

## INTERVIEW WITH JOHN SWINNEY ON 3 AUGUST 2017

### INTRODUCTION

**Q. Can you explain your role and responsibilities in the Scottish Government between May 2007 and 2014? What was your role and responsibilities in relation to the Edinburgh tram project during that period? What was the role and responsibilities of the Transport Minister, Stewart Stevenson, in relation to the tram project during that period?**

1. During that period I was the Cabinet Secretary for Finance and Sustainable Growth from 17 May 2007 until 25 May 2011 and I was the Cabinet Secretary for Finance and Employment and Sustainable Growth from the period of 25 May 2011 to 21 November 2014. In November 2014 I also assumed the additional responsibilities of Deputy First Minister. My responsibilities were, principally, in relation to my role as the Finance Minister, for public finances and the management of public finances at all times during that period. For the period from 2007 to 2011 I carried Cabinet responsibility for the transport portfolio, so I had an extensive set of responsibilities which involved finance, economic growth, transport, water, and climate change. I therefore carried Cabinet level responsibility for transport issues. Essentially the relationship between Stewart Stevenson and I was that Mr Stevenson would be more deeply involved in the issues that were his set of responsibilities on transport and infrastructure and climate change and those responsibilities, of course, were taken over by Keith Brown in 2010. I would, essentially, provide portfolio level supervision of policy and I would provide Cabinet level interaction on any of these issues. To enable me to do that I needed to have sufficient depth of knowledge and understanding of all of the issues within my broad portfolio area. Where an issue created more trouble I would know more about it, inevitably, because there would be political controversy, there would need to be Cabinet reporting, and there would be other issues to determine. Therefore, in all of the issues in relation to trams, I was very closely aware of, and knowledgeable of, the issues that were being taken forward in policy terms.

**Q. Did your involvement, and the involvement of the Scottish Government generally, in the project, change over the course of the project?**

2. In terms of my responsibilities, they changed at the moment in May 2011 when I no longer had policy responsibility, at Cabinet level, for transport issues and they would have been taken forward by my colleague Alex Neil. However, my interest, and my responsibility in terms of public finance issues, would have been consistent throughout that period from 2007 to 2014.

**Q. What were your views, and the views of the SNP, in relation to the project when it was first proposed? Did those views change over time and, if so, how did they change?**

3. In the early origins of the tram project, the SNP was supportive of the project. As we approached the 2007 election and as we began to consider what our priorities would be if we were elected to Government, I began to look closely at the likely financial resources that would be available to any incoming government in 2007. Our position became that we were opposed to the trams and the Edinburgh Airport rail link project and we said so in our manifesto for the 2007 election. As a senior member of a political party, my personal views are put into the collective discussion but I was entirely comfortable with the party's position and, in fact, argued for that. If you have got a finite sum of money to spend on capital projects, in our judgement, there were better ways to spend that money than on the Edinburgh Airport rail link and the tram project.

**Q. Was there any particular reason why you were not supportive of the tram project or was it simply a budget issue?**

4. It was to do with priorities. The discussions at the time revolved around the strength of the existing public transport networks in Edinburgh which, in our view at that time, and remains our view, were very strong. There was the wider national debate about what should a finite sum of money be spent on. Taking

forward the tram project, when there was already existing strength within the public transport network, was one of these priorities-based discussions and we came down on the side of not proceeding with the tram project. That was the position that we took into the 2007 election.

**Q. Have those views changed over time?**

5. Obviously, we took a view, when we were unable to win parliamentary support for our position on the trams project, that we would make the financial provision available for the project. We were able to secure parliamentary support in opposition to the Edinburgh Airport rail link project and in favour of the alternative of Gogar Station. In fact now the tram project has taken place the Gogar link is, in our view, a much more sustainable and effective use of public money given the other major priorities that we have had to fund, such as the Queensferry crossing, which has been a very significant and material draw on the public finances and which was unavoidable and which, again, influenced that priorities-based discussion that I have referred to. The trams system works well now but I do not change my view that, in the priorities sense, we could have spent that money, with more effect, on the infrastructure of Scotland than creating the limited tram network that we see today.

**Q. After the debate in Parliament on 27 June, what were your views of the tram project?**

6. My words to Parliament were on that occasion that we were prepared to accept the will of Parliament. A vote of Parliament is not binding on the Government unless in a legislative sense; that principle was clarified by the late First Minister Donald Dewar in the early days of the Parliament. My words to Parliament in 2007 were, on this occasion, "We are prepared to accept the will of Parliament". At that time we were six weeks into our administration, we had one more seat than the Labour Party, the general commentariat were saying that we would never last the summer, so we had to make a political judgement as to what was the right thing to do and that was the judgement that we made.

## **THE TRAM PROJECT – OVERVIEW**

### **PROCUREMENT**

**Q. In relation to procurement strategy for the tram project. What was your understanding of the main elements and objectives of the procurement strategy for the tram project?**

7. I think there were three principle elements of the procurement strategy. The first was the Multi-Utilities Diversion Framework Agreement (MUDFA), which was agreed before we came to office. It was followed by the infrastructure contract, Infraco, and the tram contract, Tramco, so those three elements were the foundations of the procurement strategy. The objectives of the MUDFA were to, essentially, get all the utilities work out of the road before the main infrastructure project commenced and the Tramco contract was really quite separate and distinct. The objective was to get on with the MUDFA, create the platform for the Infraco and quite separately, the Tramco contract would be able to take its course. The objectives were to do that within the resources that were available to the project and that had been committed by various parties and to do that over the route that had been agreed and provided for.

**Q. When did you become aware of the details of the procurement strategy?**

8. I would have had limited knowledge before the 2007 election. On becoming a Minister I would have become more acquainted with the strategy that was being pursued and then became more familiar as issues came to their conclusion. I was briefed by Transport Scotland officials on the tram project when I was elected.

**Q. As far as you understand it, did the procurement strategy or objectives change in any way and, if so, when and why?**

9. Yes, they changed, but I think that was a product of the difficulties the project had got itself into. Those three foundation elements that I talked about were ostensibly identified as the procurement strategy but then a series of adaptations, in respect of Princes Street, and the mediation, had an effect on the procurement strategy.

**Q. Did you have any views on the merits of the strategy?**

10. I think, in theory, there was nothing wrong with the strategy. I had plenty of worries about the MUDFA contract. From an observer's point of view of watching a city that I was born in and grew up in, watching the contract take its course and thinking that it did not look particularly clever and, obviously, watching media commentary about the pursuit of MUDFA, raised a lot of issues in my mind and I had those before I came to office.

**Q. Were you aware of the reasons for the issues?**

11. I think it was self-evident that you were embarking on a project which had very significant elements of, what I would call "on-line" activity. The off-line activity was easier to deal with but the on-line activity was intensely complex, I think that was plain to see from the scale of the works that were involved; so I think that was a very clear set of complexities that we were going to be wrestling with.
12. When I talk about off-line activities, I am talking about the stretch from Stenhouse out to Gogar, through Carrick Knowe Golf Course. It is an area I know very well, the land at the golf course was acquired for a project in the 1970s and 80s and was never used for that purpose, but it was there for the tram project. That stretch of track was a lot more straightforward to conceive but whenever you got into Shandwick Place, Princes Street, Leith Walk, you could see that the complexity and the difficulties became more extensive.

**Q. In relation to the procurement strategy, if you had concerns did you have the opportunity to make those concerns known?**

13. The issues I had were about the MUDFA contract, and how that was progressing. I had no particular issue with the procurement strategy because I thought, clearly, there needed to be utilities diversion, infrastructure needed to be put in place and there would have to be a tram service established, so the organisation of that did not strike me as particularly unusual. The priority that would matter to me was the deliverability of those contracts within an agreed financial envelope, which was always my concern about the project and it was one of my principal drivers of my views about how we proceeded with the contract. I thought there was nothing inherently wrong with the procurement strategy but the outcome of that procurement strategy was very material to the deliverability of the project within the financial envelope.

**Q. Do you think the aims of the procurement strategy were met and, if not, why not?**

14. In one respect the aims were met because we now have a tram system that operates along the majority of the route that was originally conceived, but the full procurement strategy was not met because the full line that was envisaged was not completed. Secondly, the procurement strategy was not effectively delivered because it was not delivered within the financial envelope that had been projected and planned for and viewed to be deliverable.

**Q. TIE said that the Infraco contract was fixed price. How important was it to obtain a fixed price for the Infraco contract? What was your understanding of what was meant by a 'fixed price' contract|?**

15. I think it is very important to obtain a fixed price contract but it is not always possible to do so. The obtaining of a fixed price contract involves a very clear understanding of the scope for any challenge to any aspects of project expenditure. It is also crucial in identifying where responsibility for any risk that arises in a project actually lies. By way of an example, or comparison, with the

Queensferry Crossing, we have a fixed price contract but alongside it we have a set of indices that look at a variety of variables that could not be conceived of by the contractor at the outset. If those variables change substantially additional costs would have to be met. For example, if steel prices changed dramatically or if energy prices changed dramatically, there would be additional costs to the core cost of building a bridge from A to B to a certain design. As it happens in the Queensferry Crossing, we have had a very benign climate in relation to prices, and as we have gone through the contract stage by stage, those financial contingencies have been returned to the public purse because they were not required. This was because steel and oil prices were fine so the financial contingency comes back into the public purse. The Infraco contract was not as fixed as people believed it to be. The City of Edinburgh Council had one view of what fixed price meant and the contractors quite clearly had a different view of what fixed price meant. With the Queensferry Crossing, it has been pretty clear to everybody what fixed price means and there has been a mechanistic way of working our way through different stages of the contract, which eliminated certain provisions because the understanding of fixed price was clear.

**Q. Did you have an understanding of what fixed price meant in relation to the Infraco contract before the final contract was signed in May 2008?**

16. On the basis of the advice taken by the City of Edinburgh Council, yes.

**Q. What was that understanding?**

17. That it was a fixed price contract but there would be very limited circumstances in which there would be a variation. It was a similar contract to the one I have outlined for the new Queensferry Crossing; there would be very limited scope for reinterpretation. The Director of Finance of Edinburgh City Council, Donald McGougan, I think, briefed the City Council to the effect that there was a fixed price element applied to 95% of the contract which would correspond with my understanding that anything else was going to be a more limited debate about 5%.

**Q. What was your understanding of the extent to which the procurement strategy envisaged that the design and utilities diversion work would be completed before the Infraco contract was entered into and before the Infraco works commenced?**

18. I think the subtle difference I would make in your question is, "before it commenced", rather than "before it was signed". Certainly my understanding of the procurement strategy was that before the Infraco commenced, the strategy was that the utilities diversion would be complete to enable a clear site to be available to be pursued as part of the Infraco.

**Q. Did you have any understanding of how far design would be complete before the commencement of the Infraco works?**

19. My understanding was that Infraco would start with a design and that the implementation of that design would follow the completion of the MUDFA as part of the strategy.

**Q. How important was the prior completion of design and utilities to the procurement strategy?**

20. Critical. I think one of the factors that Lord Fraser's Inquiry into the Holyrood building project identified as contributing to the construction difficulties was that people were turning up expecting to do something to find out that they could not do it because somebody else had not done what they were supposed to do. In my period of opposition I spoke in the parliamentary debate about the Fraser Inquiry Report, which I thought was a very good, thorough and crystal clear analysis of the Holyrood building project. I was familiar with those issues and had them very much in my mind in making the judgement about whether there was a rationale to do MUDFA then Infraco.



## DESIGN

**Q. We understand that there were difficulties and delays in progressing and completing the design for the tram project. What was your understanding of the main difficulties in carrying out the design work and the main reasons for those difficulties?**

21. I think the main difficulties were around some of the more complex structures that had to be put in place; for example, the transport halt at Murrayfield, which was a particularly complex structure to be put in place. The design work for examples like that were particularly challenging and trying. But again, the logic of the procurement strategy should have been correct in that respect, as MUDFA would be completed before Infraco, so there should have been the opportunity to resolve this design issues. These design issues do not take forever to resolve, they are resolvable, but they often need time and the sequencing of this project should have allowed for time to resolve issues.

**Q. Do you know who might have been responsible for design difficulties? Parsons Brinckerhoff were the system designers; are you able to say where the fault lay or where difficulties lay between TIE, the designers or the Council?**

22. I would not be able to pinpoint that directly.

**Q. What steps were taken to address the design difficulties, for example, the difficulties that you have just outlined in relation to different parts of the project, and were those steps successful?**

23. Clearly they were not successful because the project ended up taking as long and cost as much as it did, so, no, they were not successful. Ultimately, the designs were very good but what was clearly the problem was that, and I think this probably gets to the nub of some of these issues, the Infraco was let without final designs being in place and without a mechanism to very clearly

provide for that. There is a rationale for letting a contract without a finished design. The contract to enhance the M80 motorway was a contract where we essentially asked Bilfinger Berger to build a motorway from point to point with junctions at certain locations to a certain standard. They advised us how much it would cost and that was it. We got a motorway from one location to another, to a certain standard, with the required junctions, and it opened on time and on budget. There is nothing wrong with getting the contractor to do the design and quoting a price for the whole project. I think what happened in the tram project was that the contract was let with Edinburgh Council believing it had done that and Bilfinger Berger believing it had not.

**Q. Do you know what outstanding design issues there were upon the commencement of infrastructure works?**

24. I could not give you that detail.

**Q. The infrastructure works were commenced notwithstanding incomplete design. Can you comment on the reasons for that decision and whether, in your view, with or without hindsight, it was the correct decision?**

25. It is my last answer which gives you a flavour of my thinking here. There is nothing wrong with that as long as everybody knows who is responsible and who is paying, so there are good technical arguments for developing design in appropriate circumstances, as long as you know who is paying and who is responsible for it. If you do not, I think that gets us into the territory that the Inquiry is examining.

**Q. So in relation to the tram project are you aware of the specific reasons why the contract was entered into despite the design being incomplete?**

26. The point I am making is that there could be a reasonable justification for continuing with the project despite design being incomplete. There may be circumstances where the development of design depends on the developing circumstances of the project. Particular design solutions can only be reached

when particular problems arise. There is nothing inherently wrong with that as long as you know who is carrying the risk. There is nothing inherently wrong with asking a contractor to design and build a project to a certain standard for a certain price and to carry all the risk. I could point to successful projects where that approach to procurement has been taken. I think what is clearly an issue here is that Edinburgh Council and the contractors had two different impressions of the contract they signed.

## UTILITIES

**Q. TIE entered into the MUDFA contract in October 2006. Utilities diversion work commenced in July 2007 and were due to be completed by the end of 2008, prior to the commencement of the main infrastructure works. There were difficulties and delays in progressing and completing the utilities diversion works. What was your understanding of the main difficulties in carrying out the utilities works and the main reasons for these difficulties?**

27. I think when you dig up the streets of Edinburgh you are bound to find a lot of complexity given all the years of laying and moving pipes and cables, combined with various archaeological sites. You are just bound to encounter trouble. It was one of the reasons why we thought £545m was an awful lot of money when compared to the gain to the city. If you have got £500m to spend do you really want to spend it digging up the streets of Edinburgh to find all that trouble, to try to put in place a tram line where there is already, along most of the route, a number 22 bus every three minutes. That was the rather simple view we took of it. When we considered the costs and the complexities of opening up the streets in Edinburgh then we had some doubts about supporting the project.

**Q. Do you think those complexities could have been avoided and, if so, how?**

28. I do not think they could have been. They were an inevitable part of digging up the streets, because if you lift up the streets of Edinburgh you are bound to find all this kind of stuff. You are bound to find that companies have put a pipe where they were not supposed to but, crucially, you have to transfer risk. On the M80 project, for example, if Bilfinger Berger found an old coal shaft in the middle of Lanarkshire, the chance of which is pretty high, it was their problem. It was not our problem because it was crystal clear where the risk lay under the contract. People need to know what they are supposed to be doing and what risk they are carrying. Edinburgh Council obviously thought that there was a certain amount of risk being transferred to the contractors yet the contractors believed otherwise.

**Q. Do you know what role, if any, the provision of designs had in difficulties with the utility works?**

29. Certainly one thing I do remember is that the utilities work in some parts of the city had not been properly done. The utilities had not been put sufficiently far down to actually accommodate the implications of the infrastructure contract. The principle of the procurement strategy had failed there in the sense that the MUDFA work, which was supposed to create the smooth platform for the infrastructure contract, had not in fact done so. In some parts the utilities had to be moved again.

**Q. Generally in relation to utilities works, do you know what steps were taken to address the difficulties and did these succeed and did they work as they were supposed to work?**

30. Ultimately, they have been completed but at a much greater cost than was envisaged and with a great deal of contract conflict in the process.

## **REPORTING, PROJECT MANAGEMENT AND GOVERNANCE**

**Q. In relation to reporting, how did you receive information relating to the tram project? Who provided that information to you?**

31. I would get information through a number of channels. I would receive information from Transport Scotland officials either in the form of memos, which come to Ministers on a daily basis on all sorts of issues. I would have meetings with Transport Scotland officials on an on-going basis at a portfolio level and on a separate subject level. There would be opportunities for me to interact with Transport Scotland officials in a number of forums where I would be pursuing my portfolio agenda, including during my weekly meeting with the Directors right across my portfolio. The purpose of those meetings, for me, was to get acquainted with the general progress that had been made on the Government's priorities, but it was also a forum where I broke down boundaries between different areas within Government. I wanted to achieve greater cross-thinking between transport and the economy. I might then probe a particular matter further in private meetings or in specific meetings on that issue.

32. I would get information from time to time from the City of Edinburgh Council or from TIE, although the overwhelming majority of that information was channelled to me through Transport Scotland. I would, from time to time, receive information through correspondence. I would also regularly interact with Stewart Stevenson and Keith Brown, as the respective Ministers as part of my general interaction on on-going priorities.

**Q. In terms of interaction with Transport Scotland, who did you usually speak to from Transport Scotland?**

33. It would be a variety of people at all levels within the organisation. I would speak to its Chief Executive, to Directors of the organisation and to various officials. Invariably, if I was having a meeting with Transport Scotland about any issue it would be unlikely for there not to be a Director of Transport

Scotland present, maybe not always the Chief Executive but often the Chief Executive, certainly a Director and officials of other positions. In relation to the tram project I would have spoken to Chief Executives, Malcolm Reed and, subsequently, David Middleton. I would have also spoken to and taken advice from Bill Reeve, who was a Director, Damian Sharp, John Ramsay, Francis Duffy, and latterly Ainslie McLaughlin.

**Q. Were there regular meetings in relation to the tram project? Transport Scotland had quarterly reviews with the Council and TIE officials during the project. Were you advised, or was information provided to you, after those quarterly reviews, or was there some other setup?**

34. I would get information on a regular basis about the progress of all projects. I would get more information about the projects that were not going well, invariably, and I would interact specifically on information where I had concerns about issues that had been drawn to my attention.

