed to be done. We had got to a point where we understood there was a price hike and members needed to be made aware of it.

126. **CEC00892626** is a report to IPG on 25 March 2009 discussing the contractual dispute between TIE and BBS and considering various options. At that stage I didn't know what the range of risks or indeed the nature of the dispute was. I know that the Tram Monitoring Officer requested a report from TIE on the basis of the dispute because I don't think we generally knew what the basis of the dispute was. We had to ask for that information from TIE and it had not been received. I think the Tram Monitoring Officer at that time was Marshall Poulton.
  
127. **CEC00900419** is an email dated 7 April 2009, "Edinburgh Trams, Strategic Options and DRP" where Colin MacKenzie made certain observations on the dispute between TIE and BBS. Although the email does not appear to have been sent to me, having read the email, it simply rehearses this emerging concern between the Council and TIE in relation to TIE's relationship with BBS. It reflects the difficulty, which was increasingly obvious to us, that we were entering into a more confrontational position between TIE and BBS. I had some difficulties here because I had begun to doubt TIE's abilities in some respects and their lack of sharing and transparency was worrying me. I detected almost arrogance around this and that attitude was irritating, to say the least, and it certainly wasn't well received by Council staff who did feel that they were being regarded as nuisances as opposed to people to work with and to achieve a common goal.

128. There were numerous meetings between the senior staff, TIE and the Council; and the Chief Executive raised these matters regularly in his meetings with TIE, that there needed to be a more open and transparent relationship between TIE and the Council and that we needed to get to a better relationship. There was a lot of adjustment and by this time Willie Gallaher had left, Graeme Bissett replaced him. I think, probably, we didn't have the comfort of Transport Scotland any more and, I think, the contract development or the development of the project, had reached that stage where there was a lot of very technical and difficult negotiations. Part of the excuse that we received from TIE was that confidentiality was vital through these very complex negotiations and they saw the Council as weak in this regard because of elected member involvement and the potential for confidential information to be leaked. At one level I could see the point from TIE's perspective at another level I kind of resented the fact that they were adopting this very arrogant position and there were other ways of going forward in managing it. We were wasting more and more resource dealing with that interface rather than dealing with getting on with the job.
129. I am now aware of an email dated 9 April 2009 (**CEC00900404**) where Colin MacKenzie and Nick Smith circulated a report on the dispute between BBS and TIE (**CEC00900405**). The report noted that there were presently 350 Notified Departures in process. The disputes could be grouped into a number of different categories, including who had responsibility for design management and evolution. BBS were taking the view that all changes to design were TIE's responsibility. The report noted that the main problem stemmed from the fact that design was not complete at Financial Close. At that time I didn't see the report but I had an awareness of the issues that were raised and it didn't surprise me much, it was hugely disappointing, it exposed very bad relationships and attitudes on all parties. I think it related to what now you could see as a contract weakness and ambiguity which, in the light of day, with the benefit of hindsight, I would call it breath-taking and Colin was right to have picked it up and try to deal with it.
130. I note that by email dated 23 June 2009 (**CEC00859951**) David Anderson expressed frustration at TIE not producing a revised programme and budget,

which had been promised since November. It was Dave Anderson that took over from Andrew Holmes as Director of City Development. Obviously I was aware of this frustration and lack of responses as I have already mentioned and it was becoming increasingly evident. We were having to take a lot more action to get TIE to address the Council's needs. That was just draining our capacity, our resource, for very negative reasons and it was simply aggravating what was already a very difficult situation. In response to such concerns, putting more Council resource into the work was all that could be done.

131. I am referred to a Highlight Report to the IPG on 27 July 2009 (**CEC00688908 and CEC00659130**) -- discussing what members should be advised at the meeting of the Council on 20 August 2009. It questioned whether cost and delay should be reported and, if so, to what extent. It also identified that TIE were admitting that 40-80% of changes and delay were down to them. These figures were astonishing. I had never seen them before. This was a revelation to me and it just further distanced me from TIE in many respects and, the trust that we had in TIE. It made the drafting of the Council Report exceedingly difficult because, as I have said, I was always very keen to be as open as possible and identify options as we go forward. In this instance these sorts of figures were going to be counter-productive in terms of making any progress. It certainly made the task of drafting the Council Report very much more difficult.
132. I recall that on 20 August 2009 the Council were provided with an update by means of a report by the Directors of City Development and Finance (**CEC00823532**). It was considered that it would now be very difficult to deliver the full scope of phase 1a within the available budget of £545m. The report stated that TIE had taken extensive advice and was confident on its position on the key matters in dispute; however, it was unreasonable to expect that all adjudication outcomes would be awarded in TIE's favour. I can't remember the specific time I first formed the view that it was unlikely that the full scope of phase 1a could be delivered within the available budget of £545m. Over time it was becoming increasingly obvious that we were going to be restricted to 1a. That was a difficult message to get across. However it had become inevitable.

133. With regard to whether officers were in a position at that stage to form a view, independently of TIE and DLA, on TIE's prospects of succeeding on the key matters in dispute. We were constantly being advised that they were in a very strong position with regard to these disputes and that it was almost inevitable that the dispute would be found in favour of TIE and the Council. Even at that stage we had to hope that was the case, I think we had moved from expecting to hope. With regard to calling to account the Executives in TIE after that period of time, the Chief Executive was constantly chasing them to deliver on all sorts of different fronts. It had turned into a difficult relationship. I am referred to an earlier draft of the report which noted that TIE's work had highlighted a range of scenarios from a best case of £560m to a worst case scenario in excess of £600m also Nick Smith's email of 25 November 2009, **CEC00691664** in relation to the same thing. At the meeting on 20 August 2009, it wasn't possible to provide figures with an update on cost and delay to members, from my perspective, with any degree of confidence at all because we had begun to move so rapidly through the numbers and to do so would have resulted in the Council being able to accuse us of not telling them the full story because we could not with any confidence give a figure. Therefore, there was no point in putting a figure at that stage because we couldn't trust that figure. I had no confidence in the figures that were being put forward. By this stage our efforts were in terms of trying to contain the situation so it was a containment exercise to try and limit the cost rises and work on as best we could. The difficult relationship between TIE and BBS made that really impossible because BBS were constantly making claims and by this time they had stopped work. I can't remember the timeline, they might have stopped work on Princes Street and so the project had come to a standstill. We were in a difficult position, trying to ensure that TIE did everything that it could to deal with the matter. We recognised that TIE were probably not going to manage that on their own and I think at this time we were looking at separate legal opinions in terms of how we handled and managed all of that. Certainly TIE did that and, I think, we took specialist legal counsel as to how best to proceed.

134. I recall that by email dated 26 November 2009, CEC00479381, Gill Lindsay forwarded me adjudication decisions in relation to the Gogarburn and Carrick

Knowe Bridges (**CEC00479382**, **CEC00479383** and **CEC00479384**). With regard to my understanding of these adjudications decisions, ie whether they were more favourable to TIE or BBS, and whether the decisions were confined to their own facts or established principles of wider application, I would say that the outcomes were hugely disappointing. TIE had said that they would find in favour of them but the adjudication found for BBS. This was an important moment because, up until then, we were told, not 100%, maybe 90% certain that the findings would be in favour of TIE. TIE told us that they were going to win these, there was no question as they were definitely in the driving seat, there is no way that they could be wrong about this. It was suggested that we might appeal the decision. While I thought there was a possibility of some success there, I think it felt really as though we were wading in treacle.

135. In an email dated 10 December 2009 (**CEC00473732**), Nick Smith set out his thoughts on the justification for entering supplemental agreements to the Infracore contract. I agreed with Nick about that. I also thought that we should see the DLA analysis that had been prepared for TIE. I suspect, that would not have been forthcoming, as they would have considered that as commercially sensitive and confidential which further irritated me because why would it be commercially sensitive and confidential to the Council who stood 100% behind TIE, paid their wages and allowed the whole thing to be seen. I just found that argument really difficult to swallow.

## 2010

136. I am now referred to an email dated 22 January 2010 (**CEC00473835**). Alan Coyle noted that Donald McGougan and David Anderson had endorsed the intention to seek an independent legal view of the contractual outs within the contract and noted a need for CEC to be more proactive "where the Council are doing their own thinking rather than waiting for a briefing from TIE". I was aware of the proposal to seek an independent view and I didn't know how Alan Coyle had justified that but, as you heard, there was general agreement with this course of action It didn't matter how it was presented it was agreed. I suspected that the contractual outcomes would be in relation to managing the risk.

137. I recall that a meeting of the IPG on 17 February 2010 where we were provided with an update of TIE's views on the options, and estimated costs, of resolving the Infracore dispute "Project Pitchfork", **TIE00896564**. There were three options, namely: (1) termination of the contract with or without cancellation of the tram project, (2) BBS to complete part of the project to St Andrew Square and TIE to re-procure the remainder on an incremental basis and (3) grinding it out, ie complete the works and resolving all of the disputes under the existing contract. My views on the options available to the Council at that time were that while I appreciated there were options in the interim; I thought TIE was taking a very narrow view over the options. I thought their recommendations were being driven by their complete breakdown in their relationship with BBS and I thought that was disappointing. I thought they were superficial and I thought they were being guided by the notion of replacing Bilfinger Berger. The language used "grind it out" exemplified the attitude that was being brought to bear in terms of all of this. No reference was made to line restriction, no reference was made to timescale adjustments and none of the options that were presented were really acceptable without a much clearer and more sophisticated approach. I considered the best option to be getting to the point where we had an option to bring matters back in-house.

138. I am now aware of a letter dated 8 March 2010, **CEC00548728**. This was a letter which Richard Walker of BSC wrote to CEC officials providing BSC's perspective of the dispute, expressing concerns as to TIE's interpretation of the contract and handling of the dispute and advising that it was likely that additional costs were in excess of £100m. The letter wasn't addressed to me. I did consider that there was an attempt to divide and rule. The consortium had lost any sensible relationship with TIE, negatively we are looking at divide and rule, and positively you would look at it that they were trying to do what they could to deal with a situation so you could take a view depending on where you were coming from. Certainly TIE presented it to us as divide and rule and I nevertheless thought that it would be quite interesting to get their side of the dispute and to compare and contrast what they were saying with what we were being told. We were at the stage where, maybe a year previously, I wouldn't have entertained the idea because I would have said that TIE was in the right

and BBS in the wrong. I no longer had that surety. I never, as I have stated, considered the contract to be truly fixed price.

