

The Edinburgh Tram Inquiry
Witness Statement of Alex Macaulay

Statement taken by Farrukh Iqbal on 13 July 2016

My full name is Alex Macaulay. I am 66 years old, my date of birth being
[REDACTED] My contact details are known to the Inquiry.

I am currently retired. My role in the Tram Project was as Project Director at TIE between April 2002 and July 2006. My main duties and responsibilities were for a range of projects including Congestion Charging for the City of Edinburgh, Tram Lines 1, 2 and 3 development in Edinburgh, Edinburgh Fastlink, Ingliston Park and Ride, Road Pricing on the Forth Road Bridge for FETA, Cross Forth Ferries for Fife Council and an environmental scheme for Stirling Council. I was a member of the company Executive Board and reported directly to the Chief Executive and the Board of the company. I was also responsible for much of the day to day management of the company.

Statement:

Introduction

1. My curriculum vitae is attached as an annex to this statement, document reference **(CVS00000004)**.
2. My professional background whilst employed by City of Edinburgh Council was first as Head of Local Area Services, which covered Local Planning and Local Economic Development, Roads Maintenance and Local Projects. I then followed this with the role of Head of Special Projects which included the New Transport Initiative, NTI, but it also included the Council's input to things like the Millennium Canal, the Millennium Walkway and various other significant

projects in which the Council had an interest. My duties involved the direction of staff and of the projects. My duties and responsibilities in relation to the NTI and proposed tram network were such that effectively I was the NTI Project Director. The NTI was one of my projects when in CEC and that was one of the special projects that I was in charge of. When I left CEC, the NTI went with me to TIE. CEC remained the statutory body that was able to promote road user charging, the core of the NTI, and any other statutory processes that would have been reserved to the local authority, but TIE was appointed as the delivery body on behalf of CEC. I was then appointed as Projects, Director within TIE, one of them being the NTI. My role in relation to the NTI fell to me automatically by virtue of my position as having been Head of Service within the Council. The main perceived benefits of a tram network were the capacity of the vehicles, image of the vehicles in terms of raising the image of the city, and providing an environment where the private sector would have more confidence to invest, for example in the Waterfront Edinburgh area and the Granton area. It is very easy to change a bus service but once you have invested heavily in a tram service, it is there for a long time to come. That then generates investment confidence in the private sector to invest in the redevelopment or the regeneration, particularly of the Waterfront area. That was a major aspect of it. It was all about the image of Edinburgh as an international city. The full Council were proponents of and supported the tram network, albeit it was a Labour-controlled Council, but there was cross-party support for developing a tram network. There was not any individual who was the main proponent of the tram network, it was a collective view within the Council, both at officer and elected member level. My view at the time on the proposals to create a tram network was that I supported it and my view has not changed. I left CEC to join TIE because one of the special projects that I was responsible for was establishment of arm's length companies. For example, there was a city centre management company that I set up, Waterfront Edinburgh, and I was instrumental in setting up TIE. The NTI was going to go to TIE and that was what I wanted to implement, since it was my project at the time, and that was why I went to TIE.

3. Whilst employed by TIE, my job title was projects director responsible for a range of projects including the Tram Project. The range of projects are covered in my CV, document reference (**CVS00000004**). My duties and responsibilities in relation to the Tram Project included developing the project from concept through to the stage where it could achieve parliamentary approval and, in doing that, to procure the necessary technical, legal and financial advice that would get us through to a parliamentary approval and confirmation of the Bills and Acts of Parliament. That was my primary responsibility with the tram network. I also had other responsibilities in relation to other TIE projects.

4. I am referring to the organisation chart, document reference (**CEC01875334**). This is the first time I have seen this organisation chart. It has a date of May 2005, but that is not an organisation chart that I recognise and the vast majority of the names in that chart are unknown to me.

5. I am referring to the chart, document reference (**CEC01740338**). I had responsibility for a number of different corporate areas of activity, not all of which were necessarily linked. These were both assigned to me and also I volunteered to take some on. When we first set up TIE, it was a small organisation. I was the only operational director within the organisation and these duties had to be done by somebody, so I had them for as long as I was there within TIE. Things like personnel, managing the risk manager and so on which fell into my areas of responsibility. That was the way it evolved. TIE was not set up as a big organisation, it was set up as a small organisation and then it grew rapidly into a much bigger beast. If one looks at my CV and the expertise and experience I had as a Senior Officer within Local Government, Assistant Director within Central Regional Council, Deputy Director within Lothian Regional Council, Head of Service within City of Edinburgh Council, all of these roles involved management of staff, close liaison with HR professionals and financial professionals. That was why these duties landed on me, as being best suited to fulfil them.

6. I am referring to a note issued by Michael Howell, dated 26 May 2006, document reference **(CEC01740339)**. It refers to the need to establish TIE as one organisation, TIE Vision. I do not know what the problem that he was trying to address was. It is the first time I have ever seen the document, so I really do not know what he was talking about. You would need to ask Michael Howell for further comment. The note was issued by Michael Howell on 26 May. I left in the beginning of July 2006, so I do not believe I was particularly involved in the development of the vision of TIE moving forward beyond the time at which I left the company.
7. I left employment with TIE in July 2006. I found a new job as director of SEStran, which was closer to my areas of expertise and experience. It was all about transport policy and transport strategy, rather than implementing construction of a project, so that fitted my own areas of interest more appropriately. I have to say I was not particularly happy at that time working in TIE. I did not like the way the company was evolving, as I explain in more detail later. My departure was amicable.

Initial Proposals (2000-2006)

The New Transport Initiative and the creation of TIE

8. I am aware that on 18 October 2001 a report was submitted to the Council, document reference **(USB00000228)**, seeking approval to submit an application for approval in principle to the Scottish Executive for funding for the Council's 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 as one of the issues alluding to the creation of TIE "*Public and stakeholders' scepticism about the ability of the local authority to implement the initiative*", section 11, pages 13 and 14 of the draft application. The application for approval in principle to develop the projects in the NTI was duly submitted to the Scottish Executive. Members

were 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, Transport Minister, which supported the private sector involvement and the principle of an off-balance sheet company. As the Head of Service and Head of Special Projects, my role in that was the overseeing of the work and providing input into the report, and I was active in the Council in promoting the concept of NTI Co as it was known at that time, which later became known as TIE, or Transport Initiatives Edinburgh. I was quite active in terms of the input into that report. I also approved the text prior to submission to the director and we had discussion within the management team.

9. The main reasons for the creation of TIE were well covered in the report, document reference (**USB00000232**). If one looks at pages 12 and 13 of the report from the section, "*A new approach to delivery*" through to the end of that particular section, it flags up the main reasons for the establishment of TIE, which involved the scale of what I previously stated. The range of skills and expertise that would be needed, the public and stakeholder views and the ability of the local authority to implement the initiative itself and demonstrating key conditions for the initiative were met, for example ring-fencing of charging revenue. There was a lot of suspicion that we would be simply introducing road charging and the money would disappear. It had to be ring-fenced and re-invested into transport projects. The question of additionality and transparency of accounting. The other issues related to a requirement to borrow in advance for early implementation of the project package and to smooth out the gaps between expenditure and income. There are always borrowing constraints on local government, but it was felt it would be easier with a private sector company. The other element of transferring appropriate risks away from the local authority and the elements related to tax efficiency and liability. These were the main reasons for setting up TIE. Again, on the other hand, the local authority needed to have significant direct involvement. The local authority would own the company. Only the local authority could introduce the road-user charging scheme under the legislation. They would provide the democratic accountability, determine the priority and the nature of

the downstream investment and seek to receive certain types of grant funding from Scottish Executive. These were the main headline reasons for going for an arm's length organisation.

10. There was scepticism about the ability of the local authority to deliver the NTI and on some occasions the wheels of local authority can grind exceedingly slowly. It was felt with the scale of this development that within the local authority there was not the capacity to develop this scale of operation. I recall at the time in order to get that capacity within the local authority, there were constraints on the number of staff that a local authority could employ. It was not an easy time for local government. In the public view, particularly the press's view, the local authority was, and still is, constantly under sniping and criticism about what it does. Much of that sniping and criticism is not justified but nevertheless that is the public image of the local authority. Again, it was about having the confidence to be able to invest. If there were investment constraints, it would be important to try to get any investment off the balance sheet so that the organisation could respond appropriately and reasonably quickly to changing circumstances. I also shared those views.

11. In terms of experience in procuring at that time, managing and delivering major capital projects, including major transport infrastructure projects, the Council had senior staff and middle management staff involved in a number of road schemes. The biggest of these was the city bypass, a multi-million pound project. There was also experience in there in terms of the Portobello bypass. So there was experience within the Council of civil engineering and of roads-based projects. There was no experience in rail, because it was not a function, and tram, being a rail-based project, was something new. In terms of the NTI, the potential had we succeeded in getting road-user charging was such that the scale of the potential investment and the range of potential investment that was associated with that was an order of magnitude greater than anything that the Council had been able to do before. In terms of experience, there was some very good and straightforward civil engineering experience and transport planning experience, but nothing in rail and nothing

on this scale. TIE was set up to deal with this larger project. TIE had brought in persons to fill the experience gap that CEC did not have.

12. It was a decision of the Council for TIE to deliver the projects in the NTI. Subsequently, when we received the first tranche of grant for taking line 1 and 2 through to parliamentary approval from the Scottish Executive, the letter which came from Wendy Alexander, who was the Transport Minister at the time, was conditional on the basis that we use an arm's length company. I do not know fully her reasons for that, but certainly an influencing factor would have been the statutory process, because the tram needed to go through a parliamentary process and at that time there was no procedure within the Scottish Parliament for a hybrid Bill. Therefore, it was my understanding that it needed to go in as a private Bill and as such it had to be some form of private entity, rather than a public sector entity, promoting the Bill. From that point of view it was expedient. These circumstances have changed now, since the hybrid Bill process is now in place. So that was a factor, but there is no doubt in my mind that the Council had made up its mind to go with an arm's length company before we had any such conditions coming from Scottish Government.