**Q. So there was no standing appointment to discuss the tram project?**

35. There was no fixed day of the month for tram discussions. There was regular dialogue but the reason why I have explained the channels of communication was that I would often use my wider portfolio meetings to identify the issues of principal concern. That would allow me to structure my plans as a Minister and then we would have specific more detailed discussions if we required to do so.

**Q. Did you report information relating to the tram project to your Cabinet colleagues, including the First Minister and, if so, how did you do that?**

36. In the Cabinet there is an opportunity for Ministers to raise issues in their portfolios that they believe should be drawn to the attention of Cabinet, so I would do that from time to time. I would, obviously, brief the First Minister. I was accountable to the First Minister so he had to have sight of and knowledge of how issues were progressing and that that would be done in the very regular

dialogue I would have with him, but it was not an organised dialogue. There would very rarely be a day when he and I would not speak about issues.

**Q. Would you discuss the tram project with the First Minister?**

37. From time to time. In the early period after the election in 2007 obviously the discussion was intense over the period from 17 May, when the Government was formed, to the parliamentary vote at the end of June. I would raise issues with the First Minister so that he was sighted on them. They were my responsibility to resolve, that is the approach that we take in Government, that members of the Cabinet are the responsible individuals; we have to get on with it and advise the First Minister if we believe the First Minister needs to be advised of anything.

**Q. Did you have any concerns in relation to the reporting of information relating to the tram project to you, or did anyone in the Scottish Government have any concerns about the information being provided by the Council or TIE?**

38. I certainly went through a period where my confidence in the information that I was being given by TIE declined. Essentially, I think I would describe it as over-optimism on their part about how they were getting on.

39. I did not start off with a good view of TIE's reporting. The Stirling-Alloa-Kincardine rail project was not going well when we came to office and TIE were the project managers for that, so I did not have a good view to begin with. It was clear to me from a very early stage that Stirling-Alloa-Kincardine was going to cost us more and it was not going well, so I did not start off thinking that TIE was a great organisation. We will come on to this in some of your questions and that is one of the reasons why I asked the Auditor General to look at the whole issue, because I wanted to test whether or not I was right to have doubts about TIE. The Auditor General's report gave me some reassurance. I spoke personally with the Executive Chairman of TIE, Willie Gallagher, and that

conversation was designed to give me the opportunity to judge whether I was being fair in my judgement or whether I should be more generous in my judgement. It gave me some more confidence but then after I had been given reassurance about progress of MUDFA works it began to get into difficulties. That was the feeling I had and it would be reinforced on a number of different occasions over time.

**Q. Did you have any concerns about the information being provided to you by Transport Scotland officials?**

40. No.

**Q. Did any of your Cabinet colleagues express any concerns in relation to information being reported to them, if they were being provided with any information?**

41. No.

**Q. Given that your views on TIE varied from not being great to being reassured, did you communicate to Transport Scotland that they should dig deeper in terms of the information they were getting from TIE, or were you content that they were doing due diligence in terms of the information they were passing to you?**

42. My expectation of Transport Scotland was that they would do that and I believe they did that.

**Q. Generally when you had concerns over information being reported to you what action was taken in relation to those concerns?**

43. I would raise my concerns with Transport Scotland and then Transport Scotland would pursue it with TIE and with the City of Edinburgh Council.



**Q. Did you ever see the monthly progress reports that were submitted to Transport Scotland by Edinburgh Council?**

44. I would see them from time to time and then, obviously, my interaction with them would become more significant the more difficult the issues became.

**Q. On what occasions would look at the monthly progress reports?**

45. They would be drawn to my attention. Transport Scotland knew what my policy objectives were in the project so they would be judging the information that was coming from Edinburgh Council against those project objectives and raising with me issues that they thought I would be concerned about.

**Q. Which body or organisation do you consider was ultimately responsible for ensuring that the contracts and works were properly managed, including managing the interface between the different contracts and works?**

46. The City of Edinburgh Council.

**Q. Which body do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?**

47. The City of Edinburgh Council.

**Q. What did you consider to be the role and responsibility of Transport Scotland and the Scottish Government in relation to the tram project?**

48. Our responsibility was to provide the level of finance that we had committed to providing and to provide the necessary scrutiny that the public money that was being invested by the Government was being used for the appropriate purpose consistent with the Scottish Public Finance Manual.

**Q. Did you have any concerns, at any stage, in relation to TIE's management of the tram project or the performance of any of TIE's senior personnel or Board members?**

49. I would have to say that I had low confidence in TIE when I came to office; that confidence grew a bit but then declined. I was surprised and very concerned by the departure of Willie Gallagher in 2008. I was reassured by the appointment of David Mackay and efforts were made to reassure me about that appointment at the time but my confidence declined again and, generally, I would say I went through periods where my confidence would grow and then it would decline shortly thereafter.

**Q. What was your understanding of the Council's role and responsibilities in the project?**

50. The Council were the project sponsors. They were, ultimately, responsible for the delivery of the project. The Council had delegated to TIE the implementation of that project and I thought the Council had a role to supervise and scrutinise the delivery of the project by TIE.

**Q. Did you have any concerns, at any stage, in relation to the performance of the Council carrying out that role?**

51. I think the Council had taken a strategic decision to appoint TIE and TIE was their delivery mechanism for the project. The Council relied heavily on what TIE were doing and, again, in theory, there was nothing wrong with that but clearly the issues that I would have had about the performance of TIE were I think material considerations for the City of Edinburgh Council. It was for the Council to satisfy themselves about the effectiveness of TIE. There would be dialogue between Transport Scotland and the City of Edinburgh Council about that performance on a fairly regular basis.

**Q. Did you have any concerns about the Council's reporting and, if so, what was done in relation to this?**

52. The Council would be reporting the information that they were being provided by TIE. The Council had an additional responsibility, which would fall on the accountable officer, to scrutinise the proper use of public money. The accountable officer roles are well understood by public officials and they would have to act within that context. The Director of Finance at Edinburgh City Council would have to be able to present to my officials the calls on finance that were justifiable and consistent with the Scottish Public Finance Manual before we would certify it. In that respect, I think the Council was fulfilling its responsibility. Clearly, they would be dependent on the information, and the quality of the information, provided by TIE. So when TIE advised the Council that they were confident they would be able to win contractual disputes with the contractor, it was difficult for the Council to say to their agents that they doubt what is being set out, but then when TIE lost those disputes confidence started to seep away.

**Q. In relation to the Tram Project Board, what was your understanding of its role and responsibilities in relation to the project?**

53. Its role was to supervise the project in more detail than would be possible for the Council. By the Council I mean elected members of the Council.

**Q. Did you have any concerns at any stage in relation to the performance of the Tram Project Board or any members of the Tram Project Board? Was it doing what it was supposed to do?**

54. It was certainly fulfilling the role but wrestling with the acute difficulties that were taking place in the project.

**Q. Did you think it was effective?**

55. It wrestled with issues that were difficult to resolve. Once these problems arose it started to identify the most straightforward route to recovery, which was in itself not straightforward.

**Q. What was your understanding of the role and responsibilities of TEL?**

56. I think TEL were slightly tangential to the project in the sense that I think the purpose of TEL was to provide some cohesion between existing transport infrastructure in Edinburgh and the new emerging infrastructure of the trams. I do not think TEL were particularly material to the process.

**Q. What was your understanding of the role and responsibilities of the Scottish Government and Transport Scotland in the tram project?**

57. My view was that the Government's responsibility and Transport Scotland's responsibility was two-fold. Firstly, to ensure that every reasonable measure was taken to ensure that the project was able to deliver what had been expected of it by the parliamentary vote and, secondly, to protect the Scottish Government purse.

**Q. How was the Scottish Government supposed to undertake that role?**

58. Through the interactions of Transport Scotland with the City of Edinburgh Council and other bodies as we saw fit to try to ensure that those objectives were realised.

**Q. What role did Transport Scotland have in the tram project before it withdrew its direct participation in the project in the summer of 2007?**

59. It was a member of the Tram Project Board and I think that is the only material difference of role before and after the parliamentary vote.

**Q. How did Transport Scotland influence, supervise and monitor the tram project before summer 2007?**

60. Simply through the Tram Project Board.

**Q. After it withdrew its participation what role did Transport Scotland have in the project?**

61. Transport Scotland essentially pursued the two objectives that I have mentioned. They did so by ensuring the Council was crystal clear about the terms of the grant support that was available to the Council for this project. The grant was a section 70 grant (issued under section 70 of the Transport (Scotland) Act 2001) with conditions that would define exactly how the expenditure was to be used. The terms of the grant were consistent with the guidance in the Scottish Public Finance Manual. The terms required a monthly report on project progress to be submitted to Transport Scotland, a meeting with the Council on a four weekly basis, and confirmation on a quarterly basis that the grant conditions were being complied with. Transport Scotland would maintain a role under the grant agreement to ensure that the project had the capacity to deliver and that the Scottish Government's purse was protected.

**Q. Did that role differ from the role Transport Scotland had before summer 2007?**

62. The only respect in which it differed was by membership of the Tram Project Board.

**Q. But the two objectives remained the same?**

63. Yes.

**Q. So in terms of the supervision and oversight, the objectives stayed the same, it was just membership of the Board that changed?**

64. Yes. The reason for that was that one of the points that became clear in relation to the Stirling-Alloa-Kincardine rail project, which was a project that was

going badly, was that there was confusion over project leadership, so it had to be clear where project leadership lay. Edinburgh Council, through TIE, had promoted and secured the necessary parliamentary support for the tram Acts to build the tram. Therefore, it had to be crystal clear that the City Council were responsible for delivering this project. The Scottish Government were funders of the project and we had an interest in ensuring that public money was being used properly to deliver the project, which is what the section 70 grant award was designed to do. I did not want there to be any doubt about where project leadership lay because that is where real confusion can set in. It is very easy for contractors to play one body off against another if there is a lack of clarity about who is responsible for delivering the project. In my view, we were the funders and supporters of the project, funding the City of Edinburgh Council who were running the project. The Council had delegated the management of the project to TIE and that relationship provided me with the necessary confidence in the funding arrangements for the Council. The funding arrangements gave the Council the confidence to let contracts and to ask TIE to run the show and for TIE to be able to deliver with the contractors. However, what I think was very clear is that the interaction between TIE and the contractors and the clarity of the contract terms to the City Council, TIE and the contractors was not strong enough to enable the project to go forward successfully.

**Q. Did you think the new role of Transport Scotland was effective in ensuring that money was being spent in terms of the grant provisions?**

65. The money could not have been spent in a fashion inconsistent with the grant conditions. The accountable officer of Transport Scotland could not have signed that off. The fact that something was costing more is a different question but there is no way the Chief Executive of Transport Scotland, as accountable officer, could sign off expenditure that was not appropriate for the tram project if it was legitimately presented to him by Edinburgh Council.

**Q. When TS withdrew from direct participation in the project did you have any concerns in relation to the tram project, or any of the main bodies or organisations responsible for delivering the project around that time?**

66. No, because I had commissioned the report from the Auditor General which gave us confidence that those arrangements were appropriate and robust in relation to the trams. The Edinburgh Airport rail link was a different situation altogether.

#### **PARLIAMENTARY DEBATE ON THE TRAM PROJECT – JUNE 2007**

**Q. Just before the parliamentary debate there was a letter from Willie Gallagher dated 21 June 2007 which mentions that you had registered utilities as a major concern and he was seeking to reassure you (CEC01677601). What were your concerns at that time? What is Willie Gallagher responding to in his letter?**

67. In his letter he said that I had undertaken media interviews, which I was doing a lot of at that time. The Audit Scotland report had been published on 20 June 2007 and where I was quite simply airing what I have shared with you today; that I was very nervous about the MUDFA contract and how effective it could be taken forward given the complexity of the city. I had expressed those views and Willie Gallagher wrote to me. This is obviously at a time, 21 June 2007, being a critical few days in which judgements were being made about the Government's position and the stance that we were going to take, so this was part of the reassurance that Willie Gallagher sought to give me.

**Q. To what extent were you discussing your concerns with the other parties involved: TIE, the Council and Transport Scotland officials? To what extent were your concerns allayed by such discussions?**

68. At that stage, on 21 June, I was still trying to cancel the tram project. My objective was to secure parliamentary consent to stop this project so that was what was in my mind; that was my political objective. I was also at the time

aware of the political realities that I was facing; it was likely I was going to lose a parliamentary vote on the project. Throughout that period from May until June, I was not absolutely sure when that moment would come. I managed to avoid a parliamentary defeat when the opposition parties put together a motion a few weeks earlier to thwart the Government in its tracks. The motion was worded along the lines that the Government should not arbitrarily cancel the tram project. I seized on the word 'arbitrarily' and told parliament that I would never behave in that fashion, so it gave us a couple of weeks to get our arguments in place and to try to see if we could win a parliamentary debate. By that stage, however, I was coming to the view that I was likely to be beaten and throughout that period I was thinking about how I would handle a defeat. Bear in mind the political context, our Government had been elected with a one seat advantage over our nearest rival, things were precarious, how could we avoid this becoming something that brought the Government down? I was beginning to think about accepting the project. My invitation to the Auditor General to do a report was to give me some reassurance about the status of the project. I needed an objective opinion on the project, so I asked the Auditor General, for his view so as to create a picture of the lie of the land in case we had to go ahead with the project.

**Q. So you still had concerns about the tram project after the Audit Scotland Report was published?**

69. I had just been elected on a platform which said that we could better spend this money on other projects. We had other our policy priorities. We thought there were better priorities but I also had to look at what the implications of this project were for the Government's programme and its relationship with Transport Scotland.

**Q. In essence, the Audit Scotland report assured you there was no delivery problem but the problem that you had was political one, the policy of not proceeding with the project?**



70. Correct. One of the relevant considerations would have been the amount of money we had spent on the project already, and this was, if I recall correctly, part of the parliamentary debate. Some money had been spent on this project already and that becomes a relevant consideration to Parliament, which would consider whether the project was too far advanced to cancel.

**Q. The Audit Scotland Review was published on 20 June 2007, there was then an evidence session of the Audit Committee on 27 June 2007 then in the afternoon there was a parliamentary debate (SCP00000030 and SCP00000031). What was the purpose of the Audit Scotland review?**

71. The purpose of the review was to give me, and Parliament, an assessment of the condition of the project and its viability.

**Q. How was the scope of the review determined? What was the genesis of the 2007 review? How did you request the Auditor General to carry out a review? How did you make that request? To whom did you make that request and who determined the scope of the review?**

72. If I recall correctly I asked to see the Auditor General and he came to see me. I explained the fact that I wanted to have dispassionate information available for Parliament on the condition of both projects, the tram project and the EARL project. I knew that it was a matter of public record from Audit Scotland that they had looked at the capital projects already. They were going to maintain a sustained interest in major capital infrastructure projects, so I knew it was territory with which the Auditor General was familiar. I felt that the Government and Parliament would benefit from having a dispassionate view and when you look around where do you go for a dispassionate view? I could go to a university department for something, but with great respect to our universities, sometimes they have got agendas. I went to the Auditor General and asked him if he would do the review and he was willing to do so. That is a very unusual request for Ministers to make and I was aware of that. The Auditor General could have refused to do it, I simply asked him to do it and he could

have said “no”. But I am very grateful to him for agreeing to do the review and the scope of the review was defined by me.

**Q. So the request was made during a meeting. Was a letter sent to follow-up that request? Is there a letter from you or the Government defining the scope of the review, or was it done another way?**

73. I certainly met the Auditor General to ask him to do the review. Transport Scotland's records do not appear to hold a letter confirming the scope of the review. However, Transport Scotland have provided documents to the Inquiry which give some background to the scope of the review.. I think paragraphs 1 to 3 of the Auditor General's Report, in the absence of any letter, accurately reflects what I asked the Auditor General to do.

Doc IDs  
TRS00004432  
TRS00004434  
CEC01580562

**Q. A high level review was to be carried out into the project and a report was to be produced in quite a short space of time. What did “high level” mean? Is that something that you or the Auditor General determined? How was the review supposed to work?**

74. The report was, essentially, to provide a level of scrutiny about the strategic direction and condition of the project that would enable Parliament to be informed of issues in advance of any further parliamentary discussion. The report was able to be produced so as to be considered by the Audit Committee of Parliament, at which the Auditor General appeared and was asked questions, and then be the subject of debate on 27 June and the subject of a Ministerial statement on that day as well.

**Q. Did you think the timescale in which the report was to be produced was appropriate?**

75. The issue was going to have to be resolved within a reasonable period of time in Parliament. The political circumstances were that a project had been commissioned and was taking its course, there was a Government that wanted to stop it, a Parliament that wanted to know what was going on, and a

contractor and project that had to know where they stood because they had to make decisions. Parliament was going into recess very soon and that would leave a two month hiatus. The MUDFA work was supposed to start in July, so people needed to know what was happening with the project. Therefore, yes, it was a short timescale but it was a necessary timescale.

**Q. In relation to the quality of the subsequent report, were you of the view that that gave you enough confidence in the project? You were talking earlier about confidence in TIE being low and then rising, did the report give you enough confidence in the practicalities of the project?**

76. I think it is important to bear in mind, and it is a point that the Auditor General makes in his report, that there was a commitment to undertake a review of major capital projects so this was territory that Audit Scotland had some cognisance of, so there was an accumulated knowledge that would enable them to work within that timescale to produce that report. However, I come back to the fundamental point that, and knowing the then Auditor General, if he had felt unable to do the report he would have told me so, of that I am absolutely certain.

**Q. In relation to the Audit Scotland Report were there previous discussions either between Ministers or Transport Scotland officials and/or with Audit Scotland about such a review being carried out?**

77. Ministers would only have discussed a review with Transport Scotland officials once the Government had been formed. This would be from 17 May onwards and I commissioned the report on 4 June, so I would have been discussing it and in that period because I was working out how to address this difficulty. Prior to the election, I would have been involved in discussions with civil servants, including Malcolm Reed, in which I would have set out to them the priorities of the Scottish National Party, should we be elected to Government as part of the normal pre-election arrangements. I certainly would have outlined to Malcolm Reed that if we were the Government we would be looking to cancel the tram and the EARL projects, so Transport Scotland may have given

consideration, prior to the 2007 election, to the prospect of the SNP getting into power and the consequences for the trams and the Edinburgh Airport rail link. I have no knowledge of, and I am not entitled to have knowledge of, what was done in that period, but there may well have been consideration given to a review because I gave notice about our plans in the pre-elections discussions.

**Q. Where does Audit Scotland fit into the picture? If the policy was to cancel the tram project why would you need an Audit Scotland report?**

78. I was hoping I might have got a report which would do for the trams what it did for EARL, to be honest, but I did not get that. I got a report that was positive about the tram project but critical of EARL. So I had plenty of ammunition in the EARL report to argue that I could not possibly commission the project but there was a relatively positive assessment made of the trams project. At that point I was beginning to think about how I was going to chart a course through the situation.