139. I recall that by letter dated 13 October 2010 (**TIE00301406**) BBS wrote directly to Councillors giving their views on the dispute. I understood they would be anxious. Everyone in this situation was getting media attention. In particular there was some media coverage of the fact that Bilfinger Berger was in litigation everywhere they worked, in some places huge, much bigger than this tram project, but it seemed that the pattern of their behaviour and the pattern of their business, their business motto, was to go in low and then work on developing their price through contract challenge. I suspect, although I don't know because I wasn't in at the very beginning, that this must have been known when we did our due diligence on them as an organisation going forward. Regardless of that fact, they as a company and the three of them as a consortium were getting bad press. No organisation likes to get bad press without being able to counter that in some way or other. They had their communication team working away on it just as the Council had a communication team working on the same thing. I could see why the consortium would like to have access to elected members so that they could put their view. I suspect that they were probably frustrated, just as I found myself frustrated, dealing with TIE and therefore, I could understand why they might want to have access to elected members.
140. I note that by joint report to Council on 14 October 2010 (**CEC02083124**), Donald McGougan and David Anderson provided a refreshed Business Case for the tram project, focusing on a line from Edinburgh Airport to St Andrew Square, with a high degree of certainty of cost and programme certainty. The contingency planning work undertaken by the Council and TIE had identified funding options which could address project costs of up to £600m. The report did not give any indication of the potential cost, or range of costs, for completing the tram project. With regard to whether I was aware of whether members of the Council, in 2010, were advised of the potential costs, or range of costs, for completing the tram project and, if so, when, by whom and how, I will just repeat the political complexity issues that I mentioned earlier. The ruling group of members contained quite a large number of Councillors who were advised not

to support the tram. I have absolutely no doubt that senior members of the ruling group were kept informed of the potential costs throughout and the cost rises that were being contemplated. Some of these elected members, of course, were embedded in the organisations like TEL and TIE; they were on the Boards of these organisations so they had direct access to all the information that was available. The leaders of the different political groups all got briefings in terms of the tram project and that included the SNP, though we were highly sensitive to the prospects of the information that was being given being used in a way to undermine the political consensus of the time. That had to be managed and it was sometimes quite awkward, however, I have no doubt at all, the Chief Executive had regular weekly meetings with leaders and often the subject of the tram would be brought up. The political group leaders responsible for the portfolios of City Development, Finance, would inevitably have had briefings from these Directors because a proportion of their time was being spent on supporting the project. I would have regular meetings with the elected member who had a responsibility for my range of duties, just as they (Directors of Finance and City development) would, and I am sure they would be informed, and given information on, the way in which the price was changing and drifting.

141. I refer to the Highlight Report to the meeting of the IPG on 27 October 2010, CEC00012896, which noted certain matters under Lessons Learned. A similar report to the IPG on 1 December 2010 also refers (**CEC00013539**). My views on the matters noted under Lessons Learned and why they had not been acted upon earlier were that I thought it was a good idea to do this exercise and it was potentially useful in going forward but, of course, a number of ideas or recommendations were based on the problems that had been encountered in the past. It was intended to inform any future project management exercise and would hopefully ensure that improvements would be taken on board.
142. In an email dated 4 November 2010 (**CEC00012984**) Alastair Maclean noted that CEC were to instruct our own independent analysis of TIE's position by CEC's QC and that McGrigors had been appointed to lead that work stream in place of DLA. The Action Note, **CEC00010631**, from the IPG meeting on 9

November 2010 noted that Alastair Maclean would seek external advice on the merits of the Council engaging directly with BBS. An email dated 13 November 2010 by Alastair Maclean (**CEC00013289**) detailed his concerns in a report (**CEC00013290**). Alastair sent a further email to me on 15 November 2010, **CEC00013308** informing me that a consultation had taken place with TIE's QC. Alastair advised "one thing I can say at this stage is that I am more sure (rather than less) that my concerns of last week are real". Tom Aitchison sent a letter dated 15 November 2010 to Richard Walker of BBS –(**CEC00054284**) in this regard and I was absolutely in agreement with his concerns. It was great that Alastair could bring a fresh pair of eyes to this because most of us had been lost in the detail of it and Alastair, was able to see things that probably the rest of us were missing. That was very useful. His background and experience was very helpful. He obviously had serious reservations about TIE and its position and he certainly thought that the case for termination, which was TIE's approach at that time, was extremely weak and would result in very expensive and protracted proceedings leading to significant damage claims it was not a good course of action. It was important for the Council to document the position and I thought this was a really good idea. It was the position of the Council, as an honest broker, saying "what is wrong here" and considering that question from a legal perspective, to inform how best to proceed. It was also clear that we needed to move away from the Edinburgh legal establishment because almost every big legal firm had a relationship with some input in this project and Alastair's view was that none of the firms had the specialist expertise that was needed to address this problem. He recommended that we go to London and find someone who was an expert in the field and take advice and I wholeheartedly agreed with him.

143. I recall that on 16 November 2010 Richard Jeffrey advised Alastair Maclean of certain serious concerns he had in relation to events at the time the Infracore contract was entered into. On 17 November 2010 Alastair McLean produced a note (**CEC00013342**) setting out Mr Jeffrey's concerns. He sent that to me as the Council's Monitoring Officer. I didn't deal with tram matters as Monitoring Officer as I have explained. However, having said that, Alastair did share the concerns with me and we did have a conversation about it. It was obviously very

concerning. I think this was not long after Richard Jeffrey had taken the job and, in addition to that, I think Richard had, having got his feet under the table, was beginning to see that TIE wasn't in the best place. I think, Richard was making sure that he was starting with a clean sheet and that there were no skeletons in the cupboard. I think that there was a range of quite serious allegations being made. My understanding was that Richard had taken legal advice himself, personally, in terms of these matters and I concluded that, without some evidence to support some of these revelations, there was not a lot we could do. However, in the event Anderson Strathern advised Richard that there wasn't substance to these matters and that Richard should just get on with it. The only thing that was never resolved, was the issue raised about Andrew Fitchie in relation to DLA's relationship and I am still absolutely unclear about that. I had never received any evidence that there had been inappropriate payments made from any source. The suggestion was that Andrew Fitchie had received a bonus payment inappropriately direct into his personal bank account and that this was unknown by DLA. I have no understanding of that and there was never any evidence brought forward about that. It was a detailed document listing all of the concerns. We needed evidence as there was no way we could act on the sort of accusations that were listed. Alastair had a confidential discussion with Richard Jeffrey at which he had identified a whole range of things that he was concerned about but had only superficial knowledge of and it was nothing that I could act on at that time. Only the document that listed the content of the meeting that Alastair had with Richard Jeffrey was produced in relation to it. I believe that Richard Jeffrey also spoke to the Director of Finance about these matters but I think the Director of Finance took the same view that we don't have any evidence here to do anything.

144. I recall that the meeting of the IPG on 17 November 2010, **CEC00010632** noted that a range of cost estimates for the different scenarios were being produced. The draft estimate for Project Carlisle varied between TIE's estimate of £662m and BSC's estimate of £821.1m. These estimates were for the full scheme and the report noted that the cost estimates, as they stood, indicated that delivery of the project to St Andrew Square could be delivered for £545-£600m. I was not

aware of the specific extent to which Council officers had an input into producing, or checking these figures. I would have expected Alan Coyle who was the Director of Finance's representative in TIE to scrutinise these numbers. Alan did most of that work and I had confidence in him.

145. In emails dated 22 and 30 November 2010 Alastair Maclean expressed concerns about TIE and the legal advice received by TIE (**CEC00013411** and **CEC00014282**). I am now aware of an email dated 24 November 2010 by Richard Jeffrey to Alastair Maclean, **CEC00013441**, stating "if the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation". I was aware of these concerns. This was the on-going emergence of concerns. The relationship between TIE and the Council had been deteriorating over time and the outcome of the disputes had accelerated all that process. My own views on these matters were that I understood we were in a strong position. I thought we needed greater control and influence on TIE and we needed to have a strategy going forward which was common, which we didn't appear to have. We began to question if there was a strategy, and we began to question whether TIE recognised, understood and shared that strategy. There was a need for us to try and exercise a greater degree of control than we had had previously. We had put a lot of trust and faith in TIE and that had begun to unravel and in its place we needed to exercise our rights and our control. I think they didn't recognise, or didn't seem to recognise this. It just wasn't on their radar and I think they were basically in denial. They simply didn't see what we were seeing in terms of the trajectory and the way in which we were running into difficulties. I think it became really difficult for those at the head of TIE because by that time, I think from recollection, Governance arrangements had changed with TIE now formally reporting to TEL, the TIE Subcommittee had been formed and was taking decisions and we had a new Chairperson and we had a new Chief Executive in the form of Richard Jeffrey. These were significant changes I believe that new people leading an organisation will always tend to adopt the position of supporting the organisation and the individuals in the organisation in order to consolidate or establish leadership. I think that was the case with both Richard and, even more so with David Mackay, who was absolutely sure that what TIE was doing was correct. By this stage I and other colleagues had lost

confidence in TIE. A combination of factors including the erosion of trust and the apparent negative attitude towards the Council and the fact that CEC was taking all the risk and TIE was taking none undermined the relationship.

146. I note that on 16 December 2010 Tom Aitchison provided the Council with an update on the refreshed Business Case **(CEC01891570)**. The report noted that a line from the airport to St Andrew Square was capable of being delivered within the current funding commitment of £545m. At the meeting an amendment was passed by members to request a review of the business case by a specialist public transport consultancy that had no previous involvement with the Edinburgh tram project as referred to in the minutes **(CEC02083128)**. The level of confidence I had at that time that a line from the airport to St Andrew Square could be delivered within the funding commitment of £545m was influenced by my view that we were in a much stronger position information wise. The numbers that were produced latterly did have some credibility because they were built on a lot more data and analysis. Clearly there were lots of outstanding matters in terms of disputes and so there remained some doubt. My view, at that time, as to whether it would be prudent for the Council to increase its borrowing for the tram project beyond the £25m already being borrowed to meet the Council's contribution of £45m was that I thought it inevitable that we would have to increase our borrowing. I don't think there was any question that it was a consequence of where we were. I was aware that members requested an independent review by a specialist consultancy with no previous involvement with the tram project due to a lack of confidence. Every time it was reported there was another problem, another delay and so on and so forth. There was no doubt it was because of lack of confidence and the escalating cost. They wanted to protect their reputation. The media and media exposure, which members experienced had been very high. It was particularly important to them.
147. I am aware that on 18 December 2010 the Council approved an emergency motion proposed by Jenny Dawe to instruct the Chief Executive of the Council to continue to make preparations with TIE and BBS for mediation or other dispute resolution processes. My understanding of the purpose and need for

that motion was that in many ways it is the same thing. She needed to demonstrate a positive position by taking the initiative. She is a very astute politician and she did have an understanding of the project. She was keen that the project went ahead. All of that, of course, was always made difficult by the complex political situation that I have already highlighted.

148. I have been referred to the mediation talks that took place at Mar Hall in March 2011 following which an agreement was reached which, ultimately, resulted in a reduce tram line, from the airport to York place, being built for a total cost of approximately £776m, which necessitated an additional contribution by the Council of £231m. I did not play any part in the preparations for the mediation and/or the mediation talks. I did not attend the mediation. My views on the agreement reached at Mar Hall, including the increased cost of the tram project were that I was obviously disappointed at the scale of the increased cost but very relieved that we had a solution.