13. After the establishment of TIE, it was envisaged that the TIE role was for procurement and managing the delivery programme of infrastructure, but CEC would continue to have a statutory consents role. For example, in road-user charging and parliamentary Bills, but also CEC were on the board of TIE. It was three elected CEC members and four private sector members on the board of TIE, so they would have a direct influencing responsibility on the board. As such, they would have responsibility for delivery under the Companies Act as members of the board of the company. Page 13, document reference (**USB00000228**), relates to the different roles between TIE and the Council, about previous reporting and what was envisaged, and what was the ongoing responsibility of the Council. The project had shared responsibilities between CEC and TIE. As I have stated, the responsibility that TIE had was managing the programme of delivery, the procurement of the necessary professional expertise and managing the delivery of projects. CEC's role was

very much in the strategy, the policies, and a very active role in terms of ongoing statutory approvals, because not all the statutory approvals were included in the Act. CEC had a very keen interest in continuing to have control of its own road network, and also we were going through a World Heritage Site, so therefore planning constraints and planning issues were important to the City Council. In terms of CEC, and it is interesting that although there were three members of the City of Edinburgh Council on the board of the company, when they were on the board of the company they were TIE, not CEC. TIE was the programme delivery body for CEC and CEC was the owner of TIE. So therefore, as the 100 per cent shareholder of TIE, CEC effectively could control what TIE was doing.

14. It was envisaged that CEC would exercise control over TIE primarily through their representation on the board of TIE. They would have the opportunity to input into the board. It was always envisaged that the board would operate on a consensual basis. If it started going down to votes then it was failing and it did not ever go down to votes. Therefore the policy input and the concerns and interests of the Council could be fed directly into the board through their three elected members. There were elements which would need approval of the Council, and policy issues and strategy issues would need to have approval of the Council. The Council owned TIE 100 per cent, so they could do what they wanted with the company. If the company was not performing, the Council could take appropriate action as the owner. It was always envisaged that it would be effectively a partnership operating between the two, with these general divisions of responsibility I have outlined.
15. Establishing TIE was envisaged as a first step. Having established TIE as an arm's length company with a degree of autonomy in terms of its onward commercial relationships with other bodies, we envisaged that it could well have been the case that TIE would enter into joint ventures with other parties further down the line. But initially TIE had to be the first step in moving in that direction. One needs to set in the context of the establishment of TIE the promotion of the NTI, which was generating potentially multi-million pounds of income. Having established that income stream, it would then be able to

operate much more as an arm's length organisation and use that income stream as the lever for other commercial arrangements with other third parties. In the event, the income stream did not materialise, as a result of the road- charging referendum. TIE was always seen at the outset to become a successful programme management and delivery company within the private sector.

16. There was consideration given to how projects of this nature had been delivered elsewhere in the UK. I recall a preliminary financial case, dated September 2004, document reference **(CEC01868590)**. Pages 66 to 69 within that document recounted the deliberations of what was known as a procurement group, which was made up of professional advisors, officers of the Council and officers of TIE. You will see the parameters and the relative importance of the key criteria that were considered, covering risks, certainty, control, flexibility, flexibility of financing, value for money, market interest and deliverability. Then in section 642, were the actual options that were considered. At that time there were six different procurement and delivery options considered, ranging from a full consortium through to traditional procurement. Thereafter, in section 643, there was the appraisal of the options against the criteria that were previously set, with a summary table on page 70. As a result of those deliberations, the procurement choice was arrived at. The other issue which was running in parallel was that, in England the National Audit Office was conducting an investigation into various tram projects in England which had gone ahead, and others which were about to go ahead. As far as I recall, Alistair Darling at the time was the Transport Minister and he managed to cancel three or four tram schemes down south when the tenders came in. Just about all of the schemes in England had been promoted as private finance initiatives, and PFI was one of the options that was considered for Edinburgh. It was interesting that, having gone through this exercise of evaluating different procurement options, after we had finished doing that the National Audit Office independently came out with a report with exactly the same or virtually the same set of recommendations. In other words, PFI was not necessarily the right way to go because full risk transfer to the delivery company of a PFI, including fare box risk, involved

transferring risks that the organisations could not manage, so they were inflating their upfront costs in order to cover the uncertainty of a number of years of build-up of patronage until the business case started to stabilise. These were the alternatives that were looked at and they were given pretty careful consideration.

17. The update of the preliminary financial case on line 1, provided by TIE to the Scottish Parliament in September 2004, document reference **(CEC01868590)**, noted at page 66, paragraph 6.4.1 that TIE, given its resources and experience, was essentially a procuring body *"TIE was essentially a procuring body rather than a major project management organisation."* I did agree with that description of TIE. At that time, that was always the way it was envisaged. It was envisaged as a programme management organisation not a project management organisation. The fundamental role of TIE was envisaged in that TIE would procure, the contractors would deliver and professional consultants were the interface between TIE and the main contractor to ensure quality assurance in terms of the delivery of the project. In the event, looking from the outside in, it did not develop that way. Certainly my view at the outset of any of the major projects, if it was tram or anything else, was that TIE would procure the necessary professional advisors, whether they be consulting engineers or project management organisations or whatever. That would provide the detailed interface and the detailed checking that was necessary, in terms of making sure that the delivery contractor was actually building whatever it was supposed to deliver according to their contract. The interface organisation would be instrumental in the development of the main contract with the delivery contractor. That was my vision of TIE, that we were a programme management organisation not a project management organisation. That is fundamentally different. In terms of managing the programme, TIE were in charge rather than CEC. In terms of influencing and determining the priorities for the content of that programme, that would be CEC, because they were the ultimate client. At that time TIE did not have the resources and expertise to manage the project itself. At the early stages of TIE they were a small organisation. We managed the programme, we did not manage the project. I could not give you an exact date

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of when TIE assumed the project management role because the chronology is not particularly clear in all the documents. There was an appointment of a tram director, Ian Kendall. He came to the project having been senior project manager on the tram in London. It was around about then that things started to change from being programme management to project management and a lot of additional staff were brought in around about that time. I cannot give you an exact date, but it would be not long after Ian was appointed.

18. Consideration was given to instructing an external expert body to act as project managers for the Tram Project. In terms of my own involvement and in terms of getting the tram through its parliamentary process, we then appointed consulting civil engineers, lawyers and accountants to get us through that project. Effectively they were providing that detailed input and detailed technical expertise. The team that worked directly for me managed these professional bodies to get us through the Parliament. In terms of whether at the implementation stage, the construction stage, there was consideration given to having an extra interface, I cannot comment because at that stage I was not directly involved in that side of the tram. The concept in terms of the procurement strategy certainly had a design team upfront who could finalise the design. It had early operator involvement through Transdev to make sure that whatever was built could actually be operated by an experienced tram operator. When it moved on to the appointment of the main contractor and the appointment of the tram manufacturer, I cannot provide a view on that because it was not within my area of responsibility. In terms of getting the tram through Parliament, we appointed Faber Maunsell for lines 2 and 3 and we appointed Mott MacDonald for line 1. We appointed Grant Thornton as accountants, who are referred to later on in documents. We appointed two sets of lawyers, Dundas & Wilson who were Scottish law, to get us through Scottish law and statutory approvals. DLA Piper were appointed to give advice on contractual and procurement issues. We also appointed Bircham Dyson Bell as the parliamentary agents. These were the teams that I had appointed, or led the appointment of, to get us through Parliament. The only exception to this was the appointment of the legal firms which was lead

by the Chief Executive to avoid any conflict of interest on my part through being married to a ^{partner} partner in one of the bidding firms.

Initial estimates for the tram network (2001-2004)

19. Various estimates for a tram network were produced between 2000 and 2004. There was a feasibility for a North Edinburgh loop in July 2001, document reference **(CEC01916700)**, in which I had absolutely no input at all. It was a separate commission, it was not a CEC or a TIE commission. It was done by Waterfront Edinburgh as a separate company.

20. I note that in September 2002 there was a TIE report the "*Integrated Transport Initiative for Edinburgh and South East Scotland, a Vision for Edinburgh*", document reference **(CEC01623145)**, that was created by Grant Thornton, who were the financial advisors early on. The cost estimates that were in the report on page 88 came from a combination of input from Grant Thornton, that was line 1, also from Steer Davies Gleave and from Balfour Beatty. Grant Thornton had worked on various tram projects elsewhere in the UK. They were the lead providers of the cost estimates and had a sub-consultant, Beatty's, who were providing the engineering input to that. That was quite a broad brush and was the initial NTI concept. In terms of that particular one, the cost estimates would have come from Grant Thornton and Steer Davies Gleave, and at that very preliminary stage they would have been based on a cost per kilometre, looking at the indicative costs of other tram schemes in the UK. At that stage we were making the case for justifying road-user charging and indicating in general terms what an investment programme associated with it could look like. Other costs that were in there were indicative in terms of what the public could potentially see if we had this investment stream available to us for example improvements to public transport, increased road maintenance etc.


21. I recall a report by Arup Transport Planning in January 2003, "Edinburgh LRT Masterplan Feasibility Study", document reference **(CEC01190799)**, which estimated the total capital cost of all three lines at £527.83 million, or if built all

together at £465.55 million. I had no input in this report at all. This was a strategy document that Arup were commissioned to complete by the client section of CEC after I was in TIE. I did not have any involvement in that report at all.

22. I am aware of the 2003 Preliminary Financial Case, PFC, document reference **(TRS00000054)**, for line 1, with initial cost estimates which came from Mott MacDonald. I would not have overruled their professional advice on that. Similarly with the 2003 PFC, document reference **(TRS00000016)**, for line 2 with initial cost estimates which came from Faber Maunsell. Then the STAG appraisals for line 1 in November 2003, document references **(CEC00632759)** and **(TRS00000041)**, which again were provided by Mott MacDonald. Similarly for the STAG appraisals for line 2 in March 2004, document references **(TRS00018617)** and **(CEC01836749)**, the September 2004 update of the PFC for line 1, document reference **(CEC00630633)**, and the update for the PFC for line 2, document reference **(CEC00642799)**, were all provided information by the same engineering advisors and consultants.
23. My understanding of the purpose of STAG appraisals is that they are a requirement of the Scottish Government through Transport Scotland in order to make a case to justify the best form of investment to address particular transport problems. So the purpose of a STAG appraisal was to look at the problems, look at all the alternative solutions to it, evaluate those alternative solutions in terms of social, environment and economic analysis, and make a recommendation as to what is the best solution to that particular set of problems. As part of that, the benefit-cost ratio is there, using discounted cash flow over around a 40-year life of the project, in order to give an indication of whether investing in the best solution, or any of the other alternative solutions, would represent value rather than investing in a new school or investing in a sewage works or similar. That is the purpose of STAG. It is for the evaluation of transport projects. To a certain extent within the field of transport projects, it is there to compare apples and oranges and come up with what is most likely to find its way into an investment programme.