**Q. What were your views on the 2007 report produced by Audit Scotland in terms of its robustness and its quality? What did you think of it? (CEC00785541)**

79. Again, from my knowledge of the Auditor General, he would not produce a report which he did not consider robust and strong, which is also one of the other advantages of asking him to do it; I know the standards that he would use on these issues.

**Q. From the report of the parliamentary debate, a lot of emphasis was placed on the conclusions within the Auditor General's Report, did you think the weight being placed on the report was justified?**

80. I thought it was fair enough. If I commission a report from the Auditor General and he says that this project is in reasonably good condition then I do not think it is unreasonable for opposition politicians to use that as an argument against the Government.

**Q. Despite the generally positive review of the tram project, the SNP Government still wanted to terminate the project, is that correct?**

81. Yes. Governments that get elected with manifesto commitments to do certain things and then proceed not to do them is not a great way to proceed. Therefore, if we make a commitment that we were going to scrap the trams and the Edinburgh Airport rail link and that we were going to do other things we could not then proceed to say that we did not really mean what we said and that we will just let the projects go ahead. There are numerous examples of the politics of that not playing well.

**Q. Ministers lost the vote on 27 June and decided to proceed with the tram project. Ministers decided to cap expenditure at £500m and to withdraw Transport Scotland from the project's governance arrangements, in particular Transport Scotland was to relinquish its seat on the Tram Project Board and would not receive Tram Project Board papers.**

**Why did Ministers decide to proceed with the tram project bearing in mind what you have just discussed about parliamentary decisions not being binding on the Government?**

82. Principally because we felt that at such an early stage in our administration on such an issue of clear division of opinion within Parliament that we were not in a sufficiently strong position to do otherwise. We had been in office for six weeks; this issue had to be resolved in that timescale and Parliament had voted to do this and we should accept that view.

**Q. Why did Ministers decide to cap expenditure at £500m?**

83. Because that is what Parliament voted for. The Parliamentary resolution was causing the Scottish Government to proceed with the Edinburgh trams project within the budget limit set by the previous administration, noting that it was the responsibility of Transport Initiatives Edinburgh and the City of Edinburgh

Council to meet the balance of the funding costs. I was obeying the will of Parliament.

**Q. Why did Ministers decide to withdraw Transport Scotland from involvement in the project?**

84. We withdrew them from the Tram Project Board because we wanted it to be absolutely crystal clear that the City of Edinburgh Council were the project sponsors, that TIE were the delivery agents and we were the principal funders. But that did not remove us from interest in the project, knowledge of the project and scrutiny of the project, which was our duty in terms of the Scottish Public Finance Manual and in public policy in general. My priority was to avoid any confusion about who was running the project because if you look at what then emerged over time with all the contractual disputes, if there had been a sense that Transport Scotland and the Council were running it, then contractors would have the opportunity to play one of us off against the other. It was bad enough the way it was, it would have been fifty times worse if they were able to play people off against each other.

**Q. Did you think, therefore, that the governance arrangements that were in place before you came to power were wrong or confusing?**

85. I thought there was a risk that the project leadership confusion on Stirling-Alloa-Kincardine could be replicated in the tram project.

**Q. To what extent were these matters discussed with other Ministers, including the First Minister?**

86. Certainly Stewart Stevenson and I would have considered these issues. I might have discussed it with the First Minister but it would not strike me as being of a level of detail that I would involve him in that process. I would have explained to Cabinet what the plan was if we lost the parliamentary vote so the approach of what I did on 27 June, when I stood up and made a point of order,

would have been discussed at Cabinet. I think it is unlikely I would have discussed withdrawing Transport Scotland officials from the project board with the First Minister.

**Q. Were you aware of any concerns coming from Ministers about removing Transport Scotland from governance of the tram project?**

87. No.

**Q. How did you envisage that Transport Scotland would influence, supervise or monitor the tram project if it was not represented on the Tram Project Board?**

88. By the various ways in which the City Council was required to report to Transport Scotland; on a four weekly basis and to provide confirmation on a quarterly basis that grant conditions were being complied with and by the dialogue and discussion that would take place between Edinburgh Council and Transport Scotland on an on-going basis.

**Q. Did you or anyone else have any concerns that withdrawing Transport Scotland from the Tram Project Board would lessen Transport Scotland's ability to supervise or monitor or influence the tram project?**

89. No. The tram project had its programme and we knew what it aimed to achieve. We wanted to take steps to secure project delivery, in light of the parliamentary vote, but it had to be crystal clear that the City of Edinburgh Council were the sponsors of the project and responsible for its delivery and that their agents, TIE, had to take that forward..

**Q. Generally were you aware of any concerns coming from Transport Scotland officials about the withdrawal of Transport Scotland from the Tram Project Board?**

90. We discussed the merits of what the right level of involvement was and I believed that that correct level of involvement was what I have just set out, because I was concerned about the opportunity for confusion in leadership in the project which had affected Stirling-Alloa-Kincardine. It was, again, another of Lord Fraser's conclusions about the Holyrood project and I did not want to see a situation where a project, which had a great deal of complexity about it, could have challenges around leadership.

#### **PROJECT GOVERNANCE – WITHDRAWAL OF TRANSPORT SCOTLAND**

- Q. An email from John Ramsay to others in Transport Scotland dated 28 June 2007, the day after the parliamentary vote, appears to show a degree of uncertainty over Transport Scotland's new role in the project (TRS00004489). John Ramsay says that Transport Scotland are to be bankers rather than facilitators. A paper was then drafted by John Ramsay on 4 July 2007 (TRS00004511 attached to TRS00004510) which stated:**

***“Parliament successfully opposed ministers’ expressed wish regarding the cancellation of the Edinburgh tram project. This ensured that the Executive continued to support the project “to the limit of the previous administration’s funding limit”. Ministers subsequently committed the Executive to this decision but then went on to say that,***

- a. the funding support would be capped at £490m “and no more” and***
- b. affirmed that the tram project was the “City of Edinburgh’s – not the Executives.”***

**The project team met to discuss what those two decisions meant for Transport Scotland and future management of the project. John Ramsay goes on to say that “neither the future funding nor the level and style of project management are clear to the project management team”. He assumed their role has “now changed from being that of a fully supportive and promoting funding partner to that of a major funder or banker. Given ministers’ strength of opinion on the project and**



*accompanying comments on capped funding, that has implications for the style and level of management that they see Transport Scotland assuming responsibility for”.*

**What discussions had taken place between Transport Scotland and Scottish Ministers about the future role of Transport Scotland before the parliamentary vote?**

91. There would be very early conversations but Ministers would be considering what we would do if the parliamentary vote went against us and we would have had some initial conversations about that but, primarily, those discussions would be amongst Ministers.

**Q. Was the decision to withdraw Transport Scotland from the governance arrangements a decision based on advice from Transport Scotland officials?**

92. It would be informed by but, ultimately, those decisions were mine.

**Q. Why was there a lack of clarity in relation to future funding and project management on the part of Transport Scotland officials?**

93. Obviously the Inquiry has access to a vast amount of documentation this is representative of officials considering all of the implications of a particular issue. Therefore, you are seeing all of the interactions, or detail, about an issue and some of that will be thinking being shared internally amongst officials. Officials will be considering what they say to Ministers, stakeholders and partners. Officials have to consider many different issues before they reach a position. If I look at the letter from the Chief Executive of Transport Scotland to the Chief Executive of the City of Edinburgh Council dated 2 August 2007 (CEC01666269), the role of Transport Scotland and the reporting requirements and the interactions are crystal clear from that letter. I would not read too much into material written on 28 June 2007, in the immediate aftermath of a vote, when there has been little opportunity to interact directly with me, or with Mr

Stevenson, to provide clarity about the new role. I have got two observations on John Ramsay's notes. The first is the statement, "*Following the Parliamentary decision and ministers' statement, neither the future funding nor the level and style of project management are clear to the project management team*". You could word that a different way and say "we will need to be absolutely clear about what our new role will be in light of these circumstances". It is worded more strongly than I think it would need to be. The second point is "*We have therefore assumed that our role has now changed from being that of a fully supportive and promoting funding partner to that of a major funder or banker*". The latter part of that, "*to that of a major funder or banker*", I think is appropriate. The first part of it I do not think is appropriate because I do not think Transport Scotland was a promoting funding partner, because it was not the promoter and this is where I come back to the importance of there being absolute clarity about who is in the lead. Who is running the show? Who is promoting the project? That actually reinforces my decision to withdraw Transport Scotland because if you are a contractor and you think you have got Transport Scotland to go to or the City of Edinburgh Council to go to, you will go to both and you will play them off against each other and you will wind everybody up and I wanted to make sure that was not going to happen. That, again, is a lesson I learned from Lord Fraser's Inquiry into Holyrood. Transport Scotland never was a promoting partner and the Auditor General was crystal clear about that point. As for being "fully supportive", again, the wording of that is rather inappropriate in my view. Once Ministers had said they would fund the project then I wanted the project to work because I did not want anyone to come near me wanting more money. We were contributing £500m so I wanted TIE and the Council to get on with it and deliver a tram system.

**Q. The only reason to bring Transport Scotland off the Tram Project Board was in order to ensure clarity of roles?**

94. Clarity of leadership and that was the reason.

**Q. Was the decision to withdraw Transport Scotland discussed and agreed at Cabinet? Was it a decision for you to make?**

95. I may have advised Cabinet but it would have been my decision.

**Q. So the decision to withdraw Transport Scotland was a Ministerial decision and not one wished for by Parliament?**

96. Certainly Parliament did not take the decision, it was a Ministerial decision. What Parliament's wish was we did not discover.

**Q. In John Ramsay's memo of 4 July 2007 (TRS00004511) he wrote at paragraph 8(b) on page 5 "*that the recent clearance on project governance etc by Audit Scotland is a clear reflection of the project oversight and management that Transport Scotland has maintained to date. Against the argument for its removal we also consider that sound financial control and public probity should remain our priority and be safeguarded through continuing engagement ... we recommend that ministers are advised accordingly*". There is an email in which Bill Reeve expresses concerns about withdrawing from the governance arrangements (TRS00004547).**

**Were Transport Scotland officials uncomfortable with the prospect of removing Transport Scotland from the governance arrangements? To what extent did they make you aware of their concerns?**

97. In the Bill Reeve email there is an earlier email from Malcolm Reed in which he said correctly I am getting very strong signals from the Cabinet Secretary that TS should not be on the project board... Of course we need to fulfil any obligations under the SPFM". That to me is the crucial point. I think the important thing to remember is the requirement for ongoing dialogue and scrutiny which is set out in Dr Reed's letter to the Council on 2 August 2007. That letter supersedes all of these transactions that are going on between the end of June and the middle of July. That letter was sent to ensure that there was clarity within the project as to where leadership lay and to reiterate

Transport Scotland's role in ensuring that public money was properly spent on the project.

**Q. Did Transport Scotland think that could not be ensured by withdrawing from the governance structure or did they support that decision and think it was the right thing to do?**

98. There was clearly differences of view within Transport Scotland about the appropriate course of action but it was a decision for Ministers to take. I think the letter from Malcolm Reed of 2 August 2007 reflects our decision and firmly sets out the basis upon which the duties of, and the role of, Transport Scotland can be assured in this process

**Q. Did Ministers go against the advice of Transport Scotland officials in relation to Transport Scotland's withdrawal from the Project Board?**

99. I am not aware that I received a recommendation from Transport Scotland to do the reverse of what I did. I certainly made it clear to Transport Scotland that it was my view this was how this should be handled and my rationale for that was my reflections on Lord Fraser's Inquiry and on the Stirling-Alloa-Kincardine. I did not want to have another similar situation. I wanted it to be crystal clear that it was the City of Edinburgh Council that was the project sponsor. We were funding it significantly and we had to be assured that public finance was being used appropriately and we had to be confident about all those details, but project leadership lay with the Council.

**Q. On 9 July 2007 Malcolm Reed sent a memo dated 6 July (TRS00004523). He stated that Transport Scotland should "*scale back its direct involvement*" with the tram project. The memo at Annex C stated that Ministers accepted the wishes of Parliament to support the Edinburgh Tram Project to the limit of the previous administration's funding limit. At the very end of Annex C there are a couple of paragraphs about the future governance and the role of Transport Scotland.**

**To what extent was Mr Reed's memo sent in response to your wishes and to what extent was it advice coming from Transport Scotland officials? Were there discussions going on before this memo was sent to you?**

100. Yes. I cannot speak for Malcolm Reed in relation to what was in his mind when he produced the memo but, of course, I would be discussing these questions, in depth, with officials before this memo was sent. My style, as a Minister, has been to engage in dialogue to consider all the different issues around these questions. I do not think we would get very far just with transactional exchanges of pieces of paper where my private office listen to what I say about something and then write down their impression of what I have said and send it to an official. I am not a great fan of that as a way of dealing with challenging circumstances. I would have discussed with Malcolm Reed all the issues about Stirling-Alloa-Kincardine and he would have put those considerations into his memo.

**Q. At the very beginning of his memo, in paragraph one, he talks about responding to an email request from your office on 2 July 2007. We cannot seem to find that request can you recall what that request would have been? Would you have that email anywhere that could be provided?**

101. My office sent Malcolm Reed a note on 2 July 2007 advising that I was considering issues arising out of the parliamentary debate the week before and that I would be grateful for his thoughts on issues to be considered (TRS00031280). This memo would have been his response and then we would have talked about it.

**Q. This is where the term "scaling back" appears. What did scaling back at this point mean?**

102. What it turned into was withdrawing from the Tram Project Board.

**Q. Was there a clear idea of what scaling back at this point meant? In an email from Malcolm Reed to Damian Sharp dated 18 July 2007**

(TRS0004547). Malcolm Reed wrote *"I am getting very strong signals from the Cabinet Secretary that Transport Scotland should not be on the project board"*. Presumably then at 6 July 2007 the decision to withdraw Transport Scotland from the project board had not been made by that point? In his memo on 6 July 2007 Malcolm Reed advised that Transport Scotland should "scale back" its involvement, but was there a clear idea by 6 July 2007 of what "scale back" meant?

103. Going back to what I said earlier on. This is a period of internal transactional documentation working out exactly where we should position ourselves. I will have made clear to officials that I did not want us to be in a position where there could be any dubiety about who was running the project. I wanted Transport Scotland to consider how we could avoid having confusion about project leadership and that consideration process is what you see in the papers. I have obviously got a view about the outcome, which is correctly reflected in Dr Reed's email of 18 July but the issue settles in the letter of 2 August 2007 from Dr Reed to the Chief Executive of the City of Edinburgh Council.

**Q. In Malcolm Reed's memo of 6 July 2007 there was a concern that there would be a situation that might arise subsequently in the governance of the project which might generate further calls on central funding. To avoid that situation arising Transport Scotland staff should withdraw from active participation in the governance of the project. Was consideration ever given to Transport Scotland continuing with the existing governance arrangements and simply saying that there would be no extra funding?**

104. We made statements to that effect but clearly what I wanted to ensure was that there was a very clear understanding that there would be no room for any difference to be created between the City of Edinburgh Council and Transport Scotland.

**Q. On 9 July 2007 Jerry Morrissey responds to Dr Reed's memo stating "we need to define and discuss our level of involvement in trams. It may be slightly different to what we proposed." (TRS00004522). Do you know why Transport Scotland needed to define and discuss its level of involvement in the tram project at that stage?**

105. I suspect it is just, again, another part of the transactional material that I have talked about.

**Q. Do you know what had been proposed and why it had to be reconsidered? What is he referring to here?**

106. I do not know, Jerry Morrissey's email of 9 July 2007 is to a range of different people some of whom are on the circulation list for the note of 6 July that came to me. That is Jerry Morrissey just advising his team that they will need to talk about where this is going, because they will be waiting for a formal response to that note from me.

**Q. So when he says that it is slightly different to what we proposed, who is 'we' and what was proposed?**

107. We, I presume, is his team in Transport Scotland who will have had discussions about their input into the note for me and he is thanking them for their input. He has given them a copy of the note that has gone to me to make them aware of the note that has gone to me and that they will have to reflect on that note in light of what they had discussed.

**Q. I take your point that these papers show internal workings, and the process of putting options to Ministers. It does seem to indicate that Transport Scotland officials see their role changing, or the role of Transport Scotland changing in the governance and supervision of the project rather than just where they sit on various boards. Do you have any comment to make on that?**

108. I do not think there is any change of substance other than the membership of the Tram Project Board because at no stage were Transport Scotland the promoters of this project, it was always a City of Edinburgh Council project and that point was reinforced by the Auditor General. However, what I was anxious to ensure was that that was crystal clear to the outside world, in particular the contracting world, that that was the case.

**Q. The discussions regarding the scale back, who did that mainly take place with? Was it the Chief Executive of Transport Scotland or was it with anybody else?**

109. It would likely to be discussions between myself and Malcolm Reed, the Chief Executive of Transport Scotland.

**Q. Are you able to explain the differences in view about Transport Scotland's role in the project between Transport Scotland officials or perhaps between Transport Scotland officials and yourself? Were there differences and, if so, what they were?**

110. Certainly there would always be interaction, and differences in views, between Ministers and officials as we consider particular issues. I certainly at no stage felt that Transport Scotland officials were uneasy about the approach that I was planning to take because we had set out, very clearly, the basis upon which we would interact in my statement to Parliament. I told Parliament on 27 June 2007 what we would do and on what terms, so we were simply enacting that approach.

**Q. Jerry Morrissey sent an email on 11 July 2007 prompted by you agreement that Transport Scotland should scale back (TRS00004536). Jerry Morrissey wrote that "*We need to define and agree "scale back" for the tram project*". Are you able to comment on that? It is interesting that there was perhaps a lack of clarity about the future of Transport**



**Scotland's involvement in the tram project at this stage, after a decision to scale back had been made.**

111. It is just more of that transactional material I have talked about. This is what occupies civil service inboxes by the hundredweight on a daily basis, material flies around all the time. However, fundamentally, the role of Transport Scotland is set out in the Malcolm Reed letter of 2 August 2007.

**Q. If a decision is made to scale back Transport Scotland's involvement in the project, should the details of that scale back not be worked out before a decision is made on scaling back?**

112. I think we have got to be really careful about terminology here because I think, for me, my objective, which I would discuss with Malcolm Reed and others at the time, was the importance of ensuring we had clarity over project leadership. We wanted to ensure clarity, that was the issue we were trying to address, we therefore had to consider all the necessary points of detail in order to achieve clarity. We set out our position and then we had to develop a detailed policy as consequence of that position, which culminated in what, I think, is a very clear letter from Malcolm Reed to the City of Edinburgh Council on 2 August 2007.

**Q. In an email from James Papps of Partnerships UK to Matthew Spence and Damian Sharp on 21 July 2006 (TRS00002657) there is discussion about tram project governance. Partnerships UK was an organisation that was brought in during the early days of the tram project to assist with procurement and strategy. James Papps wrote that good practice suggested that the Tram Project Board should be a small group comprising decision makers in respect of scope and funding and delivery. He stated that the Project Board should be the only forum in which key decisions in respect of the scope of the project are determined. He suggests the membership of the project board provides the forum which Transport Scotland participates in all key decisions.**

Jumping forward a year, on 12 July 2007, David Mackay of TIE wrote to Malcolm Reed and suggested in paragraph 2 in of his letter that attendance by senior Transport Scotland officials at the Tram Project Board meetings would continue (TRS00004541).