149. My views on why the total cost of the tram project, including, in particular, the cost of the Infraco works, ended up costing so much more, for a shorter line, than the estimate contained in the December 2007 Final Business Case were a combination of everything that I have already said. There is no single reason for it. Basically, there were a number of failures; there was a problem with SDS, the design work and the quality of that design work. There was the political reasoning behind this because we did rely on Transport Scotland's involvement and their engagement and when that was no longer available, that introduced a weakness in terms of our governance arrangements. We had a negative Scottish Government approach to trams which meant we had a cap and there was no flexibility in terms of that. We had political difficulties internally because of the composition of the Council. We had TIE initially operating as we would have hoped, but latterly adopting a very unilateral approach. We had a contractor, and I would say it is a contractor rather than a consortium; we had a contractor who had history and was intent on squeezing as much out of the contract, as all contractors would and I think we had some weaknesses in our governance arrangements which were exposed by the changes that took place over time. Governance itself wouldn't necessarily have changed the outcome

but governance was certainly an issue for us. We had conflicting legal advice. We had contracts that were clearly inadequate. While I have never seen these contracts they were unable to deliver the intended fixed price project I am sure there are lots of other factors in the mix, it's not one thing, it's a perfect storm of issues and circumstances which resulted in the outcome.

150. I retired in January 2011 having completed 37 years' service. My leaving was unconnected with the tram project.

## TIE

### **General**

151. In general, the means by which CEC exercised oversight or control over TIE was through embedded CEC staff from City Development and Finance. I would also state that TIE was set up at the insistence of Transport Scotland. I still think that we could have managed this project in-house but we were advised against that. We embedded staff in the TIE operation and we held regular and frequent meetings with senior TIE staff. The Chief Executive of CEC had standing meetings with the Chief Executive of TIE, we had, from my perspective, the Council's solicitor almost embedded in the same organisation. From my perspective the IPG was obviously set up as a forum to monitor and review what was going on. We had the governance arrangements that were put in place which involved TIE and TEL reporting the composition of their Boards and the nature of their separate responsibilities. We had a Tram Monitoring Officer, the Tram Project Board and, latterly, CEC's Tram Subcommittee. It follows that we had a number of agencies involved in the tram project at different times and different stages and this introduced different levels of scrutiny. We had Transport Scotland whom we relied on in terms of independent scrutiny and for clearing funding through the gateway process. All of these were in place and provided the checks and balances needed for a project of this type. I would make one comment that the control arrangements varied over time and there is no question that what we started with was not what we ended with. Adjustments were made to reflect the different circumstances

that were being faced at different times. A lot of attention was paid to governance and ensuring that we had adequate governance in place. A lot of attention was paid to ensuring that staff resources were at the levels that were necessary to deliver outputs. A number of Council staff were paid from the tram budget. These were the staff embedded in TIE. They were mainly City Development staff; they were paid directly from the tram budget. Obviously when TIE came forward with proposals to augment their staffing complement, we would respond to that. Initially they would have discussed this with the Council but latterly they were more likely to go ahead and deal with the budget consequences at the end of the financial period. I think a lot of effort was made to try to control and monitor this by both TIE and the Council.

152. I have explained my concerns, about the performance of TIE, either as an organisation, or in relation to individual Board members or employees. I have explained the ways in which the Council's senior officers received information and updates from TIE.
153. With regard to having any concerns about TIE's reporting to the Council including, in particular, whether information was always fully and accurately reported I would state that I did not have any concerns early on, but latterly I had issues in relation to this. I have explained that I did engage independent advisors and sometimes I also had staff deployed to do this. They checked or validated reports that TIE submitted to the Council.
154. With regard to the use of wholly owned companies by local authorities and whether that gave rise to any difficulties. I was an advocate for wholly owned companies because in Edinburgh they were particularly successful. The most successful of these operated in property related businesses. Others were what were called Direct Service organisations. Examples would be catering, leisure, and transport. The property businesses made a lot of money for the Council. Edinburgh Park for example was a hugely successful commercial business. The property businesses were monitored by the Director of City Development. I had a small team of people who were responsible for monitoring the Direct Service Organisations. TIE was a wholly owned Council company as is Lothian

Buses, The Director of City Development had a unit responsible for monitoring all of the wholly owned companies other than the Direct Service Organisations. Our experience of wholly owned companies was a very positive one and I was greatly supportive of that form of organisation. These businesses were free to operate the markets in which they operated, They were able to attract people with the requisite skills at remuneration levels that wouldn't have been attainable within the Council. The Directors of some of these organisations were receiving salaries, that wouldn't have been possible within the Council's payment structure. They were able to attract good people by paying more but the bottom line for the Council was they made money and they made a significant contribution to the Council's budgets.

155. The Council's management and control of TIE in comparison with the Council's management and control of other wholly owned Council companies, eg TEL and Lothian Buses plc was initially exactly the same. We had a small Business Unit, within the remit of the Director of City Development, which had the responsibility of oversight of all these companies and they would be given dividend targets to meet. I think the Business Unit did what it needed to do in terms of monitoring and evaluating what they were about. When they didn't perform, they went into liquidation. They were generally very profitable and worked well. There was a difference between local authority owned companies operating alone, like TIE, and such companies operating as part of a joint venture with other companies, eg as occurred at the Gyle Shopping Centre, where the company borrows money and undertakes the development, with CEC benefitting from company dividends. Every model was designed for a purpose so it was customised for the particular objectives of that operation and it worked well for that operation. It doesn't mean that that was a good model for TIE or for anyone else, each of them was unique in that regard, and there were several variations.

156. I refer to a report to Council on 29 April 2004 seeking approval of TIE's Business Plan for 2004/05 (**CEC02083576**) which noted that TIE were developing, or implementing, major transport projects including; congestion charging, the West Edinburgh Busway Scheme, tram lines 1, 2 and 3, Ingliston Park and Ride and the Edinburgh Airport Rail Link. They were also responsible

for the SESTRAN one-ticket travel ticket scheme, and they were working with Transport Scotland to project manage the delivery of the Stirling-Alloa-Kincardine Railway and with Fife Council to develop proposals for a Cross-Forth passenger ferry. In considering the other projects being undertaken by TIE, I don't think that this adversely impacted in any way on the time and resources that TIE was able to devote to the tram project. I think these added interest enhanced their experience. They were all consistent with the integrated policy that the Council wanted to follow. In other words, while all of these projects were operating separately they had to be coordinated at some stage or other therefore the more understanding of these different strands of transportation the better for the longer term. The intention was to integrate them into a single entity. They understood that and TIE always knew that the intention was to end up with a single organisation with the responsibility for integrating bus, tram and indeed any other transportation.

157. When TIE was initially set up it was envisaged that they would be responsible for developing a number of transport projects in the Council's New Transport Initiative. In the event, I understand that by around 2007 the only project that TIE was responsible for was phase 1a of the Edinburgh tramline, from the Airport to Newhaven. With regard to any consideration given by the Council at that time (2007) to winding up TIE and delivering the project itself, with the assistance of an external consultant, eg a firm of consulting engineers, as project managers. I have touched on this previously. I don't think that there was a notion in 2007 to consider winding up TIE. Certainly, as time went on, there was an increasing thought that that might not be a bad idea but we were required, by Transport Scotland, to do it this way. I think had we made a case that might have been different but we just accepted that this was the way it was going to be. We understood the rationale for that, the expertise, the specialist experience of a very particular type of business. There is no question that, latterly, the option of winding up began to look very attractive. In 2007 that wasn't the case.

158. I am referred to suggestions that concerns had been raised about TIE's project management of the Stirling-Alloa-Kincardine Railway which was reported as

costing more than double the original budget of £37m, and which opened in May 2008, apparently three years behind schedule. I had no awareness or knowledge of any such concerns.

159. A report to Council by Tom Aitchison on 29 June 2006 (**CEC02084254**) detailed a revised Code of Guidance to ensure best practice in the monitoring and corporate governance of Council owned companies. The Code required the Council to appoint a Company Monitoring Officer for each company. I will pick up later on who was the Company Monitoring Officer for TIE, what their duties and responsibilities were and how they carried out these duties and responsibilities. The Tram Monitoring Officer was approved as being the Director of City Development or his nominee. The nominee changed from time to time, there was a suggestion that had there not been a nominee there would have been a conflict and I will come back to that. With regard to their duties and responsibilities and how they carry these out, that's a matter of record. There is a listing of the duties and responsibilities of the Tram Monitoring Officer in the documentation. The role was to deal with that interface between TIE and the Council. It was confused a bit by the TPB because, clearly, the Tram Monitoring Officer was meant to have that responsibility and it changed over time. There is no simple answer to this. The Tram Monitoring Officer was the individual who had the responsibility for dealing with issues arising from the tram but that became a little confused later on with the introduction of the TPB and then, latterly, the Tram Subcommittee. The Tram Monitoring Officer was still operating, but the role of that person changed as the project developed. The Code stated that Council owned companies were expected to have in place a Remuneration Committee, to meet certain requirements. They did have a Remuneration Committee and I am presuming that they met all of their responsibilities
160. In an email dated 15 June 2009, CEC00908380 Colin MacKenzie set out certain concerns in relation to CEC's governance of TIE, noting that "the Council has no real teeth in its control of TIE. This has always been understood from the early days ...". I fully agree with these comments.

161. In an email dated 3 December 2009 by Alan Coyle (**CEC00472490**) there was included a report on staffing resources (**CEC00472491**) which noted that a series of meetings held to explore cost savings had been disappointing and rather than embrace the full potential for "one family" working, "TIE used the meetings to question the involvement of current CEC staff working on the project". My view on that matter and more generally on the working relationship between TIE and CEC staff was that I fully agreed with Alan Coyle's assessment that TIE were living in a bit of a bubble. The issue of one family had been raised on several occasions, the emphasis being placed on the need for bilateral working. For both organisations to be absolutely comfortable in each other's shoes and, it wasn't man to man marking, but it was working together and this phrase "the one family approach" was adopted as being the intention moving forward. It was quite clear because we were moving into rough waters, TIE were uncomfortable with this arrangement and staff were reporting back that there wasn't transparency, there wasn't the level of transparency that there might have been. I think there was an on-going difficulty getting positive joint working to happen and, at the end of the day, I thought that this displayed an attitude towards Council employees that wasn't very generous and I think there was a definite arrogance on the part of the TIE people. Part of this was because they were generally paid more than the Council staff so there was a friction both ways. Council staff were working alongside TIE staff and questioning why they were not on higher salaries with bonuses like them. TIE's defence to the accusation that they were being arrogant, was that the difficulty arose over the issue of commerciality. The Council could not accept this argument.

162. I am referred to TIE's updated primary risk register which was shared with the Council. I can't recollect seeing the risk register. If it had been reported to the IPG, I don't have a recollection of it.

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

163. I am referred to a report to the Council on 23 February 2006 by Tom Aitchison (**CEC02083493**) which advised of the imminent resignation of the Chairman of

the Board of TIE, Sir Ewen Brown, and that there was a vacancy on the Board of TIE. Mr Aitchison would normally recommend that that vacancy be filled by open competition, on this occasion he recommended that Willie Gallagher, who was already a non-executive Director of TEL following advertisement, be appointed to the Board of TIE without advertisement. With regard to whether I had any discussions with Mr Aitchison in relation to the proposed appointment of Mr Gallagher to the Board of TIE without advertisement or open competition, I may have but I don't remember the detail of it. I think we did have discussions about the appointment of Mr Gallagher as Chair of the TIE Board and my recollection is we did go out to tender for that appointment and, indeed I am sure, one of the supplementary documents was the advert (CEC02084501). It did go out and as I recollect there were two candidates, Willie Gallagher and one other. It went to an Appointments Committee made up of elected members and Willie Gallagher was appointed. I think Mr Aitchison was maybe minded just to accept Willie Gallagher to that appointment but, I think, it was agreed that it would be more prudent to go through the procedure and I think that is what we did. Remembering that Willie Gallagher was already on the Board of TEL, he was already Chair of TEL, I can't remember, if he was on the Board of one of the organisations already so he was already a Board member. I considered that it was consistent with good corporate governance to go through the process.