24. I refer to the following reports, the July 2001 Feasibility Study, document reference **(CEC01916700)**, the September 2002 TIE report, Integrated Transport Initiative for Edinburgh and South East Scotland, a Vision for Edinburgh, document reference **(CEC01623145)**, and January 2003 report by Arup Transport Planning, Edinburgh LRT Masterplan Feasibly Study, document reference **(CEC001190799)**. They would all certainly have included an allowance for contingencies with regards to the capital cost estimates but they would not at that stage have included an allowance for optimism bias, which is much more directly related to a risk analysis than contingencies. Generally the practice at that time was to carry out your best estimate and then add on a percentage for contingencies to the individual elements of the estimate. For example, contingencies on utilities may be different from contingencies for earthworks or whatever, so it would certainly have included contingencies. They would not have included the optimism bias at that time since ~~my~~ ^{my} recollection is ~~the~~ ^{that} the requirement for optimism bias had not yet been introduced by treasury

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X  25. I note that the capital cost estimates for lines 1 and 2 in the November 2003 STAG 2 appraisals, document references **(CEC00632759)** and **(TRS00000041)**, appeared to include an allowance for optimism bias of 31 per cent but no allowance for risk contingency, whereas the December 2003 PFC, document reference **(TRS00000054)**, included a risk contingency and an allowance for optimism bias. These apparently different approaches were adopted because optimism bias came out in the Green Book during the development of the Tram Project. The initial guidance in terms of optimism bias was not 100 per cent clear as to whether you should have contingencies plus optimism bias, or whether optimism bias replaced contingencies. So I can understand why there would be a difference of approach. As things evolved, obviously we got to a stage where we had contingencies and optimism bias in it, as this is the better approach. The difficulty with a contingency is it is something that you cannot necessarily resolve before you actually start construction. A contingency is for unknowns that you cannot quantify, whereas an optimism bias is much more where you start out with a figure and then, as the design develops and construction starts to go forward,

a review of the risk profile allows you to reduce the optimism bias. Personally my view is that there is a real danger with optimism bias. It is a dangerous concept because as soon as you add on a percentage for optimism bias, the industry finds out what that percentage is and there is a danger that it might become a self-fulfilling prophecy in terms of the tenders received.

Nevertheless, the government guidance for optimism bias was through the Green Book. We should still have contingencies to deal with those areas that one will never be able to identify. You might not even be able to identify the risk. It is things that crop up that you are just not aware of. But optimism bias is very firmly related to a risk profile and, as you move forward with more and more detailed knowledge of what you are actually doing, the risk profile changes, so therefore the optimism bias should change as well. Hopefully it should come down, but it could go up.

26. I am aware that the 2003 Green Book recommended a starting allowance for optimism bias of 44 per cent in standard and civil engineering contracts. I neither agree nor disagree with this figure. The 44 per cent was a figure laid down in the Green Book. If the 44 per cent figure was not used, then I would assume there was an analysis of the risk profile and it was deemed appropriate to go below the 44 per cent mark, as this is applied at a stage when you do not have a design of the project.
27. I note that the September 2004 update for the PFC for line 1, document reference **(CEC01836749)**, appears to have included the same allowance for a risk contingency but a reduced allowance for optimism bias, from £44.2 million to £31 million. I have explained in more detail earlier how it would be an analysis of the risk profile, dependent upon the stage of evolution of the project.
28. In the early stages I had no concerns about cost increases or cost estimates increasing, bearing in mind the level of the lack of detail at the early evolution of the project, and also bearing in mind that we were dealing in Edinburgh with a pretty unique situation and there was no benchmark elsewhere in the UK to compare with. For example, none of the other tram schemes had been

built on a World Heritage Site and that was a major issue in terms of timescale for approvals and in terms of how we would need to deal with the sensitive area that we were going through. I was not concerned at changes in estimates from the initial NTI through to the estimates that came from Mott MacDonald and Faber Maunsell and were used at the input to the parliamentary process. Thereafter I assume these estimates were refined further by the design consultant that the implementation team had appointed, and debates and discussion about scaling down the tram and so on, I was not involved in that. That was the implementation team rather than the approvals team.

The Parliamentary Process (2004-2006)

29. I recall that Parliamentary Bills for the construction and operation of line 1, the northern loop and line 2, the west line, were submitted to the Scottish Parliament in early 2004. In March 2006 the Edinburgh Tram Line One Act 2006 and Edinburgh Tram Line Two Act 2006 were passed. I was the project director overseeing the development of the Bills, so I had the overall management responsibility of the lawyers, the parliamentary agents who were involved in drafting the Bills. I had procured and had overall management responsibility of the supporting information in the shape of the civil engineering consultants that provided information. Basically it was programme management of the technical expertise that we had procured for getting the Bill into Parliament. We had Bircham Dyson Bell, BDB, as parliamentary agents, so they were responsible for progression of the work. I am not sure whether it was halfway through or not, but we ended up moving that responsibility to Dundas & Wilson, primarily because BDB could not respond quickly enough in terms of the timescales of getting supplementary information back to the committee. My decision was then to move the responsibility over to Dundas & Wilson. In terms of actually being at the committee, I did not attend but I had appointed the staff within TIE who were responsible for sitting and assisting with the technical input into the committee. Again this was programme direction of the technical expertise that had been developed and had provided the information for Parliament.

30. I recall that when the Bills were presented to parliament it was already known that the available funding was insufficient to enable both lines to be built. An email dated 27 November 2003 from Graeme Bissett, document reference **(TIE00058492)**, attaching a background paper, document reference **(TIE00058493)**, noted at page 1 that *"We have explored all reasonable avenues, and concluded that a substantial unconfirmed funding requirement will remain relative to each of the two lines."* At that stage no consideration was given to producing a fresh Bill or a different STAG appraisal and a draft business case in relation to a shorter section of line that could be built within the available funding, because congestion charging was not abandoned until February 2005. While Graeme's view as finance director was that there was a funding gap, that gap could well have been bridged with a successful road-user charging scheme. As far as I recall, we did not consider changing the material that was going into Parliament.
31. I refer to an email dated 23 September 2005, document reference **(TRS00001961)**, in which Ian Kendall sent Damian Sharp a note, document reference **(TRS00001962)**, that had been received from senior counsel at Dundas & Wilson in relation to the funding gap and noted "The inflexibility of the Bills process". I am unaware of this email and note and have not seen these previously. I cannot understand what they were talking about, in terms of the inflexibility of the Bills process. My view of the Bills process was we had submitted two Bills for line 1 and line 2. That was what we were seeking parliamentary powers for. In terms of downstream implementation, if that became a phase, that was an implementation matter within the general powers that the two Acts gave us. Although I have not seen this email and note before, I do not think I would have changed the process had I been aware of them.
32. I note that a report to Council dated 9 December 2004, document reference **(CEC00455293)**, sought approval for lodging the Edinburgh Tram Line Three Bill in the Scottish Parliament. This Bill was never lodged in Parliament. We got approval to submit it to Parliament but we knew the referendum was coming up, so we waited and did not submit it immediately. It was not ready

to be submitted immediately anyway. When the referendum result came out saying that we were not going to have road-user charging, the first decision that we took back to the Council was that we need to now abandon line 3 because there was no funding stream to deliver it. If we went into Parliament with no prospect of funding tram line 3, we would not have got the parliamentary powers, so it was never submitted.

33. I am aware of the Route Development Report, Part A - Design Pause, document reference **(CEC01702137)**, produced by Faber Maunsell in November 2003. The question of the design pause, the process that you have to go through in preparing material to go into Parliament, or even if you are not going to Parliament but you are applying for planning consent for a particular project, is you need to take the design to a stage which defines what in parliamentary terms they call the limits of deviation of the scheme, in sufficient detail that any objectors or any interested parties would know what the impact of that project is. That is not a final design. That is not a design to the last millimetre of a tram track. It is not even necessarily the design of the final finishing touches of what a tram is going to look like or what a substation is going to look like or, in a roads context, where for example the gullies and the drains are going to go. However, they are at a sufficient level of detail that anyone who is potentially affected by it can understand the scale of the impact on them as individuals or companies or authorities. What we then implemented when we had reached that stage was the design pause. We did not go on and refine it any further because we had to reach a point at which we were informing Parliament what we want powers for. So that is what the design pause is all about. So it defined within vertical limits of deviation how high above ground or below ground the facility was going to be, and that is the function of the design pause. Because if you go into Parliament continuing to refine the design, then the parliamentary committee does not know what it is considering. The parliamentary committee needs to know exactly what it is being asked to give powers for. Within that there are limits of deviation. So within that set of powers, you could find that you were not needing as much land as you thought or you were not going as high as you thought, but you

could not go beyond the limits of deviation without going back into Parliament again. That is the function of a design pause.