On the same day, 12 July, there was a Tram Project Board meeting. James Stewart, of Partnerships UK, who is a colleague of James Papps was noted as saying “despite the recent funding announcement, TS would remain responsible to assure prudent spending of taxpayers’ money. This should require continued attendance at the TPB, although less detailed scrutiny outwith the board”. (paragraph 5.4 of those minutes (CEC01566662)).

There are also reports from Damian Sharp on 17 July 2007 in relation to the meeting on 12 July. In Damian Sharp’s email, under Transport Scotland’s role at paragraph 6, he wrote “David MacKay, James Stewart and Neil Renilson all expressed strong support for Bill continuing to be a member of the TPB and for TS to be actively engaged with the project”.

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TRS00004547

There seemed to be a lot of support for Transport Scotland to remain on the Tram Project Board. It is summed up by James Stewart’s point in the Tram Project Board minutes at item 5.4, where he says that Transport Scotland remain responsible for assuring prudent spending of taxpayers’ money and this required continued attendance at the Tram Project Board. One of the main criticisms that could be levelled at the Scottish Government is that it left the Tram Project Board and, therefore, could not ensure prudent spending of taxpayers’ money. Would you agree with that?

113. No, I would not. I think the contents, strictures and requirements of the letter from Malcolm Reed to the City of Edinburgh Council on 2 August 2007 deal with all of the issues that are raised by James Stewart, James Papps and all the rest. Nothing that they suggested addressed the concerns that I had raised over the lack of project leadership clarity which we saw on the Stirling-Alloa-

Kincardine rail project or identified in the Holyrood Inquiry. These are all very interesting reflections but the points that matter, which are the scrutiny of expenditure and guaranteeing that the provisions of the Scottish Public Finance Manual are properly exercised, are all covered by the letter from Malcolm Reed of 2 August 2007 and the process of reporting to Transport Scotland.

**Q. So the letter from Malcolm Reed on 2 August 2007 sets out a system in which prudent spending of taxpayers' money could be ensured?**

114. Correct, that is my view.

**Q. Were you aware of Partnerships UK advice or views on Transport Scotland's membership on the Tram Project Board?**

115. No.

**Q. Were you aware that there was, at least, some support from TIE for Transport Scotland to remain on the Tram Project Board?**

116. I probably was, yes.

**Q. Did you take these views into account?**

117. Of course. My principal concern was that I had seen projects facing cost overruns and problems about project leadership, which is why I was wanting to make it absolutely crystal clear that project leadership rested with the City of Edinburgh Council.

**Q. In the email chain which expresses your strong views for withdrawing from the Tram Project Board (TRS00004547), Bill Reeve, in his response on 18 July 2007, said that the clarity of your advice was helpful but that he remained concerned about the risk arising from withdrawing from governance arrangements that Audit Scotland had found satisfactory. He**

also wrote "Is there any worth in considering a direction from the Cabinet Secretary that normal governance processes (Gateway Reviews, Board attendance, reserved powers etc) should not be followed in this instance?" He goes on to say that would be a bit of a nuclear option but that it would provide clarity and cover. Were you aware of Bill Reeve's concerns about the withdrawal of Transport Scotland from the governance arrangements?

118. As I said, there would be conversations and discussions around these questions and all of these points would be put to me, but I come back to my point that the arrangements that we put in place ensured the proper management of our role and our responsibilities as a principal funder of the project and enabled the project leadership to rest where it had to properly rest.

**Q. Do you know if Bill Reeve sought and obtained a Ministerial direction?**

119. A Ministerial direction was neither sought nor obtained at any time.

**Q. Did Transport Scotland officials give you a range of advice or a range of options in relation to Transport Scotland's involvement in the project? Did you consider that advice and the options and decide which was the best course of action?**

120. Essentially many of the issues were considered in the note that Malcolm Reed sent to me on 6 July 2007 and, obviously, I sought that input and then I discussed it with Dr Reed and came to the conclusions that lead him to write the letter that he wrote on 2 August 2007.

**Q. I suppose the Malcolm Reed memo of 6 July 2007 is quite an important one. What input did you have into that advice and what did you say to Malcolm Reed for that advice to be produced?**

121. I suspect I better reserve my position in what I am saying on that until I see what the commission was, but I suspect my office will have sent an email that

invited Malcolm Reed to give me some contribution to reflect on in the light of the parliamentary vote.

**Q. You have mentioned the clarification of roles, considering the withdrawal of Transport Scotland from the Project Board, did you take into account the expertise that the Scottish Government and Transport Scotland could bring to a structured project such as trams in helping it go forward and their place on the board helping providing that advice?**

122. I thought that expertise could continue to be deployed by Transport Scotland operating within the revisions to the governance structures that we had made.

**Q. Did you think that the Scottish Government would be providing expertise in relation to the tram project?**

123. We would have to do that to satisfy ourselves of the grant conditions, we would have to be confident about the way in which the issues facing the tram project were being considered and resolved.

**Q. What was the mechanism by which Transport Scotland officials would be able to satisfy themselves things were being done correctly?**

124. By monthly reporting, quarterly financial reviews and by interaction in instances where we felt there were concerns that had to be addressed, and there are plenty examples of that.

**Q. How confident were you that the Council or TIE had sufficient experience and expertise to deliver the tram project on time and on budget?**

125. The Audit Scotland Report had suggested that that was something that I should be confident about.

**Q. In Damian Sharp's report of 17 July 2007 at the very beginning of the chain of emails in TRS00004547, he talks about Gateway Reviews at**

paragraphs 17 and 18. He wrote that the City of Edinburgh Council should commission a Gateway Review. On the other hand he wrote that Transport Scotland could exert better control over the remit and team selection if it commissioned a review and that would be consistent with its approach to other projects. Did Transport Scotland undertake a Gateway Review or was that Edinburgh Council's job?

126. I do not know off the top of my head but I will get clarity on that. I would imagine it would be the City of Edinburgh Council who would do that. The other projects that are referred to are projects where we are responsible for the project. This goes back to the question about where project ownership lies. If the Queensferry Crossing project is our project, which it is, then I accept we are the ones doing all that. If Edinburgh City Council is in charge of the project they should be doing it. That paragraph actually illustrates my worry about confusion about who is running the show; it says it all to me because that implies that Transport Scotland is somehow in control of a project that we were not sponsoring.

**Q. The withdrawal of Transport Scotland was not just in relation to removing officials from the Tram Project Board, there was a variation to the grant conditions so that Transport Scotland was not required to assess the project at certain stages up until Financial Close. Were you aware of that happening?**

127. Yes, because that, again, goes back to the responsibility of the City of Edinburgh Council to be the leaders of the project and to be responsible for taking the proper advice to guarantee that scrutiny is put in place.

**Q. And you were content for Transport Scotland to take a step back and not have the same powers of review at certain stages before financial close?**

128. Transport Scotland would have to be satisfied with the proper scrutiny arrangements that the City of Edinburgh Council had undertaken.

**Q. The Tram Project Board minutes of 9 August 2007 (CEC01561047) at item 3.9.2 records that the Board considered whether the decision to withdraw was politically motivated. Do you know what was meant by this comment?**

129. No.

**Q. Was it politically motivated?**

130. No. It was taken on the basis of our concern to clarify where project leadership lay and to ensure we could properly scrutinise applications for grant payments.

**Q. On 23 August 2007 Damian Sharp sent an email to Malcolm Reed and Bill Reeve to update them on progress. He said that he had made it clear that all discussions should now be between CEC and Transport Scotland (TRS00004742). In the attached paper (TRS00004745) Damian Sharp said that *“We will have access to a significant amount of information about the tram project and will be able to spot issues that are important to tram success. However, the role instructed by Ministers suggests we should not be acting on some of this information. On the other hand we very clearly remain interested in information about the financial profile to manage our overall budget.”***

**Do you consider it appropriate that Transport Scotland should be aware of information but not act upon it?**

131. No, I do not.

**Q. Can you recall what information Transport Scotland should not act upon? Do you know anything about this?**

132. No.

**Q. What action could have been taken if information was being fed back that the project was not going very well? What action could have been taken by Transport Scotland in relation to the information it was receiving?**

133. I would contend that there was plenty of Transport Scotland interaction to address issues of concern, on an ongoing basis, so I just do not comprehend that statement that Transport Scotland should not act on information, I just do not comprehend it. The idea that somehow we would get some information and think that would be nothing to do us, I just cannot comprehend that.

**Q. At paragraph 10 he mentions “an escalation process”. Do you know what he is referring to there? Is that a process that Transport Scotland would use? The email that it is attached to states that it is a note to provide an update on progress with Edinburgh Trams issues and outline issues that still need to be resolved.**

134. I can only assume that that is just considering what processes should be put in place to deal with the information being provided to Transport Scotland. I think it contradicts that line about not doing anything about it.

**Q. Do you know if that process was implemented?**

135. Civil servants spend a lot of time thinking about these processes. Ultimately, if something is troublesome I know where it ends up on my desk invariably, so there's your escalation process, ultimately. The question is how long does it take to get to me?

**Q. So you cannot recall a specific escalation process?**

136. I cannot really but I certainly can recall various examples of escalation.

**Q. Escalation by meaning it had been referred up to you?**



137. It was going to other people and had been resolved before it got to me but, ultimately, coming to me.

**Q. How would issues normally be resolved when they arose with the tram project?**

138. It would be resolved using the scrutiny process that was set out in Malcolm Reed's letter of 2 August 2007 and through the proper scrutiny of grant funding from an SPFM perspective.

**Q. In evidence to the Public Audit Committee of the Parliament in 2011 (SCP00000028) David Middleton, on page 3 of 30, said that Transport Scotland stepped down with the agreement of Ministers. Can you explain what that comment means?**

139. I think it is a comment made within the context of wider remarks about the clarification of roles which David Middleton makes in the third paragraph of his comments.

**Q. What does "with the agreement of Ministers" mean?**

140. The Ministers agree.

**Q. Can you summarise the process by which agreement was reached with Ministers?**

141. That there was dialogue between the Ministers and officials about the arrangements for our participation in the project and it concluded with the material that is in Malcolm Reed's letter of 2 August 2007.

**Q. There is an email from Ainslie McLaughlin (TRS00018055) dated 5 October 2010 (TRS00018055). At the end of his email he wrote "*It may well come out in the wash that having the major funding party remote***

*from the decision making and management of the contract is not a sensible way to manage projects like this in the future”.*

Bill Reeve wrote in his email at the end of the chain at the top of the page, *“We should be clear that the decision to distance TS from active governance was taken by the current Ministers. The governance which Audit Scotland endorsed was the previous arrangement, during which TS had a place on the TPB”.* He then goes on to talk about the contractual problems that arose and the side letters that were signed alongside the contract. He states those alterations were made after the new governance arrangements were put in place and were in no way approved by Transport Scotland.

**In hindsight do you consider that removing Transport Scotland from active involvement in the tram project was a good decision?**

142. Yes, I do. I think there would have been endless opportunity for there to be confusion around the leadership of the project if that decision had not been taken. It would have created a situation where contractors would have had ever more opportunity to try to advance their interest in the project.

**Q. Do you disagree with Ainslie McLaughlin’s conclusion in that quote that it may not be a sensible way to manage projects like this in the future?**

143. I think the issue that is material is to have absolute clarity about where leadership lies in a project. That issue is of the greatest significance and it is not the same as the principal funder having to be the project leader. It is about having absolute clarity about project leadership and that is the key point that I think emerges from all of the issues that we have wrestled with in the project.

## REPORTING TO MINISTERS

**Q. In an email to Bill Reeve dated 24 July 2007 Willie Gallagher outlines Transport Scotland's 'light touch' approach to project monitoring (CEC01566648). He sets out the system of four weekly reports, monthly meetings, quarterly meetings. You have explained the purpose of this reporting system and that is to ensure that taxpayers' money is being spent prudently is that correct?**

144. Yes, and also to make sure that the project is progressing against the plans that Parliament has approved.

**Q. What was the point of reporting to Transport Scotland when Scottish Ministers had withdrawn from active participation in the project?**

145. Because we have got a duty in terms of the Scottish Public Finance Manual to ensure that expenditure is being undertaken appropriately. We also had a duty to Parliament to ensure that the proper operation of the project was being pursued.

**Q. What could Transport Scotland or the Scottish Ministers do if the information it was receiving was not good?**

146. It depends on the particular circumstances. On one occasion I told the Council that there would be no more money because I thought they had taken a decision that was incompatible with the original grant letter and they reversed their decision. There were other occasions when you listened to an explanation of a particular problem from TIE and give them the benefit of the doubt. If TIE said they were making progress with a particular element of the contractual dispute then we had to accept that. We could not speak to the contractors, I did not want contractors being able to go to Ministers to have different conversations. We had to give TIE our support and encouragement to resolve issues but, of course, we then faced a loss of confidence when things did not go the way we were told they would go. . None of that would be any different if

Transport Scotland was a member of the Tram Project Board because you would be in exactly the same position.

**Q. To sum that up, you would have had to rely on TIE for information if you sat on the project board in the same way you were relying on information that TIE was providing directly to you?**

147. Completely.

**Q. Do you consider that Transport Scotland's involvement in, and oversight of, the tram project was greater or lesser under the new arrangements?**

148. I thought it was consistent.

#### **AWARENESS OF PROBLEMS**

**Q. Document TRS00017791 was a response to a Freedom of Information request. It is attached to an email from John Ramsay dated 9 August 2010 (TRS00017790). It sets out some of the meetings that went on between Ministers and TIE officials. Additional meetings seem to have taken place and we will come to those in further questions.**

**Did you have regular meetings with the Council or TIE or the contractors on the project?**

149. I would not say I had regular meetings with them all, no. I had periodic meetings as and when required.

**Q. What would be the general purpose of the meetings that you would have with TIE and the Council?**

150. The meetings with TIE would be held so that I could see them face to face to try to get a measure of what I was hearing and what I was thinking about the

project. I had concerns over just how much I could rely on what I was being told by TIE because I would be usually told that a problem would be resolved in TIE's favour and that the consortium did not have any grounds for their arguments. That outcome would not materialise so my confidence would fall and I would have to meet TIE, so the meetings would take place in roughly that context. My meetings the Council were principally about the need to improve the performance of TIE and to get some form of resolution to the project. Transport Scotland officials had regular interaction with the project and, obviously, their obligation was to advise me of issues that I needed to be aware of, at which point I would interact with the Council and, or, TIE.

**Q. Did you have any meetings with the contractors of the project, Bilfinger Berger or Siemens?**

151. I had at least one meeting with Siemens and Bilfinger Berger on 8 November 2010. That is the only meeting I can see a record of and I think that is probably correct.

**Q. Who would normally attend meetings between you and TIE?**

152. It might be myself and Stewart Stevenson and there would be officials from Transport Scotland. Sometimes I would see TIE on their own, City of Edinburgh Council on their own and sometimes I would see them together. I would meet Willie Gallagher, David Mackay, Richard Jeffrey from TIE and there may well have been others. From the Council I would meet Councillor Dawe, who was leader of the Council, Tom Aitchison, Sue Bruce, as Chief Executive of the Council, Donald McGougan, Director of Finance, and I may have met Dave Anderson who was the Director of Development. I cannot remember the names of those I met from Bilfinger Berger and Siemens.

**Q. And, generally, were these meetings minuted? Were any official reports produced?**

153. Generally these meetings were not minuted. The tenor of the meetings was to try to get progress on key questions and to test out whether there were any ways in which we could get to a better position than where we found ourselves.

**Q. The 28 March 2008 meeting is mentioned there at the bottom of TRS00017791, "Dates of joint meetings between TIE Ltd, Transport Scotland and Minister". Did you attend that meeting?**

154. I do not think so. From the documentation we have it does not look like I attended that meeting.

**Q. You mentioned at least one meeting with the contractors on 8 November can you recall what that was about?**

155. I was trying to determine the position of the project and I was being told that the contractors were all at fault. At that meeting I was trying to find out whether that was the case and, if it was not, what I could do to resolve the situation. I was trying to make an assessment of the project based on the information from the contractors and understand our options to get the project into a better position. That is me getting into territory that I ordinarily wanted to avoid. Why should I see the contractors because I was not running the project, I was funding it, the Council were running it, but at that stage I needed to satisfy myself about where this project was going.

**Q. So you felt at that stage you could not rely upon the reports from TIE and City of Edinburgh Council?**

156. Not so much the reports, I could not rely on the judgements about where it was heading. I suspect that at the meeting on 16 November 2010 with Jenny Dawe and Tom Aitchison I told them that mediation was the next step. That is the connection between the meeting on 10 November 2010 with the contractors and the 16 November 2010 meeting with the Council.

**Q. There was an email from John Ramsay dated 30 April 2008 (TRS00005076). Financial close took place in May 2008. He is responding**

to your concerns about timescale slippage prior to financial close. The email advises that that is due to protracted and difficult negotiations. There is another email from Dave Anderson (CEC01222014) which also refers to your concerns about delays in financial close because it did not take place on 2 May and it has been moved into mid-May. You are obviously having concerns about what was going on at the project prior to financial close is that fair? What were your concerns?

157. I was wanting to make sure that timescales were being followed and that progress was being made to ensure that I could fulfil the commitment I had given to Parliament. It is illustrative of the point that Scottish Ministers sustained its intervention and activity in the project, so we were not *in absentia*. We were actively asking questions and seeking updates. We were asking the hard questions of the people who were entrusted to deliver the project.

**Q. Do you know the reasons for the delay in financial close? Were you being advised of the reasons?**

158. I do not suspect it was anything more sophisticated than the fact that negotiations will always go on to try to get to a point of agreement about a contract and its provisions and terms.

**Q. So you were satisfied with the explanations that were given to you for the delay in financial close?**

159. I would not say I was satisfied, I was aware of what they were about but I would not say I was satisfied.

**Q. Were you aware at the time of the specifics of any issues?**

160. Not in precise detail. What I would be aware of, as I was from a number of other projects, is that this particular period can be one that can be difficult in reaching a final agreement.