164. I am aware that by letter dated 28 February 2006 John Richards, on behalf of the independent Directors of TIE, wrote to Tom Aitchison in relation to the forthcoming appointment of the new Chair of TIE (**USB00000376**). Mr Richards noted that "demonstrable experience in large scale infrastructure or construction projects businesses should be an important qualification". By email dated 29 March 2006 (**USB00000369**), Michael Howell commented on a draft advertisement of the new Chair of TIE, noting that the Chair should possess knowhow gained at a senior level "in the fields of project management, or consultancy linked to major project delivery". By letter dated 1 June 2006 (**CEC01745343**) Tom Aitchison advised Mr Gallagher that further to an interview on 24 May 2006, and Council approval, Mr Gallagher had been appointed as the new Chair of TIE. The vacant post of the Chair of TIE was advertised and made the subject of an open competition. With regard to what involvement I had

in the appointment of Mr Gallagher as Chair of the TIE Board, it would be the liaison with elected members through the process. I considered that Mr Gallagher's qualifications and experience were suitable for that post. His background and experience equipped him absolutely for the job.

165. I understand that the post of Chief Executive of TIE became vacant around June 2006 and that Mr Gallagher acted as both Chairman and Chief Executive of TIE from around June 2006 till November 2008. I don't think that the post of Chief Executive of TIE was advertised during this period and made the subject of an open competition because I think Mr Gallagher was described as the Executive Chairman and so he took on both roles. The decision not to disrupt arrangements at that stage was made because of the sensitive timing of it and the likely disruption to the progress of the project at that particular time. For quite a lengthy period he was in what was regarded as an interim role.
166. I had no involvement in the appointment of Mr Gallagher as Chief Executive of TIE. I considered that Mr Gallagher's qualifications and experience were suitable for that post. With regard to whether I considered that it was consistent with good corporate governance for Mr Gallagher to be both Chair and Chief Executive of TIE, including whether that could be detrimental to the Board's ability to exercise independent and effective oversight over the company, I would have made my views known if I had thought that it was inappropriate. At this particular point in time there wasn't a need to clarify because we had a real jumble of organisations that all linked one to the other and it needed rationalised and it needed to be formalised. There was an understanding that all of that needed to be addressed but it needed to happen at an appropriate moment and I think the timing was what was critical around all of that. We were very comfortable with what Mr Gallagher was doing and it was at an important moment in the preparation for the contract or the development of the contract. For me it didn't compromise the governance arrangements at that time.
167. My draft letter to Willie Gallagher dated 29 August 2007 (**CEC01115769**) discussed Mr Gallagher's appointment to the post of Chief Executive Chairman of TIE. I am not sure that the letter was ever sent because I do not recollect

signing it. It was to formalise his appointment in the post of the Executive Chairman and there were issues around how we would deal with his remuneration, his bonus payments and there were negotiations around that which were not straightforward. I think we were aware that his services were being sought by other organisations, so the task was to find a remuneration package which incentivised his staying as opposed to anything else because we wanted him to stay for as long as was possible. The continuity in that role was important to the project and so the introduction of what were described as "long-term performance awards" and the six month notice were introduced to his Contract of Employment. The letter was written in order to try and get in as quickly as we could to secure some sort of commitment from Mr Gallagher. We understood, that other organisations were offering him very much more attractive terms.

168. My understanding on why bonus payments were offered to Mr Gallagher as part of his remuneration and the basis on which bonus payments would be payable was that it was a complicated matter and I didn't do this myself. The Head of HR Mr Philip Barr, researched and identified an appropriate approach. It was important that we understood the industry pay arrangements so that we could pitch ourselves at an appropriate level. Having said that, Mr Gallagher knew, we wanted to be sure that what we were being told was right and we understood the type of bonus arrangements that were generally applied in the sort of circumstances that we found ourselves in. I can't remember the detail of which bonus payments were finally agreed or if that was just in relation to six monthly periods.
169. I am aware that David Mackay was appointed as Chairman of TIE following Mr Gallagher's resignation in November 2008 and he was acting as interim Chairman in October 2009 (email on 7 October 2009 from Nick Smith **CEC00690805** refers). I don't think that the post of the Chair of TIE was advertised following Mr Gallagher's departure and made the subject of an open competition. I think David Mackay was also already on the Board of one of either TIE or TEL I cannot remember. This was considered an interim appointment; it was a stopgap arrangement because we knew that we were

wanting to review all of the governance arrangements and start to put in place a more coherent arrangement. That interim appointment went on much longer than had been anticipated but it was always seen as a stopgap. He agreed to this for a year and, it turned out to be a lot longer than that. We were all agreed that it was just an interim arrangement. With regards to the appointment of Mr Mackay as Chair of the TIE Board, I was not involved other than in negotiating his terms. Mr Mackay did not continue to act as interim Chair of TIE. I don't think we ever formalised his appointment. It was always on an interim basis but I think we had to review his terms after the first year.

### **Bonus Payments**

170. **CEC02083550** is a report to Council on 26 June 2003 which noted that when considering TIE's draft Business Plan, a performance-related bonus scheme had been introduced for TIE staff. I was not involved in the decision to introduce a bonus scheme. I think I understood latterly why they had done that but I had no involvement in setting that up. I thought it was to incentivise performance and to deal with salary differentials between both the private and public sectors. I had no idea how it operated, I didn't even know who was included in the scheme. It was a scheme TIE had devised. I presume the bonus scheme applied also to include individuals seconded to TIE from other organisations and individuals and organisations engaged by TIE as consultants, because one of its objectives was to deal with salary differentials between the private and public sector. I assume that the staff that were seconded to TIE were given the bonus scheme and there were different categories of staff, those that were embedded with TIE and, I suspect that they were on the bonus scheme, there were those that were interfacing with TIE that is they were spending some time with TIE.
171. Regarding how the bonus scheme operated (ADR Operating Manual dated April 2005 **TIE0024099**), I would have to refer to my Head of HR; I did not know these details. The Tram Monitoring Officer should have known. At that early stage TIE was monitored by the Business Unit in the City Development Department so the person that headed that business unit, who was responsible

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should be  
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for monitoring the arms-length companies, should have known about bonus schemes too. I don't remember who that was. The Council officers and members didn't exercise oversight and control over the TIE bonus scheme other than through that Business Unit. That Business Unit would have done that along with the Remuneration Committee. Any arms-length company needed to have a Remuneration Committee so there should have been one for TIE and that committee had to have dealt with bonuses. The Business Unit would be aware of the sums paid in bonuses to TIE staff each year, including the sums paid to individual members of staff and the criteria in respect of which bonuses were paid. It was the Director of City Development who had oversight of the Business Unit.

172. With regard to my views on the TIE bonus scheme, I had no awareness of the bonuses paid but I understood that elected members sat on the Board and crucially the Remuneration Committee. In addition the annual business plan and quarterly reviews were expected to detail the remuneration costs. I wasn't aware of the existence of a scheme until sometime after when it was being suggested that they needed to introduce a different scheme and that's when I became engaged with it.
173. With regards to any concerns in relation to the bonus scheme including, for example, whether it could give rise to a conflict of interest on the part of TIE staff, we need to be careful. There was a bonus scheme and then there was a proposal to introduce a different bonus scheme. If we are talking about the later bonus scheme, then I was really troubled by it because it made no sense to me whatsoever. It was being introduced during the 2007 financial crisis. This is the second scheme, the one that I had concerns with. I had no knowledge of the first one. For me it didn't do what it was meant to do and it was paying out significant sums despite TIE not meeting its deadlines. The scheme was paying staff who were not delivering. It just didn't stack up for me.
174. My views, generally, of the TIE remuneration and bonus packages were that I had responsibility for all Council remuneration and in that role the primary objective is to ensure fairness. Even before equal pay really came into

prominence I always felt that staff needed to be treated fairly in terms of remuneration. This scheme was devisive and did not deliver performance improvement

175. The Operating Agreement between CEC and TIE was entered into on or about 12 May 2008 (**CEC01315172**). I am aware that document deals with bonus payments requiring the TIE Board to confirm annually to the Council's Tram Monitoring Officer "that TIE's incentivisation arrangements are aligned to appropriate project milestones". Previous versions of the draft Operating Agreement contained provisions giving the Council greater control over proposed bonuses. I am also referred to emails by Nick Smith dated 19 November 2010 and 10 December 2007 on the same matter (**CEC00013392** and **CEC00013393**). An email dated 10 January 2008 from Nick Smith to Gill Lindsay (**CEC01394985**) notes that TIE were highly resistant to CEC having some oversight of the bonus arrangements and benchmarks. Mr Smith could see no justification for TIE refusing the minimal oversight which had been requested. This is in relation to the original scheme that was in place. This is the scheme that I had more involvement with and was more uncomfortable with. My view at the time, ie late 2007/early 2008, on the matters set out in Nick Smith's December 2010 commentary document, **CEC00013393** and the need for transparency in relation to TIE bonuses was that we were raising this with the intention to introduce a revised bonus scheme and they were intending to do that through the operating agreement. My staff, that is Gill Lindsay, Nick Smith and Colin MacKenzie all knew that I felt strongly about the need to review bonus schemes because we had had problems with bonus schemes in the Council generally and we knew that bonuses were a potential problem area. When the matter arose they alerted me to what was being proposed. TIE's attitude to that was "it's none of your business – go away". They were trying to introduce the new scheme through the Operating Agreement and they needed authority to do this. We entered into lengthy discussions about the content of the scheme, its application and adjustments were made to remove some of the more difficult aspects of it. They were trying to introduce the scheme at a particularly difficult time against a backcloth of local authority staff pay settlements being pegged to

1% or nil and the new proposed bonus scheme could pay out as much as 40% on salary. In my view this was unacceptable.