34. I am aware of the Network Effects document produced by Faber Maunsell for TIE in January 2004, document reference **(CEC01839544)**. Engineering and transport consultants for line 1 and similarly for line 2 and similarly for line 3 had been appointed earlier, so there were three sets of teams focusing on these detailed lines. Within their work, they were producing patronage estimates, cost estimates and their fare-box revenue estimates and so on. But if we did build all three, then we did not have three individual lines because they all interacted and there were shared sections along Princes Street and so on that were common to all three. So the network effects study was designed to examine what would happen if we did the full network, not how much it would cost, but what would be the transport planning impact in terms of patronage and potential impact on revenue streams associated with that ticket revenue. That was the purpose of the network effects. It was a supplementary piece of work to the work that was needed for Parliament, but it was there in order to give us a better understanding of what the overall additional benefits would be if we had all three lines.
35. As far as I am aware, the parliamentary process did not cause any delay or difficulties in the project. To set that in context, this parliamentary process was new in Scotland and had not been done before. Therefore, you could not say there was a delay in Parliament or you could not say it was expedited. There was no benchmark against which to judge whether there were any delays. Certainly it was very tight. My recollection of it was that when the committee asked supplementary questions, which they often did, the timescale for delivering the answers to these supplementary questions was very short. The committee was doing its best to expedite the process. That was one of the reasons why we had to change those who fulfilled the parliamentary agent role, because these tight timescales were a problem for Bircham Dyson Bell, who were a London-based parliamentary agent with vast experience in dealing with Westminster, but not necessarily with Holyrood. I cannot

absolutely say there were delays with the parliamentary process, because I have no benchmark against which to judge.

36. As I stated earlier, we sought the powers from Parliament for the totality of lines 1 and 2. As I understand it, not now being directly involved, we still have the powers for the totality of the lines and therefore, should the Council decide to proceed, they could go ahead and complete line 1 and line 2 within the existing parliamentary powers. What has been built so far is phase 1 of the delivery of lines 1 and 2, and that does not negate the consideration of the Parliament on the Bills at all. What has been built is a phase of getting towards the final product. I note that at the meeting of the Tram Line 1 Committee on 27 September 2005, document reference **(CEC02084687)**, Phil Gallie MSP made observations noted on pages 2 and 3 stating that he did not consider a part route tramline option. They did not consider a part route because we did not ask them to consider a part route and a part route is only a phase of completion.
37. I recall that in an email from Rebecca Andrew dated 18 October 2007, document reference **(CEC01541278)**, paragraph 6 noted that the costs of the parliamentary process are £17 million. I do not know what the costs of the parliamentary process included because by 2007 I was no longer with TIE. The costs of the parliamentary process should have included in my view all the costs from when we started looking at the tramlines, which would start at the point of procurement of professional advisors to line 1 and line 2. It should not have included all the time and the advice produced for the NTI, but I do not know what it did include, so you would need to get that from the Finance Director, Graeme Bissett. As far as I recall, the funding that was available for lines 1 and 2 was about £8.5 million and the funding for line 3 was £3.5 million. When we abandoned line 3, we were aware that the £8.5 million would not have been sufficient to complete the parliamentary process for lines 1 and 2. So the remaining funding that was available on line 3, which was not the full initial sum because we had spent money on advisors and so on, was transferred over to lines 1 and 2. The figure of £17 million I do not recognise and I was long gone before that particular reconciliation was carried

out. I would have thought that the budget that was available was £12 million, or thereabouts. That is a figure that I am using from memory and this would be found in letters of grant award from the Scottish Government.

The October 2004 Arup Review

38. I recall the concerns raised in October 2004 by Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, in a review of the Business Case for line 1, document reference **(CEC01799560)**. I note that Arup also produced a review of the Business Case for line 2, document reference **(CEC01019126)**. Certain concerns were noted at this stage of development of the project which included the benefit to cost ratio, BCR, of 1.21 which did not appear to represent a particularly strong case in terms of the economic value of the scheme. The report on line 1 highlighted *"There was significant shortfall in funding, perhaps in the order of £82 million to £190 million...The total amount added for contingency on capital cost was 25 per cent. The maximum level of 44 per cent recommended in the HM Treasury's Green Book...The risk section in the preliminary financial case did not specifically address the risk associated with the management of the interfaces between the providers of design infrastructure works and system integration and tram vehicles."* I was aware of the Arup review and I did have sight of the TIE response to Arup's report, document reference **(CEC01705043)**. I did not prepare the TIE response, but through my team provided input into it. The matters noted above were all factually correct. The TIE response did address all the matters concerned. I was aware of the points that the Arup report raised and TIE did address them in their response.
39. The potential benefits to the Granton area were part of the overall justification for line 1, which served more than Granton. Granton is part of the Waterfront Edinburgh redevelopment area. It was a major area of contaminated land and industrial dereliction, adjacent to an area of multiple social deprivations as well, in terms of existing housing. If we were to see Granton developed, it would need to have a step change of its image and its credibility. Part of that step change in credibility was a commitment by the Council to invest in a tram

scheme that went right through the middle of the Granton redevelopment area and had stops in there, so there was the permanent infrastructure and the permanent quality image of transport accessibility to the area. Over and above that, we did build a Granton access road, which was one of my projects in the Council, which again took general traffic and traffic accessing the redevelopment area away from the housing, so it was not going through existing residential streets. That, again, was a statement of intent by the Council that we will be redeveloping this area of the Waterfront, and it has tremendous potential as a redevelopment area. It has not gone as fast as it could have done, primarily with the recession. These were the benefits that a tram system could bring to Granton, because at the time they were building the tram, Granton was just an area of land. The Council invested heavily in decontamination as well as part of one of the special projects. So the tram was seen as an integral part of the Granton redevelopment, which provided accessibility right along the Waterfront and up into the city centre.

The 2005 road charging referendum

40. I recall that the NTI comprised of a number of proposed transport projects, of which a tram system and road user charging formed part. The September 2002 TIE report, document reference **(CEC01623145)**, noted that the financial strategy for the NTI required revenue funding from road user charging, pages 61 and 62. In February 2005, following a referendum, the public voted against the introduction of road user charging. The income from road charging was fundamental to the financing of CEC's proposals under the NTI, including in particular the construction and operation of the tram network. With regards to funding and affordability of the Tram Project, in light of the result of the road charging referendum, tram line 3 was abandoned and just about everything else that was in the NTI was abandoned as well. Unless we had some injection of major funding, the objectives of the New Transport Initiative would not have been met. Funding from road user charging would have funded other NTI projects as well as the Tram Project. In the initial business case for the NTI, there is a list at the back in terms of the types of projects that we had envisaged delivering.

The May 2005 Draft Interim Outline Business Case

41. I am aware that TIE produced a draft interim outline business case in May 2005, document reference **(CEC01875336)**, which noted the estimated capital cost of line 1, the northern loop, was £327.2 million, including a contingency of £23.73 million which is 10.8 per cent, page 88, and an optimism bias of £52.64 million which is 24 per cent, page 91. Within the Executive funding of £375 million, either line 1 or line 2 were affordable, but the network of lines 1 and 2 was not affordable. There was a shortfall in funding for capital expenditure for both lines 1 and 2 of £206 million, including the Newbridge Shuttle, page 14. A 30-month construction programme from July 2007 to meet the operational dates for the tram by the end of 2009, described as a challenging timescale, referred to on page 17. The theme of the overall strategy described on page 17 was to ensure that risks were aggressively managed and that TIE stakeholders were not asked to commit to contractual or financial obligations until each stage has been thoroughly analysed and approved. I had no input into the above document and the capital cost estimates. By then that was a document under the leadership of the finance director. I am not aware by whom and how the capital base cost estimates, risk contingencies and allowances for OB were arrived at. I had no understanding of how and by whom the risks would be aggressively managed.

2006 Reports to Council and Draft Final Business Case

42. I was not involved in the 2006 reports to the Council on the draft final business case and cannot provide further comment.
43. I have no knowledge of the draft Final Business Case presented to the Council in December 2006, as that was after I had left TIE and I cannot provide further comment.

44. I am unaware of official guidance on risk and optimism bias provided by December 2006 as that was after I had left TIE and I cannot provide further comment.

The Procurement Strategy

45. I am aware it was initially proposed that the procurement strategy for the Tram Project followed a variation of a conventional design and build contract, whereby risks arising from design and construction are transferred to the successful bidder, albeit at a price premium. See for example the September 2002 Turner and Townsend report, document reference **(CEC01868789)**, the September 2002 TIE report, document reference **(CEC01623145)** and a July 2003 paper by Grant Thornton, Infrastructure Procurement and Funding Options Evaluation, document reference **(CEC01868299)**. I note that in 2004/05, a procurement strategy was developed whereby there would be separate contracts entered into for each of the works, the design and utility works would be carried out in advance of the infrastructure works and the design contract would be novated to the infrastructure contractor when the infrastructure contract was entered into. Options for the procurement strategy are set out, document reference **(CEC01882778)**, with comments from Andrew Fitchie. The chosen procurement strategy is set out in the following documents: the September 2004 Updated Preliminary Financial Case for line 1, document reference **(CEC01868590)**, the May 2005 draft Interim Outline Business Case, document reference **(CEC01875336)**, the Progress Report produced by TIE in September 2005 for the Scottish Parliament, document reference **(CEC00380894)**, the 2006 draft Final Business Case, document reference **(CEC01821403)**, and the 2007 Final Business Case, document reference **(CEC01395434)**.
46. My input to the procurement strategy was in the early days and it is covered by the Grant Thornton procurement and funding options evaluation document that we referred to earlier, when I am talking about alternative methods of procurement. My involvement in that was to establish the procurement group,

to pull together the relevant experts and Council staff who had an interest in this, and set up, effectively, the procurement workshop that is referred to in that document, again setting it in the context of looking to see whether PFI would still be the best option, as that was the preferred option in the south at the time. For a number of reasons PFI was not chosen, one being the question of risk transfer of farebox revenue, which was not appropriate. The second reason was that we were looking to develop a network over a period of time. If you awarded a PFI contract with a guaranteed period of life and an income which was not guaranteed, and you then wanted to build an additional line, you ended up having to buy out and pay compensation to the PFI operator for the first line. For example, that was the case in Nottingham when they moved onto line 2 and they had to pay compensation. We wanted to avoid that and achieve a flexibility whereby we could award a contract for delivery. At the time, in the context of having a new transport initiative revenue stream, we thought about moving on the various phases of the tram relatively quickly. We hoped to use the same team of experts for the next few phases. The contract was initially intended to facilitate that, which minimised the interface between having one contractor build phase 1, and then a different contractor building phase 2, and a different contractor building phase 3. There were a number of reasons why PFI did not come out as the preferred option. That was my involvement in the development of the procurement strategy. Other key issues were that there was always a risk with public utilities in gaining statutory approvals, delays with utilities, and the discovery of utilities that the companies do not know are under the road. There is always a risk of increased costs and delays in getting planning consents. What we wanted to do was de-risk these areas, which is why we separated out the utility contract. The other big risk with utility contracts is, if there are half a dozen different utilities, one cannot control the programming of the works. So for the first time in the UK, we considered looking at a combined utility contract with one experienced utility contractor doing all the main trunk service diversions. The game plan was to get those done and dusted and get the utility contractor offsite before the main contractor came onsite. Also to get the design worked up in detail and the consents that were outstanding from the parliamentary Bills, like planning consents, consents for fixing cables on

across to
of

buildings, road traffic regulation orders, and get those all sorted out before we appointed the main contractor. The objective was that the design consultant would novate ac the main contractor in the same way that the tram delivery company novated across. So we would integrate everything under the main contractor, that was the concept. That was what came out of the early deliberations on the procurement strategy. My view was that it was the right procurement strategy. It is questionable whether it was actually delivered in the way it was initially envisaged.