**Q. A couple of months prior to that, on 10 March 2008, Stewart McGarrity (TIE finance) was asked by Rebecca Andrew (CEC finance) for a note on the risks of delaying contract signature versus the risks of signing the contracts if issues in the risk matrix were not resolved. His reply was to the effect that it would take until September 2008 to complete the design; that 6 months inflation would cost £15m to £20m; and that *“More likely is that either BBS or the TS funding or both would walk away and we’d have no project.”* (CEC01506128)**

**Mr McGarrity therefore had it in mind that, by March 2008, there was a significant risk that further delay in financial close could jeopardise funding support from the Scottish Government. Was Mr McGarrity right to be concerned about that?**

161. I have no idea what basis Mr McGarrity could have for forming that view, none whatsoever. In all the correspondence I have looked at, it is one of the most malicious remarks I have read because I gave a commitment to Parliament that £500m would be on the table. There is not a thing that you will find, after I gave that commitment, that suggests anything other than that. The argument that six months delay might add £15m to the price is legitimate, I accept that. Around about the same time I would be wrestling with financial close negotiations on the M74 upgrade in which that was exactly the same consideration; the market was moving very fast and price inflation was a real and legitimate consideration. But to suggest this in any way equated with the possibility of withdrawing funding is unwarranted and without substance.

**Q. Are you aware of anything that was coming from Transport Scotland that might allow Stewart McGarrity to infer that funding might be withdrawn?**

162. None, quite the reverse.

**Q. In an email from Stewart McGarrity to Graeme Bissett dated 24 May 2008 document (CEC01342332) he stated that Ministers have asked Transport**



**Scotland to be “more involved/informed re what’s going on in the tram project”. Why at that stage did Ministers ask Transport Scotland to be more involved/informed in the tram project? This was just following financial close.**

163. On the basis of my last remarks I would not lay particular emphasis on the commentary of Stewart McGarrity with the greatest of respect. It is not about being more involved or informed it is about Transport Scotland doing what it should be doing in accordance with Malcolm Reed’s letter of 2 August 2007. This exchange between Stewart McGarrity and Graeme Bissett gives you an insight into some of the attitudes in TIE; Stewart McGarrity wrote “*this may be nothing but a general fish for information by John Ramsay*”, that is not exactly the most respectful way for somebody on a project to talk about other players. Graeme Bissett wrote “*You can never discount leaking, but my concern is the use of the information and its dissemination by TS who may not appreciate the commercial and other sensitivities*”. I consider that to be a naïve remark about an organisation that deals with multi-million pound contracts.

**Q. Have you anything to say about what they are talking about there?**

164. No. What I am saying is that this is evidence of Transport Scotland pursuing the role that I asked them to perform of scrutinising and pursuing TIE for information via the City of Edinburgh Council. That exchange of emails is the evidence of it and that is why the idea that we were, somehow, *in absentia* is baseless.

**Q. In general, what involvement did Scottish Ministers have in the project after financial close?**

165. We would be interacting with our officials at Transport Scotland to assess progress and if we were concerned about progress to then I would take action. Obviously when you are in a situation like this a judgement has to be made about how often you deploy a Minister. If the Cabinet Secretary gets wheeled out every week for a meeting with the City of Edinburgh Council it will begin to

lose its effect, but if you get wheeled out once every three months then that is more effective. If you get called in to see the Cabinet Secretary to explain the situation then you have to think about what you are doing.

**Q. You have said that the exchange of emails is evidence that Transport Scotland was not *in absentia* in this project. How does the involvement of Transport Scotland or Ministers fit with Transport Scotland's and the Scottish Ministers' desire to clarify leadership? Was it consistent with the 'hands off' approach to this project?**

166. I am not going to sign up to the terminology 'hands off'. If I want to satisfy myself, which I have to, that Scottish Government investment in a project has been used properly, my officials have to be regularly involved in reviewing in the project and they were. On one occasion, noted in some of the papers I have seen here, Bill Reeve indicates that he did not sign off a grant payment for bonuses for TIE staff. That makes the point that in order to do that we have to be able to interrogate what is going on with the project. Therefore the running of the project was done by TIE, who are responsible to the City of Edinburgh Council, and we have a funding relationship with the project and we have got to scrutinise the project to make sure that we can be satisfied about what is going on.

**Q. On 28 May 2008 John Ramsay sent a memo to the Minister for Transport updating him on financial close (TRS00005078). It was copied to you. There had been substantial slippage in financial close as we have just discussed. He advises that Transport Scotland are going to continue to apply pressure to the Council and TIE. Can you explain what pressure was to be applied and how that was to be applied and why it was to be applied?**

167. Just simply to make sure that the two objectives that the Government had in this project, to ensure that the arrangements were properly in place for its delivery and to ensure that public money was being used appropriately, were pursued.

**Q. I understand that. I am interested in the mechanism that was to be used to apply pressure. What could Transport Scotland do? What mechanism does it have? What leverage does it have to apply any pressure apart from, perhaps, having meetings and asking parties to resolve problems?**

168. A lot of it can be done like that. Ultimately, you could withhold funding, which on one occasion I did to effect a different decision. And then, of course, you have got to make a judgement about whether withholding funding would be effective in any other circumstance. I never considered removing funding until that occasion in 2011. It was the only occasion I thought about doing it, I never thought about it on any other occasion because we had given a commitment to the project but we had a legitimate interest in ensuring that it progressed at an acceptable pace and, of course, here you have got examples of that not being the case. I suppose there are other things that you could do but they would be nuclear options and we were not pursuing nuclear options. We were certainly being financially supportive but we were also trying to apply the type of pressure that would get things done.

**Q. In this context the pressure would be what?**

169. To get a sense of urgency into discussions. You can only have one set of people who would be doing the financial negotiations on the contracts. If TIE is the organisation, which has been commissioned by the City of Edinburgh Council to deliver the project, an arrangement which the Auditor General has approved, then I decided to let TIE get on with it. However, I started to see slippage in financial close so I start asking about it and for information about the situation. We would interact in a way to ensure the terms of the grant were being followed.

**Q. In his email in March 2008 Stewart McGarrity said that they needed until September 2008 to complete design. Would you have accepted slippage if it was explained to you that TIE needed several months to get the**

**design done or was there a real pressure just to sign the contract to get on with it?**

170. There is no evidence of that pressure because the financial close was expected significantly earlier on 14 May, so there was no pressure to close early. I simply wanted to understand what was going on.

**Q. Would you agree that Transport Scotland was taking a 'light touch' approach to the project? That is something that is referred to by Willie Gallagher in his email.**

171. No. Look at the exchange with Stewart McGarrity, Graeme Bissett and Willie Gallagher, that does not look to me like 'light touch'. That is Transport Scotland putting the pressure on TIE (CEC01342332).

**Q. Did the delay in financial close cause you to review the role of Transport Scotland at that point?**

172. No, because progress had clearly had been made.

**Q. Following contract close in May 2008 the Bilfinger/Siemens/CAF consortium issued a number of INTCs to TIE under the contract. A dispute arose in relation to the correct interpretation of the Infraco contract including, in particular, clause 80, which was a change provision, and Schedule Part 4, which contained pricing assumptions. Much of the dispute centred on whether changes to the Pricing Assumptions set out in Schedule part 4 had occurred and, if so, whether, under clause 80, Bilfinger were entitled or, indeed, required to refrain from undertaking the works which constituted a Notified Departure until an estimate for the cost of these works had been agreed between TIE and Bilfinger Berger. Were you aware of this dispute, which arose after the contract signing? How did you become aware of it and when?**

173. I would be aware of it through the briefings from Transport Scotland and probably, actually, through media commentary as well.

**Q. Can you recall and can you understand what the causes and reasons were for the dispute? What was your understanding of what was going on?**

174. I think what became clear was this was illustrative of the different perspectives that respective parties had of the contract that had been agreed and the different interpretations of it.

**Q. Did your understanding of these matters change over time?**

175. In my view, what had been agreed in relation to the contract was going to be subject to debate. What was not clear at that time was the scale to which that debate would be relevant. Donald McGougan said that 95% of the contract was fixed price and therefore I thought, and was advised, that there would be some debate over uncertainties in relation to the other 5% of the contract. At that stage, it was thought that there would be some tangential disagreement arising but, obviously, with the passage of time, that disagreement became more intense.

**Q. Did you get a sense of who was right or wrong in respect of their interpretation of the contract?**

176. I had advice that indicated the contract was robust from the Scottish Ministers' perspective. I was advised that this was contractors flexing their muscles.

**Q. Did you ever receive advice from Transport Scotland or Transport Scotland lawyers on the contract before financial close?**

177. Not from Transport Scotland lawyers. I was advised that due diligence had been undertaken in relation to the contract to the satisfaction of Transport Scotland and City of Edinburgh Council.

**Q. There is a letter to you dated 24 September 2008 from Willie Gallagher (CEC01192589). Willie Gallagher said that TIE were dealing with early 'bedding-in issues' following contract close four months ago. He said he was grateful for the opportunity to meet with you shortly on a confidential basis. There is another document (TRS00017791) which notes that a meeting took place on 24 September. What did you understand Mr Gallagher to mean by early 'bedding-in issues'?**

178. There was, essentially, about testing where risk lay in relation to particular issues that emerged as part of the implementation of the contract, which gave rise to higher costs than would have been anticipated. It was a question of whether those should be borne by the public purse or whether they should be borne by the contractor.

**Q. Was this all discussed at the meeting on 24 September?**

179. Yes.

**Q. What was he advising you about risk and where it lay**

180. He was advising me of the approach that TIE was taking to pursue those issues and expressing to me his confidence in the position that they had and his confidence in the strength of the contract that they had at their disposal.

**Q. Who else attended that meeting can you remember?**

181. David Mackay was certainly there and I am not sure if Stewart Stevenson was there but, certainly, I would have had Transport Scotland officials with me.

**Q. Were you reassured by what Willie Gallagher had to say at that meeting?**

182. Again, he was leading the project team and he had given me personal commitments about the pursuit of the project so I had every reason to have confidence in him and how he could take that forward.

**Q. Are there any notes of the meeting, any minutes, do you know?**

183. There does not appear to be any minutes of that meeting.

**Q. On 31 December 2008 John Ramsay sent a memo to Stewart Stevenson and you setting out progress on the Edinburgh Trams Project since financial close (TRS00016711). The memo is reporting a number of problems facing the project and that the project end date was slipping. This was due to late financial close, design differences between TIE and its contractors, design slippage, slow construction mobilisation and utilities diversion. Your response is that that is not welcome news (TRS00016723). What did you do in response to this report?**

184. This would have coincided with what was a significant disappointment to me, which was the departure of Willie Gallagher as the chair of TIE, which in my notes took place in December of 2008, and that reduced my confidence in TIE and their ability to deliver the project. In the light of this memo, I would have made two points to officials. I requested Transport Scotland to pursue our legitimate interest in making sure that the timescale was not allowed to slip and to press for that to happen. My second point was about Transport Scotland holding on to their contribution to the project where TIE was not spending up to

expected profile. That would be a comment made in my capacity as Finance Minister because, at that stage in the year, I am now thinking about where an underspend would go within and how that would be done. Let us say TIE were unable to spend £50m. If that is sitting Transport Scotland's allocation within the budget, and it is not going to be spent, I need to think about the possible loss of that to the overall Scottish Government public purse. If that £50m is not going out the door this year, then I need to do something to make sure we do not lose that to the Treasury. That is what that comment in the email from my office is about and it is on 8 January 2009 when my mind is beginning to focus on the end of the financial year. My interaction with Transport Scotland would be to get them to keep pressing here to try to get this to a conclusion.

**Q. In February 2009 contractors refused to start work on Princes Street. You were made aware of the Princes Street disputes, see for example email TRS00016789 which is referring to the dispute. What was your understanding of the reason for the Princes Street dispute? Can you recall the dispute?**

185. I can. It stalled the whole thing for quite some time and it was just, fundamentally, about where the risk lay between parties. It was about the extent to which the contractors were liable for additional costs of issues that arose once they began their work and the role of the City of Edinburgh Council, so it was just another dispute over the same issue.

**Q. What was the basis of your understanding? How did you reach the understanding you had?**

186. Through briefings from Transport Scotland officials.

**Q. Did you do anything in response to what was going on?**



187. Throughout this period we would be pressing and encouraging the Council and TIE to resolve these issues and we would be getting updates from TIE. Those updates would generally be pretty optimistic about the strength of their position and the ability to secure a good outcome based on their position. A lot of time was swallowed up trying to resolve the dispute and it went on for some considerable time.

**Q. Were you having meetings with TIE or the Council or the contractors and, if so, what was discussed?**

188. I did not see the contractors at that time but around that time there would be different meetings with TIE and with the Council in that respect, either with me or Stewart Stevenson.

**Q. What were you being told by TIE, the Council and Transport Scotland in relation to the dispute? What were your views on the reports you were receiving?**

189. I was being told by TIE that they had a strong position, and that it would prevail, and that the contractors were just stretching their perspective. I would be getting a less optimistic assessment from Transport Scotland who would be saying to me that they thought there were some very difficult issues to be overcome, and the difficulty was about how speedily those issues could be resolved in what was a protracted dispute.

**Q. You said the information from TIE was quite optimistic, information from Transport Scotland less so. Was Transport Scotland getting its information from the same source and just taking a different view on it or were they looking behind the TIE relationship and speaking to the Council and contractors?**

190. Transport Scotland would be looking at the same information and taking a less optimistic view.

**Q. What were Ministers' views, your views on the project at the time? What were Transport Scotland's views on the project at the time? What did you envisage the outcome to be?**

191. It was clear, at that stage, that we had a significant challenge on our hands. The options for resolution that are available at any time are either pursue a hard line and enforce the contract in court, go to mediation, or end the contract. TIE did not want to go to court, they wanted to get on with the project and they felt they had the strength under the contract to do that. The other options were end the contract or mediation. Those three options, in my view, did not really change very much throughout this project. So when TIE told me that they were in a strong position under the contract then I let them get on with it because they had negotiated the contract. However, I would have to say, as time wore on, I became less confident in that approach because things that I had expected to be resolved did not get resolved and I began to think that there were some significant vulnerabilities here. There was about a year or so of that kind of interaction between us and TIE until 8 November 2010 at which point I was beginning to think TIE's strategy was not going to work and something had got to give.

We then had a meeting with the Council on 16 November 2010 when I told them they were going to mediation. I appreciate that sounds like an awful long time but there are a great many transactions underway during these disputes which take time but that is a rough summary of that period and what it looked like. In between, I think you have got some stuff about the different programme options; stopping at Haymarket and stopping St Andrew Square, getting rid of the whole contract, all these things occupied time. Eventually I reached the conclusion in the latter part of 2010 that this project was going nowhere and that it had to go to mediation.

**Q. What were your views in February 2009? Did you have concerns about the project or TIE's management or the Council's management of the project at that time and, if so, what were they?**

192. I felt the Council were doing what I would expected them to do but they were not at the coalface, they were one step removed from the coalface and at the coalface was TIE and that was where it was going badly. What are your options there? We had had a change of leadership a couple of times in TIE, Willie Gallagher to David Mackay, David Mackay to Richard Jeffrey and a protracted difficult dispute. So my confidence would grow and then it would fall and then it would build up again and then it would fall. And then, in this period, 2009, I am having to consider this protracted dispute in which only very limited headway was being made and then giving it a bit more time just to see if we could get to another milestone and a bit more time to get to another milestone and before you know it a year has gone past. I got to the latter part of 2010 and thought this would not work, that this strategy was flawed.

**Q. So you had concerns about TIE in February 2009?**

193. Yes.

**Q. Did you have concerns about the £500m the Scottish Government was handing over?**

194. I was confident that the money was being used for the purposes for which it was intended but the £500m was not delivering as much value as was envisaged. We were not purchasing as much for the £500m as had been originally envisaged.

**Q. Did you give any thought to taking steps to protecting the money or ensuring it was spent well?**

195. That was what we were doing in pressing to resolve the disputes, that is precisely what we were doing because that was one of our two objectives in relation to the tram project, which was to ensure the appropriate use of public money.

**Q. You said the £500m was not delivering what it was meant to, is that a reference to the fact the line was not completed as originally planned?**

196. It was £500m out of £545m but, obviously, it was always going to be £500m from our perspective because we had made it very clear we were not going to pay more. But do not underestimate the scale of pressure that can be applied to a Finance Minister to put more money into things, believe me the pressure can be intense. So it was important to me that it was only going to be £500m out of a greater number. Therefore, in that respect, it was not buying as much, because it should have been buying £500m out of £545m but it was clearly going to be £500m out of some bigger number.

**Q. Was any consideration given to TS increasing its involvement or oversight of the project at that stage?**

197. Transport Scotland were scrutinising the project. It is, again, why our level of interaction on the project was important; we were being advised by the agents for the project that they had a strong contractual position to win these arguments and the question was how long could our confidence go on for on that basis?

**Q. Were you reassured by what you were being told in February 2009?**

198. I was having these conversations thinking we would see where it got to. I was not leaving the conversations thinking that everything was fine. I certainly would not want to mislead you in saying that I had confidence at that time. I was slowly getting less confident about the robustness of what I was being told.

**Q. Did Transport Scotland's involvement change from that point onwards?**

199. It was consistent with the way it had always been.

**Q. John Ramsay sent a memo to the Minister for Transport, copied to you, advising of the current situation regarding the tram project (TRS00005092). I think the date is wrong, I think this memo should be dated 3 March 2009 but we only have a draft copy of this so I am not sure if it was received by Ministers. It talks about the Princes Street dispute. It notes that the current dispute might impact in both cost and programme. It says that the Minister for Transport, Stewart Stevenson, had agreed to meet David Mackay of TIE and Richard Walker of Bilfinger Berger on 11 March. It also goes on to say that TIE had lost confidence in Bilfinger Berger.**

**There is a further document (TRS00016823) which summarised a telephone call from you to Transport Scotland on 27 February 2009 to discuss the dispute and to review options. You asked TS to take a very firm line with the Council and you had concerns about how this dispute would affect cost and programme. Consideration was given to Transport Scotland issuing a Cure Notice.**

**There was a call from you to Transport Scotland on 27 February, there was a memo on 3 March from John Ramsay to Stewart Stevenson and there was a quarterly review on 3 March. There was then a meeting between you and Transport Scotland officials on 4 March.**

**Did you attend the meeting with Mr Mackay and Mr Walker with Stewart Stevenson?**

200. I do not think so, no.

**Q. Do you know what was discussed and what the outcome of those meetings with Mr Walker were?**

201. I would have had a report of it from Stewart Stevenson but I cannot recall the detail. This would be us, essentially, discussing the issues I have talked about and considering the options open to us to try to resolve these issues. We would be talking to TIE and others about what the options were.

**Q. What does it mean when reference is made to you saying that a very firm line should be taken with the Council? That is contained in John Ramsay's email of 2 March (TRS00016823).**

202. It was about encouraging the Council to get on with it and find a resolution to this. This project had got to be delivered we needed to get on with it. That would be the line we would take with the Council.

**Q. John Ramsay's email goes on to talk about the financial agreement supporting the grant offered by Transport Scotland and the number of options that might be deployed under the grant agreement depending on the level of assurance flowing from Tuesday's meeting, that is presumably a reference to the quarterly review meeting, the Minister wished to consider development of a Cure Note to CEC. The meeting was to happen on 4 March, Transport Scotland were to report back to you after the quarterly review and depending on the outcome of that meeting a decision for further action would be taken. Do you know what happened to the proposal to issue a Cure Notice?**

203. TIE and Bilfinger were committed to the dispute resolution process, so we took the view that we should let the process take its course because we would be being advised by TIE that they had a strong position.