176. I discussed with other Council officers at that time, late 2007/early 2008, the issue of whether the level of control the Council had over TIE bonuses should be included in the Operating Agreement. It was a matter that needed to be dealt with by the Tram Monitoring Officer and the Directors of Finance and City Development and they should have been able to intervene. Any intervention would have been about best value because best value was the issue in local government, at the time. I didn't think that best value would be achieved by these bonus payments. I considered that the requirement in the final version of the Operating Agreement for the TIE Board to confirm annually to the Council's Tram Monitoring Officer "that TIE's incentivisation arrangements are aligned to appropriate project milestones" was sufficient to enable the Council to exercise effective oversight and control over the bonuses paid by TIE. However it wasn't as simple as that. I think we did have mechanisms within the Operating Agreement to insist on a different approach. There were two things – one was the scheme, the other was the operation/application of the scheme. The scheme itself could have been made to work without too much adjustment but it had to be managed in a particular way and I think David Mackay realised this and, in correspondence with the Chief Executive, indicated that the cost of bonuses from one year to the other had been halved through simply managing the application of the scheme. We needed to have confidence that it was going to be managed in that way going forward and some of the elements of the scheme needed fine-tuning to help to provide this.
177. In considering who ultimately decided that it was sufficient for the Operating Agreement to contain the requirement in the preceding paragraph, rather than containing the provisions in earlier drafts, I wasn't sure that the earlier draft gave the Council greater control. They hadn't adjusted the scheme. By e-mail dated 25 September 2009 (CEC00673126) (referred to below) I wrote to them identifying what I thought was wrong with the scheme, a list of anomalies, as I understood them, in terms of the possible operation of the scheme. That led to discussions about how the scheme might be altered and adjusted. It may be

that through altering and adjusting the scheme itself, we were able to move forward so that it wasn't as loose as it had been previously. The Head of HR knew what I thought about the scheme and its application and he took forward the discussions. This secured a much more acceptable scheme. I think the Leader of the Council was made aware at the time of the above matters. I think I had a conversation with the Leader of the Council, Jenny Dawe. I didn't consider that the Council were able to fulfil its duty of obtaining best value if it had little or no knowledge of, or control over, TIE's bonus scheme and payments. A conclusion was reached. They did adjust the scheme. I wanted to be more radical and questioned the need for it. They were able to make a case for the need for a scheme based on staffing difficulties. Staff were leaving in significant numbers. It wasn't a very pleasant place to work latterly because of the pressure they were under. The bonus scheme was one mechanism for holding onto individuals because, if they left mid-term, they forfeited bonus.

178. I am referred to a Tram Governance Report dated 23 October 2008 prepared by Alan Coyle (**CEC01053689**), which looked at the gaps between the suggested governance structures and what was actually happening in practice. The report set out the governance arrangements, including a reference to the TIE Board retaining its Audit and Remuneration Committees, membership of which was restricted to non-Executive Directors. The statement, however, was contrary to TIE's Business Plan, approved by the Council, which stated that Willie Gallagher, Executive Chairman of TIE, sat on both the Audit Committee and the Remuneration Committee. I had no knowledge of this but I did understand that the arrangements we had applied over that period were anomalous. They were interim arrangements because they pre-dated our thorough consideration of governance. We limped from one arrangement to another, in a pragmatic way, trying to deal with all matters albeit on an interim basis. I think with the benefit of hindsight we should have taken action to differentiate Willie Gallagher's role in respect of his attendance at the Remuneration and Audit Committees.

179. I am now aware of an email dated 26 May 2009 (**CEC00880015**) in which David Mackay advised Tom Aitchison of proposed bonus payments to TIE staff. Mr Aitchison forwarded the email to me and I advised that I remained concerned

that we do not have sufficient awareness of the way the bonus payment is structured. By email dated 15 June 2009 (**CEC00908380**) Colin MacKenzie advised me of his concerns relating to CEC's governance of TIE and suggested that "now might be the appropriate time for the Council to step in and instigate a greater degree of control over the bonus scheme by setting performance targets aligned to its expectations of service delivery by TIE and its professional officers". An Action Note prepared following the meeting of the IPG on 24 June 2009 (**CEC00860068**) noted that information on bonus arrangements was to be sought from TIE. It was down to the Tram Monitoring Officer and the Remuneration Committee to exercise supervision and control over TIE bonuses at that time.

180. With regard to whether at that time myself or other Council officers and Council members were aware of the sums paid in bonuses to TIE staff each year, including the sums paid to individual members of staff and the criteria in respect of which bonuses were paid, the only awareness I had was in the letter that Dave Mackay sent to the Chief Executive informing him that he had managed to control the expenditure on bonus and reduce it by almost 50%. He put numbers to this. I can't remember if it was £750k, and they had got it down to £350k That was my first and only awareness of the sums that we were talking about. My views on the concerns set out by Mr MacKenzie in his email in relation to TIE's bonus scheme were that he was articulating my concerns also.
181. The steps taken, by whom and when to address these concerns were as follows I instructed the Head of HR to examine the detail of the scheme and its operation. It was overly complex. It was performance driven but it wasn't detailed enough, it wasn't specific enough in terms of performance measures and, therefore, it was too loose, it was too easy in my view for staff to achieve bonus despite performance.
182. I am referred to an email dated 16 July 2009 (**CEC00665646**) and a second draft of a proposed report to Council on 20 August 2009 (**CEC00665647**). The report included a section dealing with proposed new bonus arrangements to give the Council "proper oversight and control over any bonus payments". By

letter dated 20 July 2009 to Mr Anderson (**TIE00317803**) I see that David Mackay raised certain concerns in relation to the draft report to Council. There was subsequent email correspondence in which Mr Mackay requested that the whole section on pay and performance be deleted from the report (**CEC00698019**). The chain included an email dated 23 July 2009 in which Mr Anderson noted that he would take Tom Aitchison's guidance on the issue of Executive remuneration. An email dated 31 July 2009 from Alan Coyle to Steve Renwick (**CEC00695091**) advised that governance would no longer be a section in the main report, there would be a separate report on governance and that David Anderson would lead on that. In the end, the final version of the report to Council on 20 August 2009 (**CEC00823532**) did not include reference to bonus payments to TIE staff.

183. I note in the email dated 28 July 2009 from Steve Renwick (**CEC00698213**) he suggests that I was on leave in the second half of July 2009. With regard to whether the matter was brought to my attention on my return and what were my views on whether the report to Council on 20 August 2009 should include reference to TIE remuneration and bonus payments and if I discussed that matter with any CEC senior officer, I would say that it was a controversial issue that was discussed endlessly. If I was on leave then a colleague would be given that task to intervene and try and sort something out. We just kept going round the issue. TIE acknowledged the suggestion that we just do away with the bonuses. However they argued that "bonuses are built into existing contracts of employment and consequently can't arbitrarily be removed I had to recognise that that indeed was the case and we needed to do something more meaningful around the bonus question. I always felt that the report should contain reference to bonuses. I thought that it was better to be open about it. TIE was very resistant to being told what to do and they weren't taking on board the difficulties that their proposals created. They didn't have a positive engagement with us on the matter; they knew best, they were going to have their bonus scheme.

184. I am not aware why reference to bonus payments to TIE staff was deleted from the final version of the report to Council on 20 August 2009. I thought it should definitely have a reference, even if it was just a reference without any detail.
185. I found it difficult to accept any payment should be made given the performance of TIE at that time and I did recognise that there might be unavoidable contractual rights problems.
186. I am referred to an email dated 30 July 2009 from Steve Renwick to Gill Lindsay (**CEC00684005**) expressing concern that some aspects of revised governance documents, in particular, it appears, a draft operating agreement between CEC and TEL, had been diluted, including that bonuses would be payable only on the achievement of defined and measurable milestones and only when affordability could be proven. By email dated 4 August 2009 (**CEC00684468**) Colin MacKenzie attached his comments on a draft report to Council on new governance arrangements (**CEC00684469**). Mr MacKenzie noted the Council needed to exercise greater control over the overall salary and bonus package. My views on these matters were that this simply re-opened the whole case and there was no doubt that this became an increasingly difficult matter between us. It demonstrated, I think, the attitude that was being adopted by TIE, not just in relation to bonuses but in relation to other matters as well. I had great difficulty reconciling bonuses with the performance of the organisation and, I think, we all recognised in the Council that we needed greater control over bonuses, particularly when the public sector salaries were being pinned and capped and, in some areas, reduced. The issue was quite troubling.
187. With regard to the views of CEC officials and TIE senior employees on the extent to which, if at all, CEC should exercise oversight and control over the remuneration and bonus payments of TIE employees, my view is that it was demonstrating that TIE didn't recognise the Council's right to intervene in these sorts of matters and, indeed, bonuses are an example of that. Even requests for information on progress in certain of the technical areas was met with that same resistance and, as we have talked about before, TIE's only justification, or

defence, for that was confidentiality. Graeme Bisset was the senior TIE officer at that time, I think.

188. I am now aware of an email dated 23 September 2009 (**CEC00672873**) in which David Mackay sent Tom Aitchison a paper (**CEC00672874**) containing proposals to revise the TIE bonus scheme. An accompanying slide presentation (**CEC00672875**) noted "no formal linkage between bonus payments and corporate performance ... linked mainly to individual performance" and "inadequate performance management processes to underpin/justify payments". This was a reiteration of my knowledge and understanding of these matters. I had taken on board a number of the concerns that we had, or I had, identified. There was a sense that there had been an acceptance of those and a need to tweak and change what had originally been suggested and, I suppose, I was becoming worn down by their persistence and I was looking for an accommodation at the end of the day. It certainly was an improvement on what had been before.

189. I recall that in an email dated 25 September 2009 I set out a number of concerns in relation to TIE's proposed revised bonus scheme (**CEC00673126**). I met Richard Jeffrey to discuss these concerns and he discussed this in an email dated 9 October 2009 addressed to me (**CEC00674778**). By email dated 23 November 2009 I advised Tom Aitchison (**TIE00034046**) that Richard Jeffrey was content with the mechanics of the new scheme. In regard to concerns in relation to the TIE bonus scheme, how these concerns were resolved and what new provisions were put in place, when and how. I have already covered these questions I had got to the point where, I think the mechanics of the scheme were fine; it was the application that needed to be managed and controlled. There was also the overriding issue of affordability. We had a bonus scheme being paid to individuals who were not delivering the targets that had been set. These were the matters that needed to be managed. Richard Jeffrey stated that they would manage the scheme in a manner that addressed these issues. I can't say I was entirely convinced by this but I knew from the previous correspondence with Dave Mackay, that they had already managed to reduce the bonus payments and so, if they were able to continue to do that, I would be

less concerned. I recognised that there was a need to pay bonuses because of contractual arrangements. Short of closing TIE down and setting up a new organisation, we were always going to have bonuses. Richard accepted that these were issues, and he undertook to endeavour to control bonus payments in the manner that I had suggested. To put these new provisions in place was simply a matter of applying the provisions within the scheme. It remained likely that the use of bonuses would excite criticism.

190. I refer to Transport Scotland emails in April/May 2010 that indicated TIE had applied for a possible bonus payment of £1.2m, later revised to £730k (**TRS00017572**). A paper to the TEL Remuneration Committee in June 2010 (**CEC00301222**) recommended that no TIE bonuses be paid for 2009/10 and I note that Richard Jeffrey made a staff announcement in that regard (**CEC00314582**). My views on these matters were that the move from £1.2m to £730k to £300 was good news. I still wasn't convinced that we had got to the point that I had hoped with Richard Jeffrey in terms of pulling it further back. I think that occasioned further discussion.

191. I am referred to an email dated 10 June 2010 by Nick Smith (**CEC00258236**) which noted that under the TEL Operating Agreement then in place, the question of bonuses to TIE staff required to be agreed by the TEL Board, through its Remuneration Committee. In addition the remuneration principles to be adopted each year by TEL's Remuneration Committee required to be approved annually by the Council's Chief Executive in advance of each annual accounting period and that a full review by the Council's Chief Executive of TEL and TIE's remuneration strategy would take place every three years to ensure that such strategy remained appropriate in the market from time to time. I can't recall when and why these requirements were introduced. I recognise them as good practice and I suspect that that reiteration of the requirement was a consequence of the difficulties that had emerged. In regard to whether these requirements were given effect, ie did Mr Aitchison, as Chief Executive, approve annually in advance of each accounting period, the remuneration principles to be adopted each year by TIE's Remuneration Committee and did Mr Aitchison ever undertake a full review of TIE's remuneration strategy to ensure it

remained appropriate, I would not expect him to do that. In terms of bonus it would be a Remuneration Committee task and it would be through the Tram Monitoring Officer and the Directors of City Development and AMIS I am sure that they understood what was needed.