47. My understanding of the term "fixed-price contract" was that it provided all the preconditions in place at the time of tendering and if they were being delivered, then it would remain a fixed-price contract. I would expect that there would be an element, depending on the programming or the timescale of the contract, of inflation related to the construction price index, but that would be built into the contract itself. It would not be 100 per cent fixed price, but insofar as the contract documentation sought a fixed price for the delivery of particular elements in the context of an environment defined within the contract document, if that environment stayed the same then the fixed price should stay the same. The only flexibility or change in that ought potentially to be in relation to things that are outwith the control of the contractor or the client, which would be construction price index, or similar types of national factors. It would not be 100 per cent fixed price, but it should have been within what we would reasonably expect of a variation of a contract of a fixed price.

48. My view on the importance of achieving a transfer of design risk to the private sector was that it was fundamental. That was why the initial concept of the procurement strategy was that the design team would be appointed early and they would take on board the refinements that the early operator involvement contract had produced as well. That design would be, when completed, available to the main contractor as his design against which he should be able to tender the job. In that it was intended to be designed and built, there are always opportunities for a contractor to improve on a design and make it more effective, fitting his own production methods, or his own way of working. That

was why we always envisaged that the design consultant would novate across to the main contractor and continue that process of refining the design during the design and build process. The initial design concept was, as I would expect, that the design would be at such a level of detail that a design and build contractor could be pretty sure of what they were bidding against. The comparative bids from different contractors would relate very much to the relative degrees of expertise and ways of different contractors working, areas where they can produce an innovation that another contractor does not know about. Having the design virtually complete at the time of tendering the main contract was always envisaged as part of the process.

49. I note that the following documents, of which the majority are after my involvement, relate to how much of the design work was anticipated would be complete before the infrastructure contract was entered into - the May 2005 draft Interim Outline Final Business Case, document reference **(CEC01875336)**, a Progress Report by TIE in September 2005 for the Scottish Parliament, document reference **(CEC00380894)**, the draft Outline Business Case prepared in March 2006, document reference **(CEC00380898)**, and the draft Final Business Case presented to the Council in December 2006, document reference **(CEC01821403)**. My understanding of the original concept that was developed for the procurement strategy was that the design work would be completed before the main contract was awarded and that was not just for the benefit of the client but for the benefit of the contractors, so that they knew what they were tendering for. Certainly that was my understanding of it and any decisions subsequently, which would be much later on in my term, to go out to tender before the design was completed or the approvals were obtained, would not be my area of responsibility at that time. It appears the strategy changed from it being expected that detailed design would be 60-70 per cent complete when the Infracore contract was signed to it being expected to be 100 per cent complete. I am not aware of when and why that strategy appears to have changed.
50. I am aware of the following documents relating to how much of the utility diversion works was anticipated would be complete before the infrastructure

works commenced. The May 2005 draft Interim Outline Final Business case, document reference (CEC01875336), the draft Outline Business Case prepared in March 2006, document reference (CEC00380898), and the draft Final Business Case presented to the Council in December 2006, document reference (CEC01821403). I had nothing to do with the document in December 2006, the draft Final Business Case. I may have seen the document in May 2005, draft Interim Outline Final Business Case, but I was not involved in the preparation of it. The utilities, to my understanding, should have been completed 100 per cent when the infrastructure contract was entered into and when the infrastructure contract was commenced, so that they were not aiming to start the infrastructure contract before the utilities were complete. With regards to the consequences of that decision and risk of spending significant sums in advance, I was not involved in these areas of works and I do not have anything to contribute on that. Having the utility diversions completed in advance actually strengthened TIE's position in discussions with Infracore, because it is one area of potential dispute and potential delay and disruption that the main contractor cannot found on, which is why we wanted the utilities work done in advance. So the way to avoid any risk was to stick to the strategy, do what we said we would do in the first place, get the utility works completed before the main contractor was anywhere near the site because if you have two contractors on a site at the same time then it would lead to potential claims from both sides that one is holding up the other. I was not party to the contract, but if the wording gave the main contractor control of the site, which it normally would do, and he arrived on day 1 to find another contractor still digging up the site, then immediately he has got a claim for delay and disruption, which meant extra costs and that was the risk. Mitigation was to separate these things out to keep them in chronological order and not hold them up.

December
2006 should
be November
2006

Design

51. I am now aware that in September 2005, the SDS, Systems Design Services, contract was entered into between TIE and Parsons Brinckerhoff Limited, PB, and that delays in progressing the design and obtaining necessary statutory

approvals and consents were regularly reported to meetings of the Tram Project Board and meetings of CEC's Internal Planning Group. I was not aware at the time of any delays in the design or in obtaining strategy approvals. I was not involved in anything to do with Parsons Brinckerhoff and had no involvement with them. I had no knowledge of whether PB held a view that CEC were over-designing the project. I cannot comment further on that as I had left by July 2006.

Utilities

52. I am now aware that in October 2006 TIE appointed Alfred McAlpine Infrastructure Services Ltd under the MUDFA contract to carry out the utility diversion works for the Tram Project. I cannot comment further on that as their appointment was October 2006 and I had left in July 2006.

The Infrastructure Contract

53. I had no involvement in the development and negotiation of the Infracore contract and cannot provide further comment on that.

TIE

General

54. TIE's view of its role in the project and relationship with CEC was that it was owned 100 per cent by CEC and it was appointed as the delivery organisation for various projects for CEC. So TIE was responsible for procurement and delivery and CEC was responsible for policy and strategy, and as the owner of the company could effectively direct TIE. CEC could not direct on a day-to-day basis, since day to day operation had been devolved to TIE through the company Articles of Association as I understand it, but if they saw TIE moving in a direction that was not seen to be in their interest, then they could wind up the company overnight. They owned the company and were 100 per cent shareholders.

55. When I set up TIE the concept was a programme delivery company and over time, under the direction of the chief executive, it became a project management company rather than a programme delivery company. From my perspective, I did not sit comfortably with that because I felt there was the potential for not conflict of interest but overlapping of responsibilities between the professional advisers like the design consultants and the project managers who TIE were appointing. From my perspective you have either got to be clearly a project management organisation, which would have had to have been much bigger than TIE eventually was, because you then have to check every nut and bolt and every detail of the delivery, or you need to step back and manage the programme, the timing, and the interface between the various different organisations. One of those organisations would be necessarily be an organisation that project manages the individual detailed elements of the work. We were a halfway house, neither one nor the other.
56. The concern I had at the time was that we were becoming too much of a detailed project management company, and that led to conflict of responsibility between TIE and the contractor and the consultant. In terms of board members who were appointed from the private sector, these were variable in terms of their input. The Chairman at the time, Ewan Brown, was a very good Chairman. There was another person, whose name escapes me, who came from an investment company and I felt they were living in a different world of finance. They came from an environment where investment was multi million pounds and remuneration associated with that was very high. Board members did not get any remuneration. It was not a personal thing but they lived in that environment. One of them was a finance director of a civil engineering company, Millers who was very good. There was another director, Jim Brown, who was an ex-chief officer or ex-director in local government who resigned from the board. He was the Chairman of the Remuneration Committee and primarily he did not agree with what the Remuneration Committee was coming up with. I understand that Jim was an excellent person but he took a stand and left because he could not reconcile a public sector-run company and the level of salaries that some of the directors

were getting paid. The elected members were elected members and their input was that this is what CEC wants to do. They were not, as you would expect, directly plugged into financial and technical matters. They were there to provide CEC's input in terms of strategy and direction. It could have worked, and in general the board received regular reports and where necessary these were passed on to the CEC as owner and client. We did scrutinise those reports. It is difficult to judge the board. In general it worked well as a consensus, but whether it could have been more hands-on I do not know.

57. CEC's senior officers received information and updates from TIE from all the board reports and the briefings by the chief executive and there were information meetings in addition to that as necessary. They were well briefed on what was going on. I had no concerns about TIE's reporting to CEC, including whether information was always fully and accurately reported. TIE always attempted to minimise the effect of difficulties and delays by flagging these up.

58. There were concerns within TIE and probably CEC that Scottish Ministers might be tempted to abandon the project because they were tempted to do that anyway. They took it before Parliament and the minority SNP Government at the time was out voted, and that was at the same time that they abandoned GARL in Glasgow, the Glasgow Airport Rail Link. On the other hand, the firm position of the Scottish Government at the time, having determined to award a fixed sum of money following the vote in Parliament, was to effectively distance itself from the implementation of the project. At that point we no longer had Scottish Government observers coming to the board meetings. They merely asked CEC to implement it. The concerns were that CEC itself was finely balanced. The SNP group within CEC were opposed to the tram, the other parties were in favour of the tram and it was a very fine balance between elected members holding views for and against the Tram Project. All of the information associated with the project was made available and was not kept secret. I am not aware of the views of Scottish

Ministers on the continuing implementation of the project after the Parliamentary vote referred to above.