**Q. And depending on the outcome of the Tuesday meeting a decision on further action would be taken; do you know what further action was contemplated? Was any further action taken?**

204. It would be to allow that dispute resolution process to take its course.

**Q. Document (CEC00966220) is a report from the quarterly review meeting that took place on 3 March prepared by Stewart McGarrity. At that meeting Bill Reeve stated that Ministers were very concerned about what the Princes Street situation meant for outturn costs and programme. He required confirmation that there were no contractual or other arrangements which might expose Scottish Ministers to a liability greater than £500m. The next document confirms that a meeting took place on 4 March 2009 with you to report the outcomes of quarterly review (CEC00888693). You wanted reassurance that the Scottish Government would not be exposed to extra cost and you wanted more regular communication between Transport Scotland, the Council and TIE, which might mean daily phone calls.**

**Was your primary concern here that Ministers should not be exposed to any liability in excess of the £500m grant?**

205. It was one of my considerations.

**Q. To what extent were you concerned that the Council might require to find additional borrowing if the project went over budget?**

206. That it would be inevitable consequence of the fact that we were not prepared to put up more than £500m and the City Council would have to consider how sustainable that was for it and, again, that would have been discussed. Part of my wider responsibilities is that I have got to consider the sustainability of local authorities' finances.

**Q. In the email from Stewart McGarrity, dated 4 March, at paragraph 9 he stated that Transport Scotland required a number of outcomes by the end of March. Can you remember if TIE complied with that? What was to happen at the end of March?**

207. I suspect that is just a timescale of Bill Reeve's to be honest, there was no process in place.

**Q. On 6 March 2009 an email was sent from TIE to Transport Scotland warning about the dangers of Richard Walker of Bilfinger Berger meeting with the Minister Stewart Stevenson on 11 March (CEC00869282). Why was TIE warning Transport Scotland about the dangers of meeting Richard Walker?**

208. I suspect TIE were concerned that that would somehow undermine their position and their ability to negotiate hard. From Ministers' perspectives, if we get asked to see somebody and we refuse I could imagine Mr Stevenson being hounded by the opposition for not being prepared to meet somebody. It is not easy for us to just say no, and we resist these things as much as we can but in a situation where Princes Street is at a standstill, the project is in a poor position, it would be a hard for a Minister to refuse such a meeting.

**Q. Do you know what the outcome of the meeting was with Bilfinger Berger? What information were they providing to the Ministers?**

209. They would be giving the Minister an explanation of their view of the strength of their position and the weakness of the TIE position and the need for some form



of resolution to be put in place. They would recognise that there would have to be a different financial outcome to the one that was on the table.

**Q. In light of the meeting with Bilfinger Berger, were Ministers still confident of TIE's position?**

210. We had decided to, essentially, allow TIE to pursue the strategy they had put to us. We had made a judgement to let them to try it out and see how they got on.

**Q. Can you remember what Bilfinger Berger was saying about the project or about TIE?**

211. They would be saying that there was a different impression of liability on their part compared to TIE, that the arguments were in their favour and that TIE were holding out for a unrealistic position.

**Q. Would Transport Scotland officials give you advice on the positions taken by TIE and Bilfinger Berger? Would they be advising that you should prefer one over the other?**

212. No, they would not do that. They would be assisting us in coming to a conclusion as to what was the right strategy to adopt. If TIE told us they had a strong contractual position and that they would pursue a strategy under the contract then officials would advise us that, on balance, we should let them pursue their approach.

**Q. Were Transport Scotland able to independently verify what you were being told by TIE and Bilfinger Berger? Would they be in a position to do that?**

213. I think it would be difficult for them to do that because, ultimately, these issues looked like issues that were going to have to be resolved in front of the Inquiry under Lord Hardie.

**Q. John Ramsay sent a memo to Stewart Stevenson to update him on the dispute between TIE and the consortium on 13 March 2009 (TRS00016902). The memo notes that you had requested that Transport Scotland maintain close contact with TIE and the Council. Officials have been in daily contact with TIE and a weekly telephone conference took place between Transport Scotland, TIE and the Council. Is the purpose of this regular communication with the parties in this project simply to keep Scottish Ministers' abreast of what is going on? What was the purpose of that type of communication?**

214. It was simply to ensure that we were exerting all possible influence to try to resolve the issues that were affecting the project and to make sure, as far as we possibly could, that the right steps had been taken by TIE, principally, in that process.

**Q. At paragraph 8 of that memo it is stated that it was agreed to await the outcome of 19 March dispute meeting and that estimates of cost and programme will be updated following the meeting. What was to happen after the meeting, do you know?**

215. At this stage, we were moving to the next crunch point dispute meeting, we were considering what position the project would be in after the meeting and what the next steps would be in order to try to encourage effective resolution of the outstanding issues. However, there is never simple clarity about what to do in these circumstances. TIE would recommend that they be given a bit more time for further dialogue and resolution, and that would take a month and before you know it a year would have elapsed.

**Q. What was to be done after the meeting?**

216. We would take stock about what the next steps were going to be.

**Q. In paragraph 7 of the same memo, John Ramsay mentions that Siemens have expressed concern about the behaviour of Bilfinger Berger, its**

**consortium partner. Do you know what concerns Siemens had about Bilfinger Berger and their behaviour?**

217. I do not know.

**Q. There is an email from David Middleton to others in Transport Scotland on 17 March 2009 (TRS00016931). In that email it mentions that you and Stewart Stevenson met David Mackay of TIE that day. You felt that the project was in a bad place. You were reasonably reassured by what David Mackay said. You said that the Council or TIE, or both, had not been “whiter than white”. Mr Mackay told you that the project could still be brought in on time and on budget if there was a restart soon.**

**What was the purpose of this meeting with David Mackay? Bearing in mind the upcoming dispute meeting on 19 March.**

218. This meeting would have taken place for me to get an understanding of the approach he intended to take at the meeting of 19 March and to impress upon him the importance of making progress and resolving the outstanding issues. David Mackay was relatively new in office as the chair of TIE, he had been in since December 2009, and this would be my process of trying to build my own confidence in TIE as the project proceeded.

**Q. In relation to the Princes Street disputes, there were three days of negotiation which concluded on 20 March. What did you say to David Mackay about those negotiations?**

219. My approach would not be to prescribe to him what outcome he had to achieve. Instead I reminded him of the framework within which he was operating and that my objective was to get the project moving, to get the issues resolved, because public concern about the trams project was very high. Princes Street traders, and Leith Walk traders, and the city were dealing with a number of problems. So my pressure was to try to get movement in this as far as I possibly could but without prescribing to David Mackay what he should achieve

in negotiations. I did not consider that to be an effective exercise of my role but I did have to remind him of the framework within which he was operating.

**Q. The framework you refer to was the grant agreement framework?**

220. Yes and the financial parameters of the Government.

**Q. So David Mackay reassured you? What did he say?**

221. I said to David Middleton, which is an accurate account of how I would have felt at that time, that I was reasonably reassured by David Mackay. David Mackay would have explained to me his view of the strength of his contractual position and his focus on how to resolve the disputes. He felt that TIE's contractual position supported his approach.

**Q. You mentioned that the Council and TIE had not been "whiter than white". What is that in relation to?**

222. I think that was about the relationship between the City of Edinburgh Council and TIE and the contractors, and whether those parties had gelled effectively. It was not a question about their propriety or anything like that, it was just about whether or not it was only the contractors that were in the wrong. I did not think that it was the case that the disputes were only the contractors' fault, so I was encouraging some resolution.

**Q. What was wrong with the Council or TIE?**

223. I often felt TIE were explaining a very bullish approach to me and that approach is evidenced in some of the language they were using and in responses even to communications from my officials. I questioned the effectiveness of such bullishness in their approach.

**Q. Are there any records of this meeting on 17 March?**

224. There does not appear to be any minutes of this meeting.

**Q. Did you or Transport Scotland ever raise your concerns about the bullishness of TIE's approach with the Council?**

225. Yes.

**Q. What was the Council's response?**

226. The Council had confidence in TIE but I do not think they were impervious to the fact that there might be weaknesses there, so they were 70/30 positive about TIE. I was 30/70 positive, so the Council accepted my concerns about TIE. There was doubt about TIE's approach to the consortium.

**Q. In the email from Ainslie McLaughlin he wrote that David Mackay did admit to problems on the TIE side which meant that there was scope for further contractual disputes (TRS00016931). Do you know what problems he was referring to there?**

227. These comments would reflect the fact that TIE were not resolving the disputes in the way they suggested was possible and would be indicating the likelihood of further disputes arising in the future.

**Q. So after that meeting with David Mackay, what do you think about the project at that point?**

228. I still thought it was in difficulty and David Middleton accurately reported my view in his email and Ainslie McLaughlin reinforced it.

**Q. On 19 March 2009 Bill Reeve sent an email to you and the Minister for Transport informing you of the latest update from TIE on the Princes Street dispute (TRS00016936). There was optimism that a deal could be reached, this was in reference to the ongoing negotiations, presumably. In response David Middleton said that such information enhanced David**

**MacKay's credibility that matters appeared to be unfolding as he suggested. Was there an issue with David Mackay's credibility?**

229. Yes, there was, certainly in my mind. In the note the day before from David Middleton it talks about my being reasonably reassured but I was not entirely confident in the staff of TIE. The reason for that was because of where we were and because I was always being assured by TIE. In 2007 Willie Gallagher told me that he would see the project through and he is out by December 2008. In 2009 David Mackay came onto the project which was in a difficult place and sets out how they were going to resolve these issues. The early signs were not encouraging, so I was seeing a change of leadership already and issues not being resolved. That was why we were so intensely involved in this part of the project to ensure that we can do everything we can to try to get them to a position whereby they can make some progress.

**Q. And that was done through encouragement at meetings?**

230. Yes. If TIE were telling me that they had a strong negotiating position and that they could fix the problems facing the project, then I would encourage them to go away and fix them. I wanted them to come back and tell me that they had got the diggers out on Princes Street. I did not have many options at this stage. I could have told them that they would be getting no more money, but that would not take the project further forward at that stage. In Ainslie McLaughlin's email of the day before he wrote that the walkaway figure would be as high as £100m (TRS00016931) and that it would be messy and more likely to end in a prolonged litigation. Therefore, Ministers could not just up sticks and refuse to pay any more money because what would happen to the project? Who would fix Princes Street, which was half dug up? We had a route under construction, which we were funding and therefore should be delivered. I had to give it enough time to be delivered.

**Q. On 23 March 2009 John Ramsay sent a daily bulletin email to Jerry Morrissey and Bill Reeve (TRS00016963). It explained that a**

**Supplemental Agreement had been reached in relation to the Princes Street, which became known as the Princes Street Supplemental Agreement. TIE said that this would not lead to greater costs. The email mentions a Saturday conversation between you and David Mackay, which appears to be a telephone conversation. Document TRS00016961 mentions the telephone call. What was the purpose of that conversation?**

231. That would be David Mackay giving me an explanation of what had happened in the negotiations to help me and get some reassurance.

**Q. What was the point in receiving this information?**

232. I was the principal funder of the project. It must be patently obvious to David Mackay that he had a confidence problem with Cabinet Secretary for Finance, so this was him phoning to speak to me. The phone call would have been arranged for a Saturday, because that was when negotiations concluded, to give me reassurance that things had gone well and that I had nothing to worry about. I will have made it clear to them, the week before, that I was worried about the project so I wanted to know how he was getting on. I was not surprised he wanted to make a phone call to me on the Saturday to make sure I could hear directly where it had got to.

**Q. Because, ultimately, as a funder, you could turn off the funding?**

233. Of course I could. I also had to be mindful of the implications of turning off the funding. What do I do about Princes Street, the half-built trams, my commitment to Parliament to support the project? It cannot be said that Transport Scotland and Ministers had no oversight of the project because there is very clear evidence which shows that we were absolutely on the case. We were not having two sets of negotiations with the contractors because I would not allow that to happen. We are properly putting the pressure on the people who gave the commitment to deliver the project, who were contracted to deliver this project, to make sure they were delivering the project.

**Q. Was that course of action consistent with your desire to ensure clear roles of leadership?**

234. Yes, because I am pressurising the City of Edinburgh Council and their agents to deliver on the project. I was not taking the leadership decisions I am just encouraging them to get on with the project. I was not directing what should be done in the project, I wanted to know what the timetable was, what the cost was going to be and how the management of the project was delivering my objectives. There was no confusion of leadership I was simply trying to make sure that the project was progressing.

**Q. You were obviously in very close contact with David Mackay, he phoned you at the weekend to deliver important news. Would it be the case that, as he tries to build confidence and a good relationship with you, that he is reporting to you and trying to reassure you, that he is looking to you as a leader? In his mind do you think there could be any confusion as to who was leading this project at this point?**

235. No. He knows that we are applying pressure because the project is in difficulties. He knows that we are the funders of the project and I presume he is thinking that he need to get us more confident in the leadership that he was deploying in this project. However, in terms of operational decisions, in none of the conversations did I tell him what approach to take to the project. I would simply remind him that he had a responsibility to deliver the project that I was funding and that I could not understand why he could not progress the project.

**Q. Did you have an understanding of what the Princes Street Supplemental Agreement was and what affect it would have on the project at that point?**

236. My understanding of it would be that it was an agreement that would enable the recommencement of work on the project. That would obviously be beneficial because it would get things moving again and moving in a timely manner.



**Q. Did you know whether it would lead to increased costs on that point?**

237. I do not think I would have known that but I would have certainly feared it.

**Q. Did your understanding of the Supplemental Agreement change over the course of the project?**

238. Yes, the Supplemental Agreement did not sort everything, there were still more problems with the project. In that respect my view changed from what was recorded in this note to a view that this has not actually dealt with the problems. There was still a lot of room for dispute, it was the room for dispute which was the key problem.

**Q. When did it become apparent to you the Supplemental Agreement was not sorting everything?**

239. It would be difficult for me to put a date on that. We talked earlier about the time period between this landmark event and then the next one which is the latter part of 2010 where I, essentially, required the Council and TIE to go to mediation. It will have fed into that 18 month period of difficulty.

**Q. On 6 May 2009 John Ramsay sent a memo to you to brief you ahead of your meeting with Richard Jeffrey on Thursday 7 May 2009 (TRS00005109). That meeting was to be attended by Stewart Stevenson and David Mackay. Ministers were updated on the progress of the project. Richard Jeffrey had just been appointed as the Chief Executive at this point; this was apparently a short introductory meeting with him. Can you remember what was discussed at this meeting?**

240. It was, essentially, the introduction of Richard Jeffrey who I knew, to a limited extent, from his previous role with the Chamber of Commerce and then to just hear about progress and how he intended to resolve issues.

**Q. Were you reassured by Richard Jeffrey?**

241. I knew that Richard Jeffrey had a good track record and his own personal pedigree was strong so I thought that would be helpful.

**Q. Was it now considered normal for Ministers to meet TIE officials?**

242. I have been anxious to try to say to you that we were not *in absentia*. We were not running the project but we had a big interest in the project and we had met TIE officials on a number of occasions. I had met Willie Gallagher, I met David Mackay and it was absolutely appropriate that I should meet Richard Jeffrey.

**Q. John Ramsay sent an email to Bill Reeve and David Middleton on 29 July 2009 to tell them about disputes between TIE and the contractors continued (TRS00017088). Transport Scotland were no longer sure of the final costs and not confident in what they were being told by TIE. It was noted that you had demanded an orderly conclusion to the current contractual difficulties. There is a theme running throughout this.**

243. There is a theme. The proper forum to consider these questions is, perhaps, today and also in oral evidence. When you are involved in these protracted discussions you face the issues of how do you actually exert the necessary control to get to a different outcome. Looking back on that, I think there were really only three options: apply the contract terms, end the contract or mediate and we were still in the phase of applying contract terms here.

**Q. These disputes continued after the Princes Street Supplemental Agreement; what was your understanding of why these disputes carried on?**

244. Differences of opinion about the effect of contractual terms.

**Q. And, again, in relation to what TIE were telling you, what did you think about the quality of the reports from TIE?**

245. I thought they were far too optimistic and they were increasingly getting unrealistic.

**Q. How did you know that?**

246. Because the project was not advancing, there was no tangible evidence of progress and no tangible improvement in the working environment that would suggest that that was the case.

**Q. You mentioned an orderly conclusion should be brought about, how did you envisage that would happen?**

247. By getting into an effective negotiating position to enable that to happen.

**Q. Did you have any thoughts at this time, when it was becoming very evident that confidence has been lost in TIE, that something radical in terms of your financial leverage could be done? A different structure perhaps, removing TIE and having Transport Scotland deploy their expertise? Did that start to formulate in your mind at this point?**

248. We have got structure there, TIE are the agents, they are involved in the contractual negotiation and were trying to make progress and that was right.

**Q. John Ramsay drafted a memo to the Minister for Transport in July 2009 advising him that negotiations between BBS and TIE had failed (TRS00017078, attachments TRS00017076 and TRS00017077). In that memo he notes that Bilfinger were demanding an overall sum of up to £100m to settle issues. TIE and the Council were to change strategy and start putting disputes through the contractual dispute resolution procedure. Richard Jeffrey told you the project could no longer be delivered for £512m and within the time expected. Ministers were to be**

**kept informed of developments. Was this the first time that TIE had indicated that the project could not be delivered within budget and timescale?**

249. Yes, but Richard Jeffrey had only been in the door a couple of weeks so I would be surprised if he was as definitive as that with me at the meeting on 7 May 2009.

**Q. When was the first time that TIE told you that the project would not be delivered on time and within budget?**

250. I am not clear exactly when that would be because it would not be clear to them. I suspect, when it got to the point of TIE formally stating that the project would not be delivered within the budget that I would have heard at about the time. I certainly do not have a recollection of Richard Jeffrey being definitive in this fashion.

**Q. Do you know why Bilfinger Berger were demanding £100m to settle all the disputes?**

251. Because they thought that they had a contract that entitled them to that type of sum of money and TIE disputed that, which is to say it was just another cut of the same issue.

**Q. There is another memo dated 3 August 2009, I wonder whether it is just a variation of John Ramsay's memo of July that we have just looked at (TRS00017098)?**

252. If I was guessing I would think that the memo that is dated July 2009 was a draft and I would not be surprised if that turned into the 3 August memo which is your document TRS00017098.