192. The minutes of the Council meeting on 14 October 2010 (**CEC02083123**) makes note that an undertaking had been given to provide a report on remuneration matters for Council owned arm's length companies and that the Chief Executive was instructed to ensure that a report was provided to Council on remuneration matters at TEL. An email dated 27 October 2010 by David Mackay (**CEC00064640**) noted "there is no doubt there is a need to do something – there is also little doubt that past experience, particularly in LB and TIE, are not a role model for the future – in fact the very opposite". I then produced a report for the Policy and Strategy Committee on 2 November 2010 "Remuneration and Reward Policy issues: Council Arms-Length Companies and Trusts" (**CEC00063531**). With regard to what changes were made around that time to the Council's role in approving and overseeing the remuneration of Council owned arm's length companies, including TIE and TEL, I would say that all of this raised questions around remuneration generally and the remuneration of arm's length companies in particular. The Chief Executive thought that we had good arrangements in place that these matters were managed through the oversight of the companies group and the shareholders' agreement, or the operating agreement, depending on which type of company we dealt with. Our experience with TIE raised questions and it became clear that we didn't have a consistent approach across all of our arm's length companies. One size would not fit all because they were all different, and the nature of the organisations was very different. It wasn't necessarily a bad thing that we had different arrangements, but the level of scrutiny was different and that was the more important matter. We needed to think of how to regularise the way these matters were dealt with and, for me, there was a need for greater transparency. The original arrangements for most companies were not causing a great deal of concern; it was really focussing back on TIE because we needed change in terms of attitude and its compliance. Obviously these matters were raised on a regular basis but we needed to understand that the Remuneration Committee

needed to operate effectively in this regard. The Remuneration Committee had to take on board this task and deal with it more effectively through the operating agreement or a framework agreement. I think there was a motion put forward that we should have a framework agreement which dealt specifically with this matter. That idea was taken forward, as I understand it, we moved towards a framework agreement.

193. I prepared a report for CEC's Policy and Strategy Committee on 2 November 2010 (**CEC00063531**) on Remuneration and Reward Policy Issues: Council Arms-Length Companies & Trusts. With regards to the suggestion that there were problems with CEC's oversight and control of remuneration and bonus payments of Council owned companies, including, in particular, TIE and TEL and why they were not recognised earlier and appropriate changes made, I would state that there actually wasn't a problem in all of the other companies so that's not the case. Occasionally there would be a problem when there was a change at the top of the organisation and elected members didn't like the proposed level of remuneration for the Head of EICC, the Head of Lothian Buses, the Head of Edinburgh Park or whatever organisation it might be. Most of these were controlled in different ways through different Boards, through different agreements including shareholder agreements and while elected members might not have liked what was being proposed, the proposals had been vetted through due process, they had all been agreed through a shareholders' agreement, or through some other mechanism. TIE, seemed to stick out like a bit of a sore thumb, because of the attitude adopted in TIE and this resulted in the bonus issue becoming difficult for all. The remuneration of individuals within TIE were considered by the Remuneration Committee. Elected members were sensitive to these salaries and always sought justification. The problem was that our governance arrangements weren't as robust as they could be and they were fragmented. When we come to governance there is recognition, albeit later, in the whole process that we needed to improve governance arrangements in a manner that provided for greater exposure and greater control than hitherto.

## **Governance**

## General

194. My views on governance changed over time. Initially, because I hadn't really been involved in the initial set up, it appeared to me, from a distance, that it was working well with a number of layers of governance which meant that there was a great deal of scrutiny going on in terms of the build-up of the project. The main players were the Council's staff, the Tram Monitoring Officer, the TPB and the TIE/TEL. Arrangements all seemed to function reasonably well however, it was a bit later on that I began to question the governance arrangements. There were a number of factors affecting governance. I have already referred to; the economic downturn, the politics, the changes in the political framework and the loss of Transport Scotland support. All of these, and other factors, meant that the governance arrangements were not as robust as they could have been, and maybe should have been. I became more involved in the project in 2007. That's when I started to have a greater involvement through the IPG and became more familiar with what was going on and how things were working out. Of course, simultaneously, we were beginning to question the performance of TIE, the way in which TIE was operating and the relationship that we had with them. I thought there were a number of weaknesses in terms of the governance arrangements and we have discussed some of these before in terms of the roles played by individuals. In addition to that we were beginning to identify contractual weaknesses through the delays that were being experienced and the issues arising with SDS. It became increasingly important that members were kept abreast of what was going on. As previously mentioned that became increasingly problematic. Initially I considered the multi layers of governance to be a strength but greater scrutiny of the workings of the various bodies suggested otherwise.
195. In relation to the appointment of Mr Gallagher as Chair of TIE in 2006 (Job adverts **CEC02084501** and **CEC02084500**) and the minutes of the Recruitment Committee on 9 May 2006 (**CEC02084496**) on 20 July 2007, I prepared a Briefing Paper for Mr Aitchison, "TIE – Governance Arrangements" (**CEC01566497**). The paper noted that it is now vital that more rigorous

financial and governance controls are put in place by the Council given the funding cap that has been placed on the project and the greater financial risks that were now borne by the Council. I also noted that; the governance controls were complex, combining the roles of Chair and Chief Executive of TIE was seen as a stop-gap measure (which had been in place for nearly two years), the separation of the roles of Chief Executive and Chair was required, there was no service contract for Neil Renilson as Chief Executive of TEL, the Director of City Development was the CEC's Company Monitoring Officer for TIE and in terms of corporate governance it could be suggested that the roles of Company Monitoring Officer and Director of City Development should be separated, TEL was envisaged as TIE's monitor but the fact that TEL had no money of its own and was being paid by TIE undermined TEL's position, the TPB was not a legal entity and there was doubt as to whether the Council could competently delegate its powers to them and the TPB sat outside TEL so TEL in fact had no control over the decision making board.

196. Three options were identified to achieve enhanced controls including; winding up TIE and bringing the relevant and necessary staff into the employment of the Council, TIE continues to progress the project on the basis of a fully documented principal/agent agreement with the Council and the Council to set up a tram committee to replace the TPB and essentially performing the current TPB functions. These matters would require to be considered and discussed at the very highest levels within the Council. In relation to which senior members of the Council discussed these matters I can't remember for sure whether Tom Aitchison asked me to produce this report or I suggested to him it would be a good idea. There had been a recognition that we needed to address governance matters at an earlier stage. The task was to identify, in some detail, where the weaknesses might lie. There had always been the intention to integrate the various transport organisations, and part of the problem with the governance arrangements around the tram, was that there were too many fingers in the pie and they weren't sufficiently coordinated or focussed enough in terms of the degree of responsibility each carried. There was a need to rationalise the organisations and allocate responsibilities. As part of this process it was considered necessary to clarify the role of TEL in relation to TIE.

197. We were also trying to deal with what we believed to be a weakness in terms of the overall governance of the project. While I think the changes that I proposed in terms of governance were, on reflection, fairly obvious, they were not evident at an earlier stage. They emerged out of the working of the project and its development. It is the case that some changes should have been made a bit earlier. The recommendations of the Cadbury Report which we embraced in most other aspects of our business were not implemented as quickly as they should have been. However, I think most of the recommendations in my report or mentioned as weaknesses in that report, were addressed in one way or another. Several meetings took place in relation to what should be done about matters that had been identified. It was difficult to put a timescale on the changes that were to be put in place but there is no doubt that the roles were more expressly identified, the Tram Monitoring Officer role was enhanced and TIE and TEL's role were more clearly delineated. and issues with the Operating Agreement were addressed.
198. I would add that Audit Scotland remarked in their report that they were happy with the governance arrangements and that the governance arrangements had been through external scrutiny. With regards to whether the roles and responsibilities of each of the bodies etc involved in the delivery and governance of the project was sufficiently clear, Transport Scotland exercised independent and objective oversight over the tram project in the early stages and were satisfied with governance at that time.
199. The fact that the same individuals often sat on more than one body or organisation and the suggestion that this might adversely affect the independence, objectivity and, ultimately, the effectiveness of the governance arrangements, ie by leading to a merging, or overlap, of the roles of the different bodies, I would presume this to be a reference to Willie Gallagher's dual role. I was quite comfortable with that at the time because it was temporary and the sort of arrangement that was needed to drive the project He had the confidence of both the TEL and the TIE Boards and, at that point, it was particularly important to ensure that business was coordinated to ensure good progress I

was comfortable with that arrangement. I understood that there were potential downsides to that arrangement but in my view, the individual concerned was able to carry that off so I was comfortable with that. As I stated Audit Scotland reported on progress several times in relation to the tram project, with very little negative comment.

200. With regard to whether the governance structures allowed CEC officials and members to exercise effective control over the project, I thought that we did have control. Latterly we thought we had lost a bit of that because we weren't able to breakdown what we perceived to be a bit of resistance on the part of TIE and, of course, the changes that were brought about when we became funder of last resort, also changed relationships. On reflection, maybe we should have, at that particular point, put a bit more effort into thinking of the consequences. TIE, while theoretically answerable to the Council, did not see themselves in that light and this should have been addressed. Colin MacKenzie and others pointed out that they were seeing greater resistance to any acknowledgement on the part of TIE that they were answerable to the Council and Colin voiced his surprise that this was the case given that the Council were the paymasters and that TIE were entirely reliant on the Council for meeting their bills. This situation developed over time and manifested itself in various ways at different times. These differences culminated in the final position in which separate legal advice was being sought. The situation became dysfunctional.
201. The body or organisation that was ultimately responsible for ensuring that the tram project was delivered on time and within budget would be TIE. I can see other people suggesting that it was the Council because the Council funding TIE but in my view it was TIE. TIE was set up and designed to take on that role.
202. A joint report by Andrew Holmes, Donald McGougan and I to the Executive of the Council on 20 December 2005 (**CEC02084258**) discussed the governance of Council owned companies, taking account of a recent review by Audit Scotland. The report refers to the Council having established a Companies Unit in 2001. The Companies Unit had a role in exercising oversight and control over TIE and TEL. It's the arrangement that the Department of City

Development had previously put in place in order to oversee the work of the different arm's length companies that we had setting up work agreements, shareholder agreements and monitoring these agreements. The Companies Unit would produce an annual report. The Director of Finance had a closer liaison because there tended to be a lot of matters that would arise in relation to financial issues as opposed to operational issues. As I say, it was a very successful arrangement and the unit worked well to begin with and I think it became more problematic as these things do. The head of that unit (I can't remember his name) was liaising and working with people in these companies, realising that he was being paid half of what they were being paid and yet he was exercising authority over them. There was a lot of grumbling and dissatisfaction with that. This needed to be addressed. The report noted that for the larger more high profile Council companies the appointment of additional independent board members should be considered. It also noted that there was at that time a dearth of independent non executive Directors with the range of experience and expertise required by the major Council companies. That issue was resolved in relation to TIE and TEL. All the companies had their Boards and they went through due process in terms of recruiting to these Boards. Formal recruitment processes were adopted. I was aware, that there would be individuals approached because of the need for particular skills and/or experience, but the process was always formalised.