59. It was fairly clear that we were a creature of the Council and so therefore the Council was quite entitled to have control over what TIE was doing. In terms of the agreement which set up TIE as a delivery organisation and kept all the strategic decisions to the Council, that was clearly understood and it did not create any tension. What it did do at times was it created a little frustration over the timescale that it sometimes took to make decisions, but in my opinion that was not tension.
60. Andrew Holmes, the Director of City Development, would be best placed to provide comment on information and reports produced by TIE. I am not aware of how the Council handled its internal reporting procedures and whether these reports were checked or validated by the Council and/or by independent external advisers on behalf of the Council.
61. I am aware that in a note prepared by Barry Cross in December 2005, document reference **(TIE00707566)**, he set out his views of the relationship between TIE and the Council. I would not agree with them. If you take the first bullet point of Barry's note where CEC set up TIE, not necessarily voluntarily, stating that it was a condition set by the Minister, Wendy Alexander, at the time. I do not agree with that statement. CEC had agreed to set up the company before Wendy Alexander became involved. Wendy Alexander had a business background and was more private-sector oriented than many politicians, but also she was probably advised in terms of the statutory process that it could not be taken forward other than by a private Bill at that time through Parliament. I do not understand the second bullet point in the note "*CEC wholly owns TIE. Profitability might therefore be considered desirable.*" The rest of the note is very much opinions that Barry has expressed, based upon the fact that while he was still with CEC he was effectively leading the client function and the client interface between CEC and TIE. Barry has made lots of comments about CEC's views and CEC's opinions and I do not want to comment on that because that is Barry's opinion

of the organisation that he was a part of. I do not know whether the views expressed were accurate or not. I could not assess the impact on the progress of the project.

62. I am aware that in a report to the Council on 29 April 2004, document reference **(CEC02083576)**, seeking approval of TIE's business plan for 2004/05, it noted that TIE was developing or implementing seven major transport projects. I note that TIE also worked with Transport Scotland and Clackmannanshire Council to project manage the delivery of the Stirling-Alloa-Kincardine railway and worked with the Fife Council and others to develop proposals for a Cross-Forth passenger ferry. I did not consider that the other projects being undertaken by TIE adversely impacted in any way on the time and resources that TIE staff were able to devote to the Tram Project. Separate teams were involved in the different projects.
63. I would say there was some cross-over experience that TIE gained from these other projects, but it worked both ways between the tram and the other projects. We operated in an open-plan office and, therefore, if anyone had a particular issue that they felt another team could help them with then that was available.
64. The extent to which TIE had the expertise and resources to work on these very different projects, along with a number of different public authorities, was evidenced by the fact that they were all successfully delivered. We did not deliver the Cross-Forth ferry primarily because the economic case did not stack up but we certainly delivered all the business cases and the appraisals for it and so on. We delivered the West Edinburgh Busway. We delivered the Ingliston Park and Ride site. The proof of the pudding was that we are not going through a public inquiry on these projects. We are going through a public inquiry on the Tram Project. We did have the expertise and we delivered.
65. The Tram Project had priority for TIE, including TIE senior management and the board. There were concerns about TIE's project management of the

Stirling-Alloa-Kincardine railway, which was reported as costing more than double the original budget of £37 million and which opened in May 2008, apparently three years behind schedule, but you need to put that into context. TIE went into this project at a late stage and the role that TIE had was to tidy up the concerns that were associated with the delivery of that project late on in its delivery. A lot of the decisions in relation to increased costs had already been made. Extra pieces of infrastructure had been included. New road diversions had all been included in the railway project. TIE did a good job at tidying it up at the end of the day, but TIE was not involved at the outset of that. TIE came in when construction was well underway and it came in to tidy up a lot of the concerns that had been expressed. TIE's management of the SAK railway project did not give me any concerns about TIE's management of the Edinburgh Tram Project. They were separate projects with separate management and TIE came into the Stirling-Alloa-Kincardine railway very late in its delivery.

66. TIE produced an updated primary risk register which I found very useful as a means of identifying, quantifying and addressing risk. It was not a tick-box exercise and we had a very good and competent risk manager within the organisation who did a good job. The risk register was regularly updated and regularly referred to. We had a risk register for all our projects, so the risk analysis was as rigorous as I had seen. The quality of the information recorded in the risk register was good. The most important element of consideration of the risk register was on developing a procurement strategy. The identification of risks, the identification of interface and the identification of programming risks in the development of the procurement strategy was a major input to that. Thereafter, having identified the risks, the risk register would grow as the knowledge of the project developed and became more detailed. It was there as a tool to just keep our eye on how these risks were evolving and being addressed. The biggest help to me was initially looking at the procurement strategy.

67. I am aware that Council staff who worked on the Tram Project while remaining employed by CEC while seconded to TIE, were also later employed directly by TIE. A discussion paper quotes CEC resources and funding, document reference **(CEC01053743)**, and notes on page 2 *"Normal practice for CEC staff working on any capital project would result in their time being re-charged to the project. An exception has been made in relation to tram."* I was one of the staff who was seconded early on, and while seconded we were still employees of CEC, therefore we were paid by CEC under the terms and conditions of our contract with CEC. TIE did not have any payment mechanism or re-charge mechanism associated with that. How CEC then re-charged to the project or otherwise would be a matter for CEC internal finance to guide on that. When seconded, we continued to be paid by the Council and it was only when we went to TIE with a new contract of employment with TIE that we were then invoicing CEC for the time spent on the various different projects. Some of the projects that I was responsible for were for other authorities. We were invoicing the other authorities on the basis of the time spent on that particular project. So it was accounted for on a project-by-project basis within TIE for TIE employees.
68. I do not know if the remuneration of CEC staff in each of these different situations re-charged to TIE and if they were included in TIE's annual accounts. The TIE Finance Director, Graeme Bissett, would have this information. When we were seconded, we were still CEC staff so it would not be in the TIE accounts because there was not a flow of money through TIE. I was subsequently employed by TIE and if TIE was paying the salaries then it would show in the TIE's annual accounts. The income from re-charging other external bodies will show in the TIE accounts as well. Since we were not an organisation that was designed to make a profit at that time that would reconcile, and in terms of expenditure and income I would expect it to reconcile to zero.
69. I do not know if the remuneration of CEC staff in each of these different situations included the total cost of the Tram Project when it was reported to

the Council. The TIE Finance Director in December 2007, Graeme Bissett, would have that information.

70. With regards to companies owned by local authorities, the initial concept of TIE when it was set up, was that TIE would be able to generate its own level of income and thereby its investment would get off balance sheet. Therefore it would be able to facilitate more investment for the community. The most appropriate role for companies like these is where they have their own revenue stream. Lothian Buses, for example, has its own revenue stream and under the Transport Act there were limitations on how much control that the Council could apply to a transport company. TIE was not a transport company, it was a procurement and delivery company. Hence the Council could have more control. Another good example was EDI, Edinburgh Development and Investment, which was an arm's length company that developed the business park out at the Gyle. Once again, totally arm's length from the Council, with its own generated income because the Council had transferred the land across to the company. They were then able to progress it as a business. We never got to that stage with TIE because of the referendum result on congestion charging. Undoubtedly with a 100 per cent owned company, the best sort of model would be a company that had its own revenue stream and a company with a board of directors, which has not necessarily got elected members. It would operate as an independent company, but still 100 per cent owned by the Council. Therefore it would be covered by the shareholders' agreement and whatever powers the Council would have to intervene if they felt company was not delivering what the shareholder wanted. I believe there is a role for them and it gets expenditure off-balance sheet as well.

71. With regards to the Council's management and control of TIE compared with the Council's management and control of other wholly-owned Council companies, for example, TEL and Lothian Buses PLC. I will use the example of Lothian Buses. A number of years ago it used to be the case that the Chairman of the Transport Committee of Lothian Regional Council was a member of the board of Lothian Buses. He took the correct decision in my

view to stand down as a board member because his committee was responsible for awarding bus contracts for which Lothian Buses would be tendering. There was a conflict of interest there and so he pulled out of Lothian Buses. Lothian Buses operated effectively for many years, and it still does operate, and it will operate without CEC directors on the board. They are all appointed private sector directors on the basis of their own individual skills and abilities. Again that comes back to the Transport Act, when the treatment of wholly owned public sector bus companies was controlled by the fact that the public sector was not allowed to have an interest in the management and operation of these companies. They had to be arm's length and independent of the Council and that is still the case. There is still legislation that applies.

TEL specifically was established after I left but the concept of TEL arose out of discussions that I had with the Office of Fair Trading way back at the beginning. The issue concerned the consequences for an existing local authority owned bus company if a tram company was successful in capturing passengers currently using buses. We decided to get both companies under the same umbrella so the losses on one side are compensated by the gains on the other side and it filters its way up to the top and becomes a single entity. That was what the concept of TEL set out to be. The concept was that as a parent company, not just a parent holding company, but an actual active parent company, it would own the bus company and have a contractual relationship with the tram operators. So effectively, that company at the top would have control of both and the accounts of both would filter up to the top, meaning it would be one single economic entity. Because that top company needed to have direct control over its subsidiaries and not just be a holding company, that effectively made that top company a transport company. As a transport company, it then falls into the same category as Lothian Buses. So the concept of having TEL there to direct operational issues between the tram and the bus company was fine. The concept of having a central set of accounts, so that everything filters into the same economic entity was fine. The issue then arises as to how much control the Council can have over TEL, and in my view it cannot have any more direct control over TEL than being the 100 per cent owner of the company, with therefore the Draconian measures they could take as a single shareholder.