**Q. It was to brief you ahead of a meeting with Richard Jeffrey on 5 August. Did that meeting take place?**

253. I do not think it involved me as far as I can see. However, in a sense, the recommendations at the end of the memo of 3 August, give you a kind of summary of the choices that were available to us and how we had pursued them. The first recommendation states that over the course of the last few months TIE's strategy based on intensive negotiations and mediation had not been proved successful. The consortium were sustaining their demand for an additional sum of up to £100m. You can see that we allowed TIE to pursue their negotiation strategy to see how it went. In relation to the second recommendation, it states that the Tram Project Board agreed dispute resolution procedures on 29 July. I think it would be premature for me to have said to TIE that they could not negotiate hard, that they had to surrender now, that would have been premature. You have to allow that if there is a dispute resolution procedure in the contractual arrangement. I do not think I would need to take legal advice to satisfy myself that if such provisions existed in a contract and I decided to, essentially, up sticks and pull the Government's funding, that contractors would have a very strong case in court that we had not exhausted all means under the contract to resolve those issues. I am sure Transport Scotland would have taken legal advice before advising me on that point so you allow them to take their course in that respect. The third recommendation mentions the revised risk profile of costs, which is probably about the first time I would have seen numbers of that magnitude. . However, if the dispute resolution procedure was going to operate on the basis that TIE told me it was going to, and that they were going to get a great outcome, then those numbers would not be realised.

**Q. On 13 August 2009 Bill Reeve sent an email to you and the Transport Minister to advise on latest developments (regarding the dispute resolution process) with the tram project (TRS00017140). He warned that it was likely costs would exceed £545m and that the project would not be completed until 2012. You wanted an assessment of the estimated costs and timescales and its implications and Bill Reeve was to prepare a note. I think John Ramsay actually prepared that note and his note is TRS00017151, dated 21 August 2009. Ministers were invited to note that**

**until the formal dispute resolution processes were complete there was insufficient certainty around what these increases in cost and programme would be.**

**How had a situation arisen where nobody knew how much the project would cost or when it would be delivered?**

254. Because there was a dispute between the contractors and TIE about the meaning of the contract.

**Q. Did that cause any concerns to you in relation to whether the oversight and control arrangements that Transport Scotland had were they adequate? Did you think they were adequate?**

255. It comes back to what we discussed earlier that my concern, by that stage, was that our £500m, out of £545m, would be buying less than it should have done.

**Q. On 14 September 2009 Ainslie McLaughlin sent an email to David Middleton and Bill Reeve (TRS00017238). In that email Ainslie McLaughlin said that he had spoken to staff from Bilfinger Berger ostensibly about the M80 but talked about tram issues as well. Bilfinger Berger had said the cost of the project would be at least £700m and that there was still a considerable amount of uncertainty. Bilfinger Berger wanted Transport Scotland to take over the project and for Transport Scotland staff to be seconded to TIE. Ainslie McLaughlin's view was that the contract had completely broken down. There was a suggestion that Ministers could become involved depending on the outcome of the dispute resolution procedure. Were you made aware of these views?**

256. I do not recall ever seeing that note.

**Q. Were you advised that the end of the dispute resolution procedure might be a good point for Ministers to become involved, depending on its outcome?**

257. Obviously we would be assessing the landmarks we were reaching at all times to determine when it was appropriate for us to make a decision about our next step.

**Q. What dispute resolution outcomes would be necessary for Ministers to become involved in the project? What is Ainslie McLaughlin suggesting in his email?**

258. I think, ultimately, where we ended up in the latter part of 2010 is a product of that analysis. I had a conversation with the leader of Edinburgh City Council when I told her that she had to go to mediation. It was not a discussion about whether we should go to mediation it was a conversation to say you are going to mediation. You could quite fairly say to me that there is quite a long time between October 2009 and October 2010, but there would still be contract dispute resolution processes going on to try to make progress. It was a question at what point do we accept it is not working and do something about it.

This was an example of officials thinking through our three options that I referred to and considering what was the most likely route to delivering the project. This account from Ainslie McLaughlin would be a snapshot of an ongoing process of which there would still be steps to be taken before we could come to any conclusion about what was the right way to proceed.

**Q. Did you know that Bilfinger Berger was keen for Transport Scotland to take over the project?**

259. No, I do not think I was aware of it.

**Q. Why would they want that to happen?**

260. They probably lost their appetite for dealing with TIE. At the same time as this was going on, Ainslie McLaughlin was leading the building of the M80 which was done by Bilfinger Berger.

**Q. What was your experience of dealing with Bilfinger Berger in relation to the M80 project?**

261. Fine, because the contract was to build a motorway from here to there, with five junctions, according to the manual, at a fixed price. So everyone knew where they stood and we never had any bother with it.

**Q. It mentions there that Stewart Stevenson is to meet Bilfinger soon, presumably you did not go along with him to any meeting with Bilfinger Berger?**

262. I think the first time I met the contractors was in November 2010.

**Q. On 22 December 2009 John Ramsay sent an email to the Minister of Transport which was copied to you (TRS00017326). It mentions a recent meeting with the Minister and TIE and the Council on 2 December 2009. At that meeting Richard Jeffrey said the optimism regarding improvement in relationships was not being reflected in construction activity. Final costs still remained unquantifiable. Ministers were made aware of recent dispute resolution procedure decisions going against TIE. TIE were to hold key meetings with Bilfinger Berger and Siemens in early 2010 and wanted to hold a subsequent meeting with Stewart Stevenson.**

**Did you have any views on the decisions coming out of the dispute resolution process at that time including whether they favoured TIE or Bilfinger Berger?**

263. The decisions reduced my confidence in the TIE strategy of negotiating hard based on a watertight contract. Again, this note, in a sense, illustrates the dilemmas that you face in the situation. On the one hand this note said there had been recent growing confidence that both parties would be able to improve the overall contractual position, so you have got an atmosphere of improving relationships. You think if parties can agree then let them get on with and let



them deliver the project. The next paragraph states that parties remain miles apart. You work your way through the project in the hope that improvements in relationships will get better outcomes.

**Q. What information were you being provided on the dispute resolution process? Were you being advised of individual outcomes or were you being advised generally as to what was happening?**

264. I would be told, for example, that there were five issues at stake and that TIE won one and Bilfinger Berger had won four, or something like that. Therefore, I would not know that Bilfinger Berger won in relation to Castle Street or whatever but I would know that, essentially, there was declining confidence in the negotiating strength of TIE.

**Q. Were Transport Scotland officials advising you that TIE were losing some adjudications on matters of principle?**

265. Yes.

**Q. Who would provide the information on the dispute resolution procedure to you?**

266. Transport Scotland officials. By that time it would have been David Middleton but it would be in a variety of different forms. It would be in notes of this type, it might be in other material, it might be in conversation. I would see senior officials every day of the week so they had plenty of opportunities to tell me things.

**Q. It mentions a meeting between the Minister and TIE on 2 December, did you attend that meeting?**

267. I do not think so.

**Q. On 21 January 2010 John Ramsay prepared a briefing for the Transport Minister, copied to you, for a meeting with Richard Jeffrey that was to take place on 25 January 2010 (TRS00010627). Again, you are being told that recent adjudications had been made mostly against TIE. Richard Jeffrey had held separate meetings with Bilfinger Berger and Siemens and these proved to be inconclusive. The Minister was advised that Transport Scotland thought that phase 1a would cost significantly in excess of £600m. John Ramsay recommended that Ministers consider issuing a Cure Notice. It appeared that Bill Reeve made some notes of the meeting (TRS00017371).**

**Do you know what was discussed with Richard Jeffrey at his meetings with Bilfinger Berger and Siemens?**

268. He would be trying to resolve the outstanding issues with a process to enable progress to be made on the project.

**Q. Did you attend that meeting on 25 January 2010 with Richard Jeffrey?**

269. I did, yes.

**Q. Do you recall what was discussed?**

270. I think Bill Reeve's note of the meeting is what I would have expected; we would be discussing whether to continue with a partnership approach with the contractors or an aggressive commercial approach. You get an insight into how the time elapses, Bill Reeve notes in his emails that TIE had "eight weeks to bring matters to a head since the last Tram Board meeting" and that they should report back to 10 March board meeting. So that would be us into March where we would review the project again and, before you know it, the months are disappearing in front of you.

**Q. In his memo of 21 January 2010, John Ramsay recommended that the Minister noted that TIE continues to experience severe problems with the**

**consortium in reaching an overall commercial settlement to the contractual disputes that are affecting the project and had been set a timescale of the end of March 2010 to achieve an overall settlement. Why was the end of March set as a deadline? What happens at the end of March?**

271. That will be the Tram Board meeting on 10 March, which is referred to in Bill Reeve's memo. It would have been in the context of that. It means that there will be further discussions after the board meeting in March.

**Q. Who set the timescale? Is that a Transport Scotland stipulation? Is something going to happen at the end of March?**

272. No. It is about trying to put some pace into things, we needed to set deadlines because you can see how quickly months disappear here.

**Q. There was a discussion about issuing a Cure Notice again. Did that ever come to pass?**

273. You have got various contractual provisions available to you such as negotiation, and the dispute resolution procedure. If you issued a Cure Notice you might not be able to sustain that in front of a judge if you have not used the dispute resolution process within your contract. There are judgements to be made here about what would be a legally robust route to take because you are about to get rid of a major contract if that is what you are going to do. These people do not collaborate lightly in their demise of projects.

**Q. I refer back to Ainslie McLaughlin's email in September where he said that they should await the outcome of the dispute resolution procedure before they think about taking any action involving Ministers or getting Ministers involved with the project. This is now March 2010 and adjudications are going against TIE. Was any thought given to Transport Scotland increasing its involvement in the project at that point?**

274. You are looking at a period that culminates in mediation. The issues are not about Transport Scotland's involvement, the issues here are about a fundamental contractual dispute and that is the issue that you have to resolve, so you do not resolve that by Transport Scotland becoming involved.

**Q. What is Ainslie McLaughlin talking about in September 2009 when he said "That might be the point for us to become involved if Ministers decided that was necessary"? Do you know what Transport Scotland officials are envisaging?**

275. We ended up in October 2010 going to mediation. What we were doing, over this period, is letting the arrangements of the contract, the arrangements of the project take their course. We were not interfering, we were not putting in different leadership, we were just letting TIE negotiate hard under the contract terms to protect their interests because they were acting on our behalf, as the public funders of this project, That approach continued and there were changes of leadership and we give those changes time and space, and continued to encourage resolution, but the issues still did not get resolved. I am then told that TIE's contractual approach had not been successful and that the remaining options were a Cure Notice or the dispute resolution process. As the contract provided for a dispute resolution process I thought that it should be used. They went through that process and TIE lost on a number of issues and the project was still not making progress. I then began to form the view that we were never going to reach a resolution under the contract. That is why, in the latter part of 2010, I had to say to the City Council this is not working, you need to go to mediation.

**Q. Just to clarify in terms of the evidence, the Cure Notice we were talking about, is that the Cure Notice that Scottish Ministers could issue against the City Council in relation to the terms of the grant agreement between the two of them? There would not be a Cure Notice in relation to the contract to build the trams? Is your evidence that issuing a Cure Notice**

**between you and the City Council would not have done any good because you were waiting for them to exhaust the dispute resolution process?**

276. That is exactly my position. A Cure Notice does not actually resolve the problems, the City Council just has a further set of issues to deal with in relation to the Cure Notice. Suddenly the Council's flow of money has disappeared and it is then left with a relationship with all the contractors through TIE. How does that solve anything? I would have a City Council that has been hung out to dry. It is important to understand where the Cure Notice fits into the process. The contract provided for a dispute resolution process which we had to exhaust before Ministers could issue a Cure Notice. We felt we would not be in a strong position without exhausting the dispute resolution process.

**Q. On 11 March 2010 David Middleton sent an email to the Permanent Secretary and others (TRS00010651). He wrote that you had met TIE staff on 10 March. You were uncomfortable with where the project now stood. You wanted Transport Scotland to "stay close" to TIE. It was hoped that TIE's approach would induce a shift in approach by Bilfinger Berger. Bill Reeve produced a note of the meeting dated 29 March which sets out the main points covered in that meeting (TRS00010646). Did you attend the meeting on 10 March?**

277. I must have done so.

**Q. Generally what was discussed at this meeting? Would Bill Reeve's note cover the points that were discussed in the meeting?**

278. Certainly the parts of the note 3 to 8 would reflect the contents of the meeting, yes.

**Q. In the email that David Middleton sent on 11 March, do you know what he means when he is talking about TIE's approach hopefully producing a shift in approach by Bilfinger Berger. What was he referring to there?**

279. He was referring generally to the fact that TIE believed they had seen a shift since January. It is, essentially, based on the view from TIE that they thought things were getting better. That gave us ground for optimism and therefore we would give it eight to ten weeks from 11 March, to around mid-May, to see if the new mood gave us progress.

**Q. Can you recall what TIE's approach was at that stage?**

280. TIE's approach was captured by Bill Reeve in his note. (TRS00017371). It was the more aggressive commercial approach associated with Richard Jeffrey. It was a slight change in approach, TIE were now choosing to fight over issues that they knew they could win in order to make progress, so that is what is being referred to in the note. We needed to give TIE time to see if that approach would work.

**Q. In the memo from Bill Reeve to you on 29 March 2010 (TRS00010646) he states at paragraph 10 he that if TIE formally advises that it is not possible to deliver the full scope of phase 1a within £545m, then it is open to Scottish Ministers to exercise some of the remedy provisions within the grant letter. He goes on to state that the first step would normally be to issue a Cure Notice. TIE had already told Ministers of its intended action to address the programme and cost issues. Therefore serving a Cure Notice would not achieve anything which has not already being done. How does a Cure Notice work? Do Ministers simply identify a problem and ask TIE to resolve it?, Or is there an independent verification of the plan that TIE are putting in place to address the problems?**

281. It is a case of us issuing a notice which we would expect somebody to comply with. I could have issued a Cure Notice that would have required the line to be completed to Newhaven. TIE would have come back to me and told me that they could not do that. So what I do then? Do I enforce the Cure Notice which stops the project in its entirety, therefore leaving the City of Edinburgh Council hung out to dry. Enforcing a cure notice would not help the traders of Leith Walk or Princes Street. It would not help the Council, it would be sued by

Bilfinger Berger and probably suffer financially as a result. Therefore, a Cure Notice was an option but what would it lead to? A Cure Notice essentially requires the Council to tell me how they are improving progress on the project. They can give me that information without me having to expose the City Council to enormous legal risk, which I think would be indefensible for a Minister to do.

**Q. Do you think the grant conditions were suitable for a project of this type?**

282. Yes, because they were based on a finalised business case and an expectation of the Government being a part funder of the project. That part funding arrangement was judged by the promoters of the project to be satisfactory within the context of that business case, so the grant conditions were suitable. I think the issue which arises is what should the £500m provided by the Scottish Government have paid for because it paid for a lesser proportion of the trams than intended?

**Q. The memo mentions the Funders Oversight Group. What was the purpose of the Funders Oversight Group? Why did Transport Scotland attend that?**

283. Simply to recognise we were going into a different phase here where cost was going to go over £545m, so it was important that our position was properly understood in that context. By properly understood, I mean that it was to be clear that we were not providing any more money.

**Q. And that was the only reason that Transport Scotland had a position on the Funders Oversight Group?**

284. Yes. It was important that Transport Scotland ensured that our financial contribution was being used appropriately, which was their duty in terms of the SPFM. Transport Scotland, on my behalf, had to be assured about the appropriateness of the use of the £500m but they also had to clearly convey that the Government was contributing no more money to the project.

**Q. In the email from David Middleton dated 11 March 2010 (TRS00010651) it was mentioned that you wanted Transport Scotland to stay close to TIE. What does that mean? How was that to be done?**

285. We have gone through endless transactions of how we are keeping tabs on it, keeping dialogue, pressing them to get to destination points.

**Q. On 10 May 2010 Bill Reeve sent you an email telling you about the two-pronged approach to dealing with Bilfinger Berger (TRS00010718). TIE were going to try to obtain a guaranteed maximum price for a truncated route option, but they also had a parallel work stream in which they are looking to terminate the contract. Bill Reeve stated that it is going to be publicly confirmed the project would not be delivered within the budget and on time.**

**What were your views on TIE's two-pronged approach to the project? Did you think it would result in success at that time? Were you aware of this approach?**

286. Yes. In a sense I just view this as part of the progress to the November 2010 requirement for mediation. The acceptance of a guaranteed maximum price strategy represents a change in approach by TIE. TIE's hard line contractual strategy to force the contractors to deliver the whole line for a fixed price has now been abandoned. That is a major shift of position for TIE and, at that point, you are then looking at different options as to how this project might be successfully delivered. In all honesty, a contract termination process, with Remedial Termination Notices etc, etc, would result in parties being in court for years with the city half dug up. Therefore, you might serve a termination notice on the contractor but that does not get anyone on site to complete the project and it does not keep you out of the courts for several years. You therefore need to be pragmatic, which was the reason for the guaranteed maximum price strategy. I thought the guaranteed maximum price strategy was the best



option. It is the termination strategy was undeliverable because you would blight the city for years.

**Q. Did you tell TIE that?**

287. I do not know if I expressly told them that but David Middleton would have had to come to me to get consent for a contract termination process. On the basis of what I have said, I would not have agreed to such a strategy, which is why we ended up in mediation in November.

**Q. What were your thoughts on where this project would end up at this stage?**

288. Costing a lot more than it was supposed to and realising, by this point, that the original contractual position had now been deserted. I had given TIE from the spring of 2009 to spring 2010 to pursue the contractual options and this note tells me that has failed. We then had to try to get to a guaranteed maximum price which obviously meant the price would be higher than what was envisaged. That says to me the game's up and from there we end up in mediation.

**Q. In terms of the truncated line proposal, did Ministers have any input into that idea, before it was pursued with Bilfinger Berger? What input did Ministers have in relation to that proposal?**

289. I would have thought that we would have seen material which would have suggested that truncating the route might be the only way it could be brought in within a reasonable financial margin.

**Q. Did TIE propose a truncated line or did Ministers make the proposal?**

290. TIE would have proposed that.

**Q. It is obviously a material part of the grant that the project, as was defined in the grant, was the line from the airport all the way round to Newhaven, so this was a material variation which would have entitled Ministers to terminate the grant at that point. There was obviously a tacit agreement from Ministers that you were willing to accept a truncated scope and that that would not endanger the grant arrangement?**

291. Correct. I do not think we were as far advanced as 'consent' but our accommodation of this was clear.

**Q. On 17 June 2010 John Ramsay sent a briefing ahead of Ministers' meeting with Transport Scotland and TIE on 21 June 2010 (TRS00010721 and TRS00010722). It mentions that a meeting between Ministers and TIE took place on 10 March. It is noted that at that meeting you made it clear that the current position was unsatisfactory. There was disagreement over the contract and severe delay with no agreed completion date.**

**On 21 June 2010 the meeting took place between you, the Minister for Transport, TS, CEC and TIE (CEC00263295). You conducted the meeting by directing questions at TIE personnel mostly on Carlisle mechanics and timing.**

**Can you explain what was discussed at that meeting? This was to do with Project Notice and Project Carlisle. There was also discussion of the Gogar Station.**

292. The Gogar Station is the easier part of it. The Parliamentary resolution of June 2007 required us to support the tram project but it required us to come back to Parliament with an approach that addressed the issues raised by the Auditor General on the Edinburgh Airport rail link. I cannot remember when, but probably later on that year, we would have gone back to Parliament with a proposal which was for a Gogar Station. Given that the trams were going ahead, a Gogar Station, which would provide the connectivity to the Fife line,

would be an easy connection from the Fife line via the trams to the airport. It was an airport rail link at a lower cost. However, I was concerned to ensure that the building of the station happened contemporaneously with the development of the tram line. There was a bit of difficulty about that because there was a concern about the impact of station construction work on the tram route. Ultimately, we had to accept that the construction of the Gogar Station would take longer. At that stage I would have been wanting to progress the Gogar Station because that was part of my Edinburgh Airport rail link.