203. I am aware that a report by Ian Stirton, Chief Internal Auditor, to the Audit Committee on 31 January 2008, (**CEC02084259**) "Updated Local Code of Corporate Governance" 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". The CEC officers who were responsible for ensuring that this principle was met in relation to the tram project were the Director of City Development, Director of Finance and the Tram Monitoring Officer. I did at the time consider that that principle was met in relation to the tram project.

204. **CEC01162045** is a Discussion Paper dated November 2008, "Governance Performance and Restructuring Options" drafted by Graeme Bissett. noted a

number of weaknesses in the governance of the tram project, including a comment that the TIE Board was a high quality resource which was “somewhat out on a limb” and that there was a considerable overlap between the TIE Board and Tram Project Board. TIE was seen as the organisation accountable and responsible for all aspects, but this was not aligned to actual responsibility and that in general CEC’s leadership role was not well reflected in the execution of governance. The paper also noted that there is one company too many. By this he meant that TEL was created in 2004 to coalesce the tram project with Lothian Buses at a time when relationships were poor. My views on these matters were that I generally agreed that there was one company too many and there needed to be a rationalisation. That is confirmed later in terms of the recommendations that were made. Bringing together TIE and TEL was always our intention; the issue was when. In 2008, we were understanding that there were difficulties this paper reflects that.

205. **CEC01077814** is an email dated 20 January 2009 in which Colin MacKenzie advised me of his concerns that the governance review should be led by the Council, a proposed paper by TIE was “symptomatic of the failure by TIE to acknowledge the Council’s lead role in terms of governance” and that “it is not a matter for the family members to debate among themselves what is best for them, it is for the parent to decide on which model or structure it wishes to put in place”. My views on these matters were that I generally agreed with Colin. There was no doubt that any governance changes had to be led by the Council. TIE knew that there was going to have to be changes, they knew that these changes were going to have to be put into place relatively soon and they wanted their interests prioritised. I agreed with Colin but I always knew it would be the Council that would make these changes not TIE. We would take into account TIE’s views and, to be fair, the bit that Colin fails to fully appreciate is the importance of taking account of TIE’s views as technical and commercial experts in this field. They were far better equipped than us to contribute to a view on how best these matters should be governed and we had to listen to them and pick up on what they had to offer. At the same time we were responsible for achieving best value and I always considered that to be the

Council's responsibility to ensure that we were operating to protect the public purse. It was a matter of listening and taking on board what TIE had to say.

206. In a report to the Council on 12 March 2009 (**TIE00446919**) I advised on proposed changes to the governance and corporate structure. An email I sent on 24 June 2009 (**CEC00688760**) noted a need to secure the improved governance grip that was clearly desired by the IPG. A note was produced to capture the points of principle discussed and agreed at a meeting on 28 July 2009 between representatives of CEC, but not myself, and TIE (**CEC00825672**). A report to the Policy and Strategy Committee on Governance on 29 September 2009 (**CEC00680472**) sought approval for the new governance arrangements and operating agreements. An email dated 8 October 2009 from Nick Smith to Gill Lindsay (**CEC00701747**) noted that a direct CEC/DLA reporting structure would be established in order that CEC were in the driving seat regarding the stage 2 governance changes. Both Donald McGougan and I were noted to be in favour of that approach but were "mindful of ruffling feathers". I also refer to the report to Council on December 2009 on "Integration of Public Transport – Company Structures" (**CEC02083135**). The changes to the corporate and governance structure that took place in 2009/2010 and what were the stage 1 and stage 2 governance changes signalled the beginning of the Council bringing about an integrated arrangement. This was a step in that direction. It was always envisaged from the outset that it was the intention to have a single operating company for the integrated transport arrangements in the city. The changes that had been well documented and were in various reports, referred to the sorts of changes that were going to be part of that and all of the interested parties, that is all of those involved in the different entities, like Lothian Buses etc, were all aware of the direction of travel. The elected members knew about this from the outset. The overall strategy was to have an integrated transport system in the city and this was the beginnings of a move towards that. I think it refers to "ruffling feathers" and it is fair to say that there were, particularly in organisations like Lothian Buses, a number of concerns. Lothian Buses were a very successful company doing extremely well, very highly regarded generally and they were concerned that they would be disadvantaged and their success would be undermined by

the integration process. This difficulty was complicated by the fact that the Council didn't have complete ownership of Lothian Buses, there was 9% ownership sitting with the other Lothian Councils and they had no interest in the tram and wanted to protect the successful bus company. Lothian Buses also suspected that they would be drawn into tram funding arrangements

### **The City of Edinburgh Council – Council Officers**

207. In general with regard to the responsibilities of each of the Council's senior officers in relation to the tram project it was the Director of City Development, Director of Finance and the Council Solicitor. At an earlier stage it was the Director of City Development and his Business Unit colleagues. Colin Hunter was in charge of that unit. He was the officer in CEC that was responsible for ensuring that CEC exercised effective governance and control over Council owned companies such as TIE and TEL. With regard to whether one officer or officers in CEC were responsible for ensuring that the tram project was delivered on time and within budget, There was no one officer with that responsibility. The constants were the Director of City Development, Director of Finance, Council Solicitor, Tram Monitoring Officer and the TPB being the key people and organisations engaged in the monitoring of the tram and the development of the tram project.
208. The IPG (Chief Executive's Internal Planning Group) was a non-Executive body. It was set up because of anxieties around governance with the tram project. We began to appreciate that the governance of the project wasn't what it might have been and we had a concern over reports that were being received about delays and other issues arising. It was set up in order to provide a monitoring forum but it ended up being a bit more than that. It was there to identify and facilitate what could be done to address difficulties that were being encountered. Some of these were issues for the Council specifically, the difficulties over TROs and TTROs, the street closures and traffic management issues. There were also planning matters for example approvals for pylon ties. These matters were within the control of the Council and the IPG was in a position to deal with any difficulties associated with them.

209. I agreed with the views of Mark Turley that he set out in his emails dated 12 May 2010 (**CEC00236984**) and 15 June 2010 (**CEC00241274**) . Mark was new to the IPG and, I think, initially, Mark had understood the IPG to have executive responsibility and it did not. I think that was his misunderstanding but he was absolutely right in what he said. Mark had new responsibilities for roads and he was anxious to make sure that nothing that he was responsible for was going to hinder the progress of the tram work.
210. With regards to the role, remit and responsibilities of the Tram Monitoring Officer. The role was established through the Operating Agreement of both TIE and TEL and the duties of the Tram Monitoring Officer are detailed in these Operating Agreements. It was stated in the Operating Agreement the role should be undertaken by the Director of City Development or his nominee.

### **Council Members**

211. In general, elected members, including the Council Leader, the Finance and Transport Convenors, Group Leaders and individual members were all advised of developments in relation to the tram project, in normal process through regular meetings with key elected members. The Leader and Deputy Leader and those that had portfolio responsibilities would be briefed weekly but there would be daily contact with most of them. Issues that were arising were always dealt with and in addition to that, there were some elected members who were actually on the Board of these organisations so there was a lot of connection and communication. Members were always updated on significant developments relating to the tram project including, in particular, the problems that arose and the estimates of the cost of completing the project, as best as we could, because the sand was shifting so quickly, it was difficult to keep pace.
212. In considering to what extent the need for commercial confidentiality conflicted with the need to keep members informed of matters relating to the tram project, we took steps to address that conflict and these were successful. TIE had a major concern about this and I know that TIE spent a good bit of time with those

elected members who were on the Boards of TEL and TIE to impress upon them the absolute need for commercial confidentiality and I think that generally worked. The issue of commercial confidentiality was heightened by the fact that the tram was not supported by all of the Council. There was a party that was not in favour of the tram and it was thought that they might not treat confidential information as confidential if they thought it was appropriate not to do so. They were not excluded from information but the situation and the concern of the other parties had to be managed TIE thought that Council Officers were leaking information to the media, not members. This was TIE's justification for not sharing information in the manner that we would have ideally liked as a partner. Members were in a position to take informed decisions in relation to the tram project through briefings and portfolio responsibilities and by being members of relevant boards they were adequately informed. When there was a need for further information members requested external advice and guidance. I do accept that members were losing confidence in the ability of the Council officers and TIE to deliver on this.

213. **CEC02084258** is a report I prepared together with Andrew Holmes and Donald McGougan for the Executive of the Council on 20 December 2005. It discussed the governance of Council owned companies, taking account of a recent review by Audit Scotland. The report noted that good corporate governance dictates 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 the Council, to demonstrate that they have been appointed on merit and not through any form of patronage. In considering whether there was a formal selection process for elected members who acted as non-executive Directors of TIE, and, indeed, for elected members who sat on the Tram Project Board and on the Board of TEL it was a proper point to make by Audit Scotland and we recognised that our practice had not always complied. In particular, the Board of organisations like Lothian Buses tended to have a political complexion and due process really hadn't been applied as frequently as it might. However, having said that, it was recognised that we needed to do something about that and it was also recognised that there was nothing we

could do about existing Board members. Obviously, what we needed to put in place were arrangements for ensuring that that formal arrangements were put in place. A number of the companies did have proper arrangements, Edinburgh Leisure, for example, went through full recruitment processes and did it very effectively. The intention was to try and make sure that they all complied with best practice. The Business Unit had a responsibility to ensure that when vacancies arose, the process was adopted to ensure that there was no question of patronage. The report 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. Training to take place for elected members appointed as non-executive Directors of TIE, and, indeed, for elected members who sat on the Tram Project board and on the Board of TEL. There were differences in the training dependant on where the role was, in a technical type organisation, the training would be provided externally or be bought-in. It would be up to elected members to decide if they wished to attend such training events.

214. **CEC02083455** is a report I prepared for Council on 20 September 2007 discussing revised governance arrangements. I noted that a Tram Subcommittee, being a subcommittee of the Council's Transport, Infrastructure and Environment Committee, had been established to review and oversee decisions with respect to the tram project. In relation to how much oversight of the tram project the tram subcommittee was realistically, able to exercise, I could see no reason why it would not be able to exercise full oversight. It had delegated powers of the TPB and it was taking over that role with a broader range of scrutiny responsibilities. It should have had considerable influence; it definitely had the capacity to have considerable influence on the project.
215. I note that a Tram Governance Report dated 23 October 2008 prepared by Alan Coyle (**CEC01053689**) identified certain gaps between the suggested governance structures and what was actually happening in practice. My views on whether there were any such gaps and whether any such gaps adversely impacted on the governance of the tram project were that I thought it was a useful paper by Alan Coyle because there were gaps that he was able to

identify. I think Alan worked with the Council's Solicitor or, it might have been Colin, I can't remember which, certainly he had legal support in pulling that paper together. I think that, if these gaps had been left unchecked, they would have adversely impacted on the governance of the project. It alerted us to the need to close the gaps.