72. Considering if there was any difference between local authority owned companies operating alone like TIE and such companies operating as part of a joint venture with other companies, as occurred at the Gyle Shopping Centre, where the company borrows money and undertakes the development with CEC benefitting from company dividends. In my view the latter model carries the advantages. The underling company can have its own revenue stream, because you need the revenue stream in order to borrow or you need a capital asset against which to borrow. The development company had the capital asset against which they could borrow in that they owned the land and, as it got its consents for different types of development, the value of that land went up. It is by far the better model because it allows much more commercial relationships with the private sector to be entered into, and using those relationships with the private sector, you end up with a situation where you get the best of both worlds. The shareholder knows what it wants and the delivery company has the ability to have joint ventures or other commercial and contractual arrangements with third parties to bring in the expertise of those third parties and get a better product.
73. I am aware that TIE instructed DLA Piper in connection with this project, however the Council also received legal advice from DLA Piper. I was responsible for correspondence with DLA Piper on this matter, document references **(CEC01660254)** and **(CEC01660255)**. The thinking behind that arrangement not only applied to DLA Piper, it applied to all of our professional advisers at the time and this was pre-delivery. These were the professional advisers who were taking us through up to parliamentary approval. Also at the time we were embarking on property acquisition, because in the consultation process the tram lines had been made public and, therefore, we had property owners who were approaching us to say that they wanted TIE to buy their property. Provided it was relevant to the project, we were happy to do that. We had a situation where, as I recall, the advice we got from DLA Piper and from surveyors in valuing the properties then had to be reported back up to the Council and the Council had to make its mind up whether the Council wished to acquire a property or not. The Council in common with all other local authorities is advised by its own internal legal department. The only

real advice they had without doing a separate contract was what had come from the TIE legal advisers. In moving into parliamentary process the Bill had to comply with the wishes of the Council and the advisers that TIE had appointed were the same advisers that the Council were relying on when reporting up to the elected members. We were asked by the legal department in the Council to make sure that contractually the advisers had a duty of care to the Council as well as a duty of care to TIE as the contracting body. That was the source of that request and the response that we got from Andrew Fitchie from DLA. We got similar responses from all the professional advisers. They did not lose sight of the fact that, should something go wrong, the Council would have the ability to invoke action against the professional advisers if they had been negligent in their advice. So not only TIE but the Council could do that as well, and that was a degree of comfort that we got. I cannot remember who I discussed this arrangement with, but it was a request that came from CEC legal but I cannot remember an individual concerned.

74. We did not have a conflict between CEC and TIE while I was at TIE. From reading the newspapers, it would appear that there is a potential conflict in terms of subsequent legal actions that are being taken against TIE. DLA were advising both TIE and the Council. That was a situation never envisaged in that correspondence that I had. The correspondence I had was to establish a duty of care not to use the same legal adviser in a legal case where the same advisers are acting for both sides of the case. I could not subscribe to that. It was always envisaged that CEC and TIE were on the same side, potentially seeking to achieve the same thing, and if there was a potential for any cases downstream it would be more likely to be against the professional advisers.

Bonus Payments

75. I note that in a report to CEC on 26 June 2003, document reference **(CEC02083550)**, it states when considering TIE's draft business plan that a performance-related bonus scheme had been introduced for TIE staff. A bonus scheme was introduced for TIE staff because TIE was starting to employ staff from the private sector, where bonus was the norm. The bonus

scheme applied to TIE employees. Any staff employed as consultants were subject to individual consultancy agreements, therefore, if the bonus scheme applied to them it would depend on what their individual consultancy agreement was. In terms of staff seconded, in my time the input was coming from Lothian Buses, as with the evolution of assisting with the early operator involvement capability. They were not subject to anything to do with bonus and as far as I was aware, in my time, anyone seconded in was subject to the terms and conditions of their own contract of employment with their own employer. The bonus scheme operated as basically a performance bonus scheme on an annual appraisal basis, where at the start of the year targets were set up for all the staff concerned who were in the bonus scheme and then they were evaluated on progress against those targets. It was just the way you would normally administer a bonus scheme. It was an annual performance-related bonus scheme. Michael Howell, Chief Executive of TIE, would be able to explain the formal means by which it was intended that CEC would exercise supervision and control over the TIE bonus scheme. As far as I was aware, the interface was with management within TIE and with the Chief Executive. In practice, CEC officers and members were made aware of TIE bonus payments, but it was the Chief Executive who exercised supervision and control. I do not know if he had ultimate control or if he felt directed by CEC. CEC officers and members were party to board reports to the TIE board and the board reports to the TIE board were available to CEC at all times. CEC officers and members were also 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. Again Michael Howell would be best placed to provide this information.

76. My views on the TIE bonus scheme were that I felt it was largely a waste of time. It was introduced at a time when the majority of the staff within TIE were ex-CEC staff and they were not interested in a bonus. They would do their job whether there was a bonus there or not, and I made the point to Michael Howell that I thought it was largely a waste of time. It was something in the order of 10 or 15 per cent maximum for directors or senior staff. I felt that the time and effort spent on it was largely wasted. It would be much better if an

enhanced level of salary was paid, the bonus being included into the base pay of the staff because it did not make a blind bit of difference to the level of commitment of the staff concerned. That may not be the case with a lot of the private sector people that subsequently came in, and Michael Howell did change this later on and they did actually increase the bonus payment. I was not party to that decision but that was late on in my period of time within TIE. Largely for the bulk of my time within TIE, it was the relatively low level of bonus. I am not aware of 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. This was a fairly straightforward bonus scheme, it was on targets and if you did not meet your target you did not get the bonus. That is why there was not a conflict.

Governance

77. In general in my area of work within the Tram Project, which was getting it through Parliament, the governance was fairly clear. It was TIE that was putting forward the Bill, so from that point of view it was fairly clear. The Council had the ability to be aware of everything that was in the draft Bills. They were brought up to speed with all the technical advice that we had. It got more complex as the project moved into a delivery stage and the implementation of the Tram Board. It confused me when I viewed diagrams of the structure, document references **(CEC01875334)** and **(CEC01740338)**, because it was not at all clear within that structure who was responsible for what. Having a Tram Board and a TIE board, and then committees of the Council, potentially would lead to levels of grey areas between them and lack of clarity. What was disappointing was that effectively the Scottish Government washed their hands of the project and, after the vote in Parliament which fixed the budget for taking the tram forward, we saw no more of observers at the TIE board from Scottish Government, which was a loss. From that point of view that was disappointing. It had the appearance of a fit of pique in that Ministers did not want the Project to go ahead and made their view clear. In different parts of the project, governance was fairly clear. Governance was fairly clear as we were moving forward in the early stages,

getting the initial designs ready for Parliament and so on, getting the Bills in and taking the Bills through, but I suspect it did get more confused as the project evolved.

78. No body or organisation exercised independent and objective oversight over the Tram Project. Neither the Council nor TIE appointed any individual. There was the Arup review for line 1, document reference **(CEC01799560)**, which was done by Scottish Government, but that is the only one of which I was aware. I would have expected that, bearing in mind the bulk of the funding was coming from Scottish Government, that Scottish Government would have continued to take a closer involvement in the evolution of the project, but that did not take place. The governance structures allowed CEC officials and members to exercise control over the project. Whether it was effective or not is a matter of judgment and that is a question that needs to be asked of CEC, because they were the ones who potentially would feel they either had control or not, or were effective or not. It is unclear which body or organisation was ultimately responsible for ensuring that the Tram Project was delivered on time and within budget. TIE was the delivery body and therefore, within the constraints that TIE had control over, it would be responsible for delivering on time and in budget, but it would not have control over a number of issues like planning conditions. It would not have control over those strategy decisions that CEC kept unto themselves. The answer to who had the ultimate responsibility was unclear but I suppose the ultimate responsibility, in that the CEC was the client, would rest with the CEC. Within my area of work the level of engagement was good with CEC, in terms of whether it was a help or a hindrance.

The City of Edinburgh Council Officers

79. With regards to the responsibilities of each of the Council's senior officers in relation to the Tram Project, CEC's governance and control over TIE and TEL and other related queries, these should be asked of CEC because it would be them that would define the responsibilities within their own organisation and

who the responsible officers were. This is not relevant to me and I have no knowledge of the level of checks or otherwise.

The City of Edinburgh Council Members

80. With regards to Council members in general, including the Council leader, the finance and transport conveners, group leaders and individual members being advised of developments in relation to the tram project, the Council had members on the board of TIE, they received all the board papers of TIE and the relevant committee received reports from officers within CEC. As for other briefings to members and individual members, I have no knowledge of that. That would be a matter internally for CEC to decide. The extent that information provided to members was derived from TIE, and the extent the information that was provided to members being the product of independent work by Council officers, would need to be asked of CEC. We certainly provided the information. What they did with it and how much review they carried out is a matter for them. The extent that the need for commercial confidentiality conflicted with the need to keep members informed of matters relating to the Tram Project was a CEC issue, not a TIE issue. As far as TIE's information provided to CEC, they received all the information that we had. Thereafter, once it went into the Council it was a matter for the Council to answer if ultimately they considered that members were in a position to take informed decisions in relation to the Tram Project or not.
81. I am aware of a report by Andrew Holmes, Jim Inch and Donald McGougan to the Executive of the Council on 20 December 2005, document reference **(CEC02084258)**, which discussed the governance of Council-owned companies, taking account of a recent review by Audit Scotland. The report noted that good corporate governance recommended that there should be a formal selection process for elected members acting as non-executive directors on the boards of Council companies, with non-executive directors selected with the same impartiality and care as senior executives to demonstrate that they have been appointed on merit and not through any form of patronage. Elected members were appointed by the appropriate

committee, not specifically interviewed for their skills. They were there to represent the Council and that was the Council's perspective on it. The report also noted that all directors appointed by the Council should be given appropriate training across the full range of issues at the time of their appointment and/or subsequently as appropriate. I do not recall if any such training took 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.

Tram Project Board

82. The Tram Project Board was after my involvement and I was never fully involved with the TPB. I am not able to provide any comment on the role of the TPB.
83. I am now aware that a Progress Report was produced by TIE in September 2005 for the Scottish Parliament, document reference **(CEC00380894)**. I was not involved with this and cannot provide any comment.
84. I am now aware that in an email dated 26 September 2007, document reference **(CEC01561555)**, Colin Mackenzie expressed certain concerns relating to the lack of accountability of the TPB and CEC and other related matters. I am not able to provide any comment on this as I had no involvement in this and have never met Colin Mackenzie.