**Q. Did the Gogar Station cost the tram project money beyond what was envisaged?**

293. The Gogar station was not included in the £545m. It was a completely separate cost. I recall that there were some financial implications for the trams project in relation to the Gogar Station project, but it was handled completely separately from the tram contract and paid for by the Government. This was never part of the tram project but it had some site implications.

**Q. There were worries I think from TIE that plans for the Gogar Station would cause more difficulty with the contractors?**

294. Yes, and that is why the station was not built within the timescale of the tram project.

**Q. So at this point in time the termination option and the maximum price truncated route option, are being pursued by TIE during 2010. What was happening with the project at this stage? What did you understand was happening? What were your views on what was happening?**

295. Bill Reeve's note of 10 May outlines the Project Carlisle, the truncated route option, and Project Notice option, the termination process. We had now departed, by my tacit acceptance, from the original concept and we were now

considering our options. We were working out what to do and what are we were prepared to as accept.

**Q. You have indicated that it would be highly unlikely you would have accepted a termination option, so would that be fair to say that the only other option would be the truncated route?**

296. In my mind that was the case because I could not work out how to deliver the project otherwise. I would probably have shared it with senior officials in Transport Scotland. Richard Jeffrey states in his email in CEC00263295 that "Swinney did not directly express a view on Notice or Carlisle, but body language etc seemed he understood the risks with Carlisle". That summary is wrong. I would have had worries about Carlisle because we would truncate the route, all these poor folk in Leith Walk have had a lot of misery inflicted on them for years and they still would not get a tram so that meeting was not easy.

**Q. What were the risks with Carlisle?**

297. I think the principal risk I would be concerned about was the loss of strategic opportunity for Granton, the connectivity, that would have linked that area more readily to the city and the airport. We would lose a tram line that really would have gone quite a significant distance and taken in a lot more communities. My second worry was Leith Walk and the fact that people had had to endure a lot and had no benefit for it. Thirdly, this would not look good politically. Those were the risks with Carlisle. The risks with Notice I have kind of talked about, I could not conceive of a result from Project Notice that would not be protracted legal situation, a construction hiatus in the city and significant reputational damage.

**Q. CEC00224208 is a report to CEC's Internal Planning Group. On page 4 of that report it is mentioned that you were meeting with Richard Jeffrey and David Mackay on 28 July 2010 to discuss Project Carlisle. There is a further email (TRS00010824) which contains background information for that meeting and lines to take for the meeting. Ministers wanted the**

**Gogar tram stop to open at the same time the tram system opened. TIE were worried it would complicate negotiations with Bilfinger Berger on a resolution regarding Project Carlisle.**

**What is your understanding of the effect of the Gogar station and negotiations with Bilfinger Berger? Was there any effect?**

298. None. Those were Transport Scotland and TIE discussions. I would be asking for the Gogar station but TIE would be asking us not add something else into the mix.

**Q. This meeting comes a month after a meeting in June. What was being discussed? Why is there a need for a meeting a month later? Is it just the Gogar issue or are at this point are you in contact with TIE officials on a monthly basis?**

299. Not on a monthly basis. It just so happens that there is a lot happening here. The project is at a critical point, quite clearly the project is changing direction and I tacitly accepted that by not objecting to the truncation option so we are guiding our way through what decisions are to be taken.

**Q. TRS00010824 mentions you have a view on timing; what was your view on timing?**

300. I would have been pressing for the Gogar Station to open at the same time as the trams. But I conceded the point that it could not be done.

**Q. On 29 July 2010 Anthony Rush sent an email to Andrew Fitchie (CEC00337630) in which he said that he agreed with you when you said that not setting aside “the 80.13/34.1 issue” and getting on with the works was “a sign of bad-will/faith by BSC”. Can you explain what was meant by this statement? Do you know what was going on at this point?**

301. No, I cannot explain it.

**Q. What did you think, generally, of Bilfinger's behaviour at this stage in the project?**

302. They were quite clearly dug in, so they were in a pretty adversarial relationship with TIE and had been for some time. They had obviously decided that the contract was costing them more money than TIE were prepared to spend, given the nature of the contract agreed, and they were going to dig in for it.

**Q. On 4 August 2010 David Middleton (DM) sent an email to Bill Reeve, copying in you and the Transport Minister (TRS00010867). Bilfinger Berger had just made an offer which would mean a cost of £660m to complete the line from the airport to St Andrew Square. TIE would not accept that offer. You noted this email and wanted David Middleton and Stewart Stevenson to be involved in regular dialogue with TIE and Richard Jeffrey about where the project is heading.**

**Do you know the circumstances of this offer and TIE's rejection of it? Do you know why TIE rejected it? What were your views of Bilfinger's offer? Were you aware offers like this were being made?**

303. Yes. Essentially we would still be in the moment, you can see from the email. David Middleton wrote that Richard Jeffrey sought an urgent word this morning. The offer by Bilfinger Berger to complete airport to St Andrew Square was about £100m away from what TIE thought reasonable. So you had Bilfinger Berger saying £660m and TIE believing it should be £560m. Again, at this stage, TIE, closest to the project, were telling us that this was far too much money to pay for the line to go to St Andrew Square. I wanted Transport Scotland to stay close to TIE and see what offers are being made.

**Q. Were Ministers giving their views on what offer should be accepted or not?**

304. As I remember that period there was still a view, from TIE, that if we were going to get a truncated route, it was tangible to get that close to £545m, which is what this note from David Middleton would substantiate, but Bilfinger Berger were offering £660m. Therefore, Ministers would have told TIE to pursue their view and get a truncated line for £560m. We were supporting TIE in their endeavours to get an offer closer to £545m. Why should the public purse be paying £100m more than our agents thought should be the case. In retrospect, obviously, that would have been a good deal.

**Q. Were any offers made by Bilfinger Berger that you told TIE were unacceptable, or that they should accept?**

305. Not that I recall.

**Q. On 16 August 2010 John Ramsay sent an email to Bill Reeve attaching draft text for further advice to Ministers for a ministerial decision (TRS00017806 and TRS00017807). The memo mentions that the next meeting with CEC and TIE will be on 26 August 2010. In light of the difficulties and uncertainties as to scope and cost, Ministers are asked to consider whether it is appropriate to continue to provide financial support to the project under the terms of the Grant Agreement. The project is no longer capable of being delivered within the terms of the Grant Agreement.**

**Did you receive this memo? It is just dated August 2010 and we cannot seem to find the final copy of it.**

306. I am not sure if I did.

**Q. Was consideration being given to action being taken under the Grant Agreement at this point? This is August 2010.**

307. None of the issues will have changed in that respect from what we discussed earlier.

**Q. On 28 September 2010 you requested a comprehensive update on the trams project (TRS00018048). Again, it notes the meeting on 26 August 2010 which you attended. Did you attend the meeting on 26 August?**

308. Yes.

**Q. Email correspondence in TRS00018059 noted that a meeting was to take place on 7 October. Did you attend that meeting as well?**

309. Yes.

**Q. Can you recall what was discussed at those meetings? What was the purpose of them?**

310. This is me looking very carefully and closely at where the project is going and we have got to the point where I am thinking that the contract dispute resolution procedures are getting us nowhere. The project was not progressing and it was very clear that the project could not complete to Newhaven, so what were we going to do? This is me forming a view by speaking to the relevant parties. First of all going to TIE and the City Council, subsequently I see the contractors. I then see the City Council again and this is me forming a route to mediation because I am taking the view that provisions within the contract for dispute resolution look to me to have been exhausted.

**Q. An email from John Ramsay dated 11 October 2010 (CEC00111694). noted that you had raised concerns at the meeting about mobilisation payments made to the Bilfinger Berger consortium. Can you explain the concerns you had regarding mobilisation payments and were your concerns ever resolved to your satisfaction?**

311. What that looks like to me is Richard Jeffrey had suggested at my meeting with him that £30m or so was being paid in excess of the value of work. I wanted to understand that why that was the case. John Ramsay therefore sought



information from Stewart McGarrity. He, essentially, disproves the points suggested by Richard Jeffrey to me at the meeting.

**Q. So you were satisfied with Stewart McGarrity's response?**

312. I did not see Stewart McGarrity's response, but my officials in Transport Scotland will have been satisfied with what they had seen. Mr McGarrity said that there were no additional advance payments, so he refuted what Richard Jeffrey had actually led me to believe and you wonder why my confidence went up and down.

**Q. On 8 October 2010 Richard Jeffrey sent an email to Tony Rush and David Mackay (CEC00179915) in which he said that the consortium wanted to meet and that Bilfinger Berger wanted out of the contract but that Siemens and CAF wanted to stay in. There was the prospect that a deal could be done. Tony Rush responded saying that there would be an EU law hurdle and that your agreement to ignore the regulations would be required.**

**Were you ever consulted about this possible deal that Bilfinger Berger would leave the consortium and what is the EU law hurdle that he is referring to?**

313. I certainly heard discussions about the possibility of Bilfinger Berger leaving the consortium. The EU hurdle thing just leaves me gobsmacked. Anyone with an elementary understanding of the Scotland Act 1998 knows that my ability to agree that we can ignore regulations in EU law is needing to go on an elementary course so I have no idea what that point is about. This is around about a time where, clearly, there is uncertainty about where the project was going and whether Bilfinger Berger would stay or not.

**Q. Did Bilfinger Berger want to leave this project?**

314. I heard talk of that nature but at no stage did I have anything put in front of me saying that they are taking any steps to get out or are raising a legal action to protect their interests or anything of that type.

**Q. On 8 November 2010 you met with Bilfinger Berger and Siemens at St Andrew's House. There was a briefing for that meeting (TRS00011272). It advised that TIE were of the view that termination of the contract was now all but inevitable and you have been asked to waive a requirement under the grant conditions to give Ministers 30 days' notice before exercising any rights to terminate the contract. It is apparent that you saw a letter from Bilfinger Berger to the Council outlining problems from the contractors' perspective (TRS00011188).**

**What was then discussed at the meeting? Was termination discussed at the meeting with Bilfinger Berger?**

315. No.

**Q. What did you discuss with Bilfinger Berger and did this letter to the Council from Bilfinger Berger form the basis of that meeting? That is the letter dated 13 October 2010 (TRS00011188). Did this letter prompt the meeting?**

316. I think when I probably saw this letter I would have realised that I better meet the contractors, given that I was getting to the point where something was going to have to give. Mr Stevenson had met them, but I had not met them, it was part of my approach not to meet them but I felt I had to get an understanding of their position, so that would probably have prompted me to initiate the meeting. I cannot be absolutely certain if I initiated the meeting or if they made some approach, but it was an appropriate time for me to meet them given I had been thinking that something had to be done.

**Q. Can you recall what was discussed at the meeting? What did the contractors say to you?**

317. They basically would have given me a tale of doom and gloom about TIE and all their concerns about TIE and I would have spent a lot of time listening. I would probably know a bit about what they were doing but, fundamentally, it would be them telling me their perspective.

**Q. Was this the turning point? What was the outcome of this? What did you decide to do after this meeting?**

318. I decided to get the City Council in and tell them they were going to go to mediation. It was not a turning point for me, I was getting close to a turning point for some considerable time. A year had been given to exhaust contract dispute resolution mechanisms that ultimately did not work. There then seemed to be a prospect of a negotiated settlement but TIE were still telling me that we should not give the contractors an inch. I still saw limited progress on the project so I was considering options. The termination option was not a great option for the public sector because we would be left with the implications, so the options were negotiation or mediation. I judged that this was just going to end up in a huge legal process with enormous reputational damage for the city and physical damage for the city without the issue being resolved.

**Q. What did you learn at that meeting that you did not know already?**

319. I probably just learned about the depth of the challenge of resolving these questions.

**Q. Was there any discussion in this meeting about mediation as a way forward, or were you just listening and considering it afterwards?**

320. I was pretty much listening to what the contractors had to say. I think that was the approach that I had decided to take in advance. I certainly do not recall any conversation about mediation.

**Q. Did you get any indication that the contractor was aware of the relative weakness of the termination option or was it just a surface level discussion of individual issues?**

321. They certainly would not have expressed that to me but I would have deduced from it that a termination option would not have been uncontested, which I kind of knew beforehand, but it was pretty clear to me that that would be the case.

**Q. Who attended that meeting with Bilfinger Berger? Did Transport Scotland officials attend the meeting?**

322. They would have, yes.

**Q. Do you know who attended from the contractors' side?**

323. No I do not.

**Q. You then had a meeting with Jenny Dawe and Tom Aitchison of the Council on 16 November 2010 (TRS00011262). You told them that you were concerned that terminating the contract would plunge the project into limbo and lead to years of legal wrangling. There was agreement that some sort of deal should be struck. There was a suggestion of mediation and that Tom Aitchison would look into that. Was that the first time that mediation had been suggested as a possibility?**

324. I think in amongst the various stages of discussion over time the theoretical possibility of mediation would have been part of previous discussions. However the Council was confident in their contractual position, as were TIE, so they were allowed to take their approach.

**Q. Assuming mediation had been discussed before, what was the reaction from Jenny Dawe and Tom Aitchison?**

325. I think they were steadily becoming resigned to the fact that that was inevitable but the conversation with them, as I recall it, was that this strategy was not working so mediation was going to have to be pursued. I told them they had to go to mediation.

**Q. What was the outcome that you were looking for? What did you envisage mediation would do?**

326. Enable the project to be completed because it could not be completed without an awful lot of heartache, legal difficulty, damage to the city and inconvenience to the residents of the city and visitors for a prolonged period if we did not do that.

**Q. Were you resigned to the fact that completion would probably be the Project Carlisle proposal, the airport to city centre?**

327. I am not sure at what point we formally confirmed the truncated route, but I was resigned to it, yes.

**Q. On 5 July 2011 Sue Bruce sent you a letter (TRS00011647). She asked for permission to treat additional monies raised from non-domestic rates differently from other councils in order to meet the funding shortfall. What were your views on the matters raised in this letter in order to give the Council some extra funding? What did you do in response to that request?**

328. I think I indicated to the City Council that we were prepared to discuss with them how they might address the financial shortfall by means such as that but I do not recall giving a definitive answer to Sue Bruce.

**Q. So you cannot recall whether they got what they were looking for?**

329. No. We would have had a discussion with them about how they could raise the money to deal with that.

**Q. There was a BBC documentary called 'The Great Tram Disaster' aired in 2011 in which you said that the information provided to you by TIE was "rubbish" and that you were misled by TIE.**

**330. Can you explain these comments and summarise them? By whom were you misled and in what way and when?**

331. I think I have set out to you how I felt that I was given false optimism about the way in which TIE were pursuing the project and reassurance that things would be secured, that decisions could be delivered, that there was no need to worry. It proved to be very weak and poor information, that is what I meant by that.

**Q. Looking back was there a point in time when you thought you were being misled and when was that point in time?**

332. I feel I have shared with you the frequent occasions in which my confidence in the quality of the information that I was being given was undermined. I gave TIE and some of their officials the benefit of the doubt on a number of occasions. TIE had set out legitimate approaches to resolving some of the issues which, in my judgement, were part of the contractual process, and they were entitled to pursue those courses of action.

**333. AUDIT SCOTLAND REPORT – FEBRUARY 2011**

**Q. Audit Scotland undertook an audit of the project in February 2011 and there is an email (TRS00016853) which is a briefing from Campbell Docherty to you about that report with lines to take dated 1 February 2011 (TRS00016853). There appears to be a concern within Scottish Government about the report as it implies that coming off the project in 2007 was a mistake. The report states that there may be merit in**

**Transport Scotland becoming more involved in the project, given its infrastructure project expertise. A number of concerns and responses to them are contained in the report given to you by Campbell Docherty.**

**Generally what were your views on the Audit Scotland report in 2011?  
Did you think it was a fair report?**

334. It goes through the various issues that are involved in the project and, obviously, as with all Audit Scotland reports, we considered them carefully.

**Q. Did you agree with the conclusion or the implication that perhaps the Scottish Government withdrawing from the project in 2007 a mistake?**

335. No, I do not agree with that for all the reasons I have given about the importance of clear project leadership.

#### **MAR HALL MEDIATION – MARCH 2011**

**Q. An email from John Ramsay dated 21 December 2010 stated that TIE and BSC had agreed on a mediator and were moving towards mediation. In response to that email you offered the services of TS in relation to the mediation (TRS00011353).**

336. **Why did you offer the services of Transport Scotland in relation to the mediation?**

337. To try and get the project fixed.

**Q. What services were Transport Scotland able to provide in relation to the mediation?**

338. I thought the experience of Ainslie McLaughlin who had dealt with Bilfinger Berger on the M80 contract, and who had successfully delivered a number of

projects, would be well placed to build a confident environment for mediation to take place, and that is what he did.

**Q. In terms of the services Transport Scotland were providing to the mediation, building that confident environment, is it still the case that Transport Scotland are on the side assisting with the City of Edinburgh in this mediation?**

339. Yes, the City Council are, essentially, the project sponsors and the dispute is with them and the contractors. Transport Scotland was trying to facilitate a resolution between them.

**Q. What involvement did you have in arranging mediation? Did you suggest it to the Council and what further involvement did you have?**

340. My function was to essentially make sure the mediation happened and I offered the services of Ainslie McLaughlin to ensure that it took place. We are into the territory of a principal funder requiring others to participate and I did not have to make any efforts to get the contractors to sign up to the mediation, because it was clear that they were keen to get to a resolution.

**Q. Was Transport Scotland in dialogue with the Council or TIE in working up a strategy for mediation?**

341. I do not know.

**Q. Do you know if there was any strategy for mediation on the Council's side?**

342. I think you would have to ask the Council that question.

**Q. You mentioned you did not see a need to get the contractor to sign up to mediation, is it the case then that you felt there was a need to get the Council to be persuaded to mediate a solution?**



343. I certainly think the Council needed some prompting to do it. To be fair to the Council, there was no resistance to doing it but I think it had to be prompted to make it happen.

**Q. What were the Council's concerns about mediation?**

344. It was not that they expressed concerns, it was that they had a contractual position, they had the knowledge that if they departed from that contractual position, which I thought had happened quite some time before, that it would likely involve change to the project and more money. I suspect that would have been on their mind but I could not see how the difficulties could be resolved in the way that the project was currently constituted.

**Q. Did Transport Scotland or did Ministers have objectives for the mediation