216. I recall that I sent an email dated 26 January 2009 (**CEC01041760**) commenting on a Communication Report (**CEC01041761**) – which, at face value, represented an opportunity to “resolve both TIE’s communication weaknesses and our own weaknesses as described by Verve and perceived by members”. The elected members in the Council had requested an external review of the Communications Division. The SNP group were not long in power, and they felt that we weren’t doing enough to deal with the adverse media attention that the Council was getting. We had an aggressive negative media campaign, against the Council and the elected members, felt that the responsibility for dealing with that should lie at the Communication Manager’s door. They considered that the Communication Manager wasn’t doing enough to resolve it. At the same time I had conducted a review of the communication service myself and I had commended the Communication Manager for all the good work the Communication Manager had been doing. This did not fit with the member’s perception of the situation and they asked for an independent external review. We were getting a lot of negative press particularly about the tram project, and, in addition to that, TIE were complaining that they weren’t getting the support from communications that they wanted. They were buying in their own communications expertise. Everyone was blaming everyone else for the negative media attention that the Council was getting, really aggressive negative media attention. Verve completed a report on the communication function and had made a number of recommendations, some of which were sensible, others I think were pretty well unacceptable. TIE, as I mentioned, bought-in significant communications support to assist, as they needed to do, because at that time residents and the general public, were not happy with what was happening on the street.

217. With regards to the weaknesses of TIE and CEC that I have already referred to and how these were addressed, firstly, we were not dealing with this negative media attention effectively and we weren't doing enough to communicate what was happening, when it was happening. The intention was to raise the game in terms of spreading the word and trying to put more and more information out into the public realm so that people were advised timeously about what was planned. That was difficult to achieve because it was not always possible to do this. There were many things that we were not doing that we could have done and certainly there was a perceptible improvement in terms of the volume of material that was going out. The IPG reviewed that at every meeting and there was a standing item on the IPG to consider the communication plan for the following week

### **Tram Project Board**

218. In general, the Tram Project Board was created in order to provide governance for the tram project. It was formalised, as you know, later on as a subcommittee of TEL but, before that, it was the body that had the biggest interface between TIE and TEL. From an executive point of view, it had an executive role and the role was identified in the Operating Agreements. I think the TPB was a very sensible arrangement at the time and I had no reason to doubt that it had the capacity and the ability to do what it was meant to do. Operating agreement powers were formally delegated to the TPB. I think this is one of the weaknesses in the governance arrangements. That was why the subcommittee was formed and it reported to TEL. In this way it was able to operate as originally intended.

219. With regard to whether I had any concerns, at any time, in relation to the TPB as an organisation or in relation to individual members of the TPB, I am not sure what that relates to.

220. The primary function of the TPB was an executive role to manage and execute the project. Its role and remit was clarified in the Operating Agreements.

221. The TIE Board had the executive responsibility for the delivery of the tram project. The TEL Board had a wider range of responsibility, it was responsible for the TIE Board's functioning and operation but it was also responsible for the other transport interests that the Council had, including Lothian Buses.
222. I am aware of an email dated 26 September 2007 (**CEC01561555**) in which Colin MacKenzie expressed certain concerns relating to the lack of accountability of the TPB to CEC, that TIE were responsible for the delivery of the tram project, that they 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. My view on these matters was that it was an interesting point. There was a danger by making the changes that we would, in some way or other, reduce the level of responsibility carried by TIE. That was not the intention and it was only one interpretation of what might happen in terms of these changes. It was not intended to, in any way, reduce TIE's accountability.
223. I note that the joint report to Council on 20 December 2007 by Andrew Holmes and Donald McGougan (**CEC02083448**) sought approval for proposed new governance arrangements. The report explained that the TPB would be formally constituted as a committee of TEL. The Council decision was on 20 December 2007 and that constituted the TPB as a committee of TEL and that was formally done at that time. Prior to the Tram Bill being passed in 2006, the TPB operated, informally, it didn't have a formal reporting mechanism. Like a lot of these questions, there is no one answer, there is a range of answers at different times because there were so many changes taking place. In 2006 up until 20 December 2007 when matters were formalised, TPB was still operating at the interface with TIE, monitoring their progress and their development. They did more than that, in my view, because that would suggest that they were non-executive but I think the TPB had a more hands on function. It did intervene, on occasions, over that period to ensure that TIE followed direction. I think it was always meant to be, or have, an executive role rather than a non-executive role.

TEL

224. In general, with regards to TEL, the remit and the responsibilities and the powers and sources of authority are all contained in committee reports, they are a matter of record, and they are part of the Operating Agreements. They are well documented. I don't remember who was the Company Monitoring Officer for TEL. I wouldn't say I had concerns, at any time, in relation to TEL as an organisation or in relation to individual members of the Board or in relation to individual employees. I could understand that there were confusions in peoples' minds as to what TEL did relative to TIE and the other organisations that we had. It was a busy market place and it wasn't easy for people to understand the governance. That governance paper that I produced illustrated that point exactly that there were too many organisations and there had been no real effort to show how they related one to the other and how they were capable of being integrated. I wouldn't say I had concerns but I could understand that people might be confused a bit about what they were all about. I think the role of TEL changed over time, because we reinforced TEL's role with regard to TIE. TEL was established in 2004 to promote and develop the implementation of transport arrangements for the city so it wasn't just for the tram, it was for all transport arrangements. There were other organisations such as Transdev and TEL was meant to sit above them with a view to transport integration. Their role was to promote the integration of all modes of transport. They had a freestanding Board but no direct reporting to any other organisation.

225. I am aware that Lothian Buses PLC appears to have expressed certain concerns in relation to which body would be responsible for ensuring integration of the tram and bus services. With regards to what concerns Lothian Buses had in that regard, what weight was given to these concerns and to what extent TEL was created to address these concerns, I have touched on that already in as much as Lothian Buses had concerns on many levels. They always understood that the long-term intention was to have an integrated transport arrangement in the city and, obviously, they were anxious about the impact of that. As time went on they became more and more anxious about the impact of that on their own business. They had a concern that they were being taken over. These matters were taken very seriously, not least of which because there was a lot of

member disquiet around the fate of Lothian Buses and what might happen to the company. A lot of reassurance needed to be given. A lot more work was done to bring Lothian Buses on board and ensure that they were given opportunities to participate in the integration. They needed to be involved in determining the fare structuring, the route planning, and other operational matters all of which impacted directly on their business. A fair amount of effort went into trying to address their concerns and to reassure them that the importance of Lothian Buses to the integrated transport project was fully understood. Indeed their financial contribution was critical. TEL was created to address these concerns. That was TEL's function. That was its core function.

### **Transport Scotland**

226. Following the formation of an SNP administration in May 2007, and the vote in the Scottish Parliament in June 2007, Transport Scotland's role in the governance of the project changed from being active to passive. I think I always considered Transport Scotland's contribution to be very helpful in many ways, they brought a kind of independent rigour to the technical side of the project and when that fell away what we were left with was them simply managing a capped grant process, signing off for payments without doing any of the other more rigorous work. I think we missed their contribution, I think it had an adverse effect on the project, particularly in relation to risk assessment and their other expertise. I have got no real evidence to support that, it's just a feeling I have that Transport Scotland's scrutiny would have benefitted the project and would have had a controlling influence on TIE which the Council didn't seem able to exercise. With regard to what regular reporting, and by whom, to Transport Scotland took place after the change, we still had to apply to Transport Scotland for financial drawdown. This was a formal process. I think there were other informal contacts with Transport Scotland, not that I had anything to do with these.
227. Once problems arose Transport Scotland were kept fully informed with the project including the likely cost increases. This was done through the

drawdown for the grant procedure and through quarterly meetings with Transport Scotland.

### **Partnerships UK**

228. I was not aware of the role played by Partnerships UK in advising on the procurement strategy and the governance model and, generally, in providing advice and oversight in relation to the tram project. I had nothing to do with this.

### **OGC Reviews**

229. I am referred to the fact that in May 2006 an Office of Government Gateway Readiness Review was carried out of the tram project and a report of the review was delivered to the Chief Executive of TIE on 25 May 2006, **CEC01793454**. The overall status of the project was assessed as "Red", that is "To achieve success the project should take action immediately". This was in 2006 which predated my direct involvement through the IPG which was in 2007.
230. I have now been made aware that a second OCG Review was carried out in September 2006 (CEC01629382). I wouldn't see any of these because they wouldn't have come to IPG and if they didn't come to IPG I would never have seen them.
231. I am referred to the Project Risk Review by the Office of Government Commerce on 15 October 2007 (**CEC01496784**). That was a Malcolm Hutchison report. I am not sure if I saw that report and as I have said before, I regarded these as pretty important documents and I know that, when we received these, we took them very seriously and took action to address any issues that arose. My recollection was that in that paper we were given quite a good clean bill of health, I don't think there were many issues arising. Clearly it was important that we addressed these because, they were our paymasters, and they had the £500m. We were hugely incentivised to make sure that if the OGC was suggesting that there were things to be done, they were done.

Regardless of that incentivisation I had a high regard for that independent overview of the whole project.

232. I have now been made aware that there is a third OGC Review carried out in October 2007 (CEC01562064). I might have seen that report. That might have gone to the IPG. I think the IPG was maybe set up shortly after the Council report approved the project so it would be in about August 2007. I don't remember seeing the report. As I have often said that I thought that the discipline brought about by the OGC reports was helpful and was so important to alerting us to what needed to be done and I was greatly supportive of that. It just simply meant that we were kept alert to what needed to be done.

### **Consequences**

233. I considered that the main consequences of the failure to deliver the tram project within time and within budget, including, in particular, on residents, businesses and other individuals and organisations were the financial legacy and the reputational damage. There was a lot of damage done to the Council's reputation but also to local people in terms of loss of business, inconvenience and personal cost. A lot of work was done to try and understand the impacts on residents and businesses and compensation was paid out in relation to some of that inconvenience. Lessons were learned that would be carried on to any future projects. It is difficult to differentiate between the impact of the financial downturn and the impact of disrupted business caused by the tram. From the Council's perspective, we had a lot of financial heartache which will be carried into the next 20 years and there was damage done to the Council's reputation, although that has been partially recovered by finding an exit strategy. I have no doubt that there will be further developments in the tram over time, but it will take a long time for the wounds to heal. When it does come back I hope we won't lose sight of the lessons learned so that when the next stage comes along we will be able to manage that project in a different and better way. I would refer to previous statements I have made this far as to what steps were taken by the Council to try and alleviate these consequences.

234. In relation to the Council official that would be responsible for alleviating the impacts on residents and businesses it would be the Director of City Development supported by the Council's Communication team and lots of others in terms of hosting events and taking care of complaints. There would be a huge volume of mail including complaints and cases for some form of compensation. These would be dealt with by a combination of staff. From a variety of Departments, I had retired by the time that was in full swing.

235. My views on what 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 are obvious because we had to resort to prudential borrowing there are long term consequences. Our financial projections demonstrated that the tram would become profitable within a relatively short space of time and the tram patronage seems to be at or above the levels that were originally anticipated in addition Lothian Buses profitability has not decreased but increased over that same period. The integrated transport arrangements are looking quite healthy and as a consequence I am assuming they will be addressing the financial consequences over a period of time.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 100 hundred 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.....20.04.2017.....