TEL

85. I note that on 30 June 2005 the Council considered a report prepared by Tom Aitchison entitled "Transport Policy and Delivery: The Next Steps", document reference **(CEC02084688)**. This covered a number of proposals including the integration of transport services and the establishment of TEL. I cannot remember when TEL was set up. In terms of this report, which is June 2005, I was not involved in creating and conveying that report on TEL. That was the responsibility of others within the organisation, it was not me, which is an

implementation issue. By March 2006 there was a letter from Tom Aitchison to TIE, TEL and Lothian Buses, so TEL must have been set up by March 2006. I did not leave until July 2006 and I stopped having any involvement in the implementation of the Tram Project much earlier than that. I believe there was a memo from the Chief Executive to that effect because certainly for the last 18 to 24 months I was focusing solely on getting the parliamentary powers and managing the other projects that we had that were listed earlier on, and they are listed on my CV. From when Ian Kendall was appointed, that was when my direct involvement in any of the procurement issues wound down. With regards to the papers about establishing TEL, Graeme Bissett was taking a lead on that because he was taking a lead on the corporate governance and the interaction between TEL, Lothian Buses, Tram Project and the Council. He was the lead person in preparing those reports.

86. I am not able to comment on what Lothian Buses' concerns were and what weight was given to them, but TEL was undoubtedly created to address integration between trams and buses. TEL was to set up the legal company structure that would allow a bus company to deal with a tram company. After I left it ended up as Edinburgh Trams Ltd as the operating company with persons seconded to it from Lothian Buses, but earlier on it was Transdev. If two separate companies were integrating their services then it could be viewed as a cartel and be an illegal activity. So the purpose of establishing TEL was so that TEL became the integrating body between their contracting partner the tram operator, and their bus company Lothian Buses. TEL is undoubtedly the transport operating company and one of their primary responsibilities is being able to legally integrate tram and bus without it being seen under competition law as a cartel. That was certainly the purpose of it.
87. I am aware that a draft report to the TIE board on DPOFA procurement prepared by Andrew Fitchie in August 2003, document reference **(CEC01883094)**, noted at page 6, paragraph 5: *"TIE's objective to achieve bus/tram integration requires commitment from Lothian Buses to treat the introduction of the Edinburgh tram network as an opportunity not as a repeat of CERT."* This was very early on in the considerations. The history of CERT,

Central Edinburgh Rapid Transit, was that CEC did go out to tender for operators of CERT, a guided busway proposal. It was a design, build and operate contract, as far as I understand it. I was not directly involved in it at the time but it was discussed at various management team meetings. I cannot remember who the operator was in the successful consortium, but it was one of the big private bus companies. Lothian Buses were in another consortium. When it became clear that the Lothian Buses consortium was not the successful operator, the service 22 was introduced between the airport and central Edinburgh and other bus service registrations, which in effect undermined the business case for the bus rapid transit scheme and it collapsed on that basis. So that would be Andrew Fitchie's reference that they should not see it as a CERT, because they saw CERT as a major threat to their business operations and therefore took a commercial decision that they would effectively take the customers away or provide the service without providing the rapid transit. That was a commercial decision of Lothian Buses at the time and I suspect that is what Andrew was referring to. Lothian Buses would be best placed to confirm that this was the case. That was why, when we started out considering the procurement process for the tram, we did meet with Lothian Buses and explained to them that we would rather they did not bid in a consortium because if they did not win we would potentially be in a similar situation to Nottingham. What we would rather do is tender for an experienced tram operator who would run the trams, but there would be something which turned out to be called TEL as the overarching company between the two operations. Therefore, changes in the profitability of Lothian Buses would be offset by changes in the profitability of the tram; and they would be reporting up to a senior board and be treated as a group on the set of accounts. That was accepted by Lothian Buses and they did not tender as an operator at the time we went to open tender.

88. In a note attached to an email to Graeme Bissett from Andrew Fitchie dated 2 March 2004, document reference **(CEC01874860)**, it is suggested that Lothian Buses viewed the tram proposals as a threat to the bus operations. Once we had established the structure of TEL and that we would not be a big threat to Lothian Buses, this provided a degree of comfort for the two

subsidiary companies. It was accepted by Lothian Buses and they did actively participate in the early operator involvement. We had good participation when Senior Lothian Buses staff came in. Senior staff came in from Lothian Buses and worked with Transdev in refining the designs that were in Parliament, to make sure that the bus stops were in the right place to integrate with the tram stops and the tram stops were at frequent intervals and so on.

In those terms we did get good co-operation from Lothian Buses in moving it forward. Initially they undoubtedly did see it as a threat but at the end of the day they were sufficiently reassured with the company structure that had been put forward that they could participate positively in moving with it.

Transport Scotland

89. Up until the vote in the Scottish Parliament in June 2007, we had a senior officer from Transport Scotland as an observer on the board, John Martin, who was the Head of the Transport Division at the time. We also had Damian Sharp as a regular liaison from Transport Scotland. We did not have direct access to Ministers and after the vote in Parliament which continued the commitment to the Tram Project, the observers on the board were not there any longer and the liaison we had with officers diminished. The Scottish Government exercised oversight and control over the Tram Project, putting it at arm's length. I have got no indication at all of what they were doing within Scottish Government, but certainly I could say there was no visible involvement. There was disappointment that there was this withdrawal from engagement by the Scottish Government, Transport Scotland, Ministers and officials. In my view this was because of the vote in the Parliament and the decision by Ministers that they would provide a fixed lump sum for the delivery of the Tram Project, in spite of their own policy not to deliver the project, because they were outvoted by a coalition of the other parties in the Parliament.

Partnerships UK

90. Partnerships UK were very actively involved in the New Transport Initiative considerations and they did advise on early considerations on the procurement strategy. They seemed very fixated on the Private Finance Initiative but they did come round after some of the experiences in England. They eventually supported the procurement strategy that we had. They were involved in the procurement workshops and the development of the procurement strategy but I would need to confirm that information from minutes of meetings. They attended the board on occasion as well and provided advice at board meetings, particularly in relation to company structures and topics of that nature. They were involved but when they stopped or whether they continued right through at the end I do not know.

OGC Reviews

91. I am now aware that in May 2006 an Office of Government Commerce, OGC readiness review, document reference **(CEC01793454)**, was carried out on the Tram Project and the report of the review was delivered to the chief executive of TIE on 25 May 2006. The overall status of the project was assessed as red, meaning to achieve success the project should take action immediately. I took no part in that review. It was not my responsibility to respond to any concerns reported and I cannot comment further on it.
92. I am now aware that after I had left, the second OGC review was carried out in September 2006, document reference **(CEC01629382)**, which resulted in an amber rating. A follow-up review was carried out in November 2006 for Transport Scotland **(CEC01791014)**. I took no part in those reviews.
93. The main consequence of the failure to deliver the tram project on time and within budget was reputational and that was a big downside and still is. If there are further plans to complete the original tram network, the reputational loss associated with the Tram Project as it was delivered would be a big downside to it. As far as the local businesses were concerned, every effort was made during the construction to make sure that the businesses continued to be accessible, but inevitably when you are building a big piece of

infrastructure past a couple of thousand people's front doors, there is disruption. With that disruption and the timescale extending, then I would say that it was probably detrimental in turnover terms to businesses that actually fronted onto the tram line itself. I have no turnover statistics to substantiate this but I believe it to be a reasonable assumption. However, there would likely be an uplift associated with the fact that the tram is passing their front door and there would be potential business benefits associated with that, but whether it is the same businesses that were there previously I do not know. The biggest issue was reputational and that applies to whether or not we got support from the general public for moving onto the next stage, or support from business or support from the Chamber of Commerce or the Small Business Association and so on.

94. The continuing consequences of the failure to deliver the Tram Project within budget, including in particular the money available to CEC to spend on services and capital projects, are that it made a hole in terms of the overall totality of the CEC's capital budget and the CEC's revenue budget, but it is not an unmanageable state of affairs. In my view CEC is perfectly capable of managing its budget moving forward and delivering on its objectives in spite of an overspend on the Tram Project. When you start to look at the financial turnover of the CEC, it is a big business.

Conclusion

95. From my perspective it is relevant to ask the question: how and who decided that the main infrastructure contract should go ahead before the utility diversions and the design were complete. The original procurement strategy was quite clear but it was not fully followed. It was not followed because the main contractor was on site whilst the utility contractor was still there and that was, from an outside perspective, a significant element of additional cost. On the other hand, had everything been done consecutively then there could have been further delay in the project. Whether that delay would have resulted in increased costs simply because of inflation is a matter of others' judgement, but certainly had it been done consecutively there would have

been potentially less disruption caused by the overlapping of activities. That is something the inquiry may find good and justifiable reasons for or it may find less justifiable reasons, I do not know.

96. Out of a number of issues, the one that I was most uncomfortable with was the high levels of bonus being paid. I was uncomfortable with high levels of remuneration being paid, particularly to those who had been imported from the private sector, but you live with that. I was not comfortable with the way that the company had evolved as neither a programme delivery company nor a project delivery company. It was a halfway house between the two. That was my take on it; others had a different view. If TIE was to continue as a business, it needed to spread its own business risks, which was why I was keen to be involved and get TIE involved in a range of different projects for different clients, so that we were not in a position where if one client decided it had a budget crisis, the business would end up folding. From my perspective having all the TIE eggs in the one Tram Project basket was not a good business model for a company. I understand how we got there and it was quite clear that the priority for TIE was undoubtedly the Tram Project, but everything else seemed to be viewed as peripheral and not important enough to be worth developing. From that perspective I tended not to agree with the Chief Executive's approach. These views were all there in the background of my mind when I decided to apply for the job of director of SEStran and got the job. Had I not got the job at SEStran, I would have left TIE anyway for the other reasons, not necessarily specific tram related reasons. These were reasons related to the fact that we had a business that had a reputation throughout the country and could provide services throughout the country, so that would produce a stable business model, but we seemed to be getting pulled back to focus on one particular issue.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 51 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... [REDACTED]
Date of signing..... 7/12/16 0

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Subject to minor corrections in
pen and initialed by me

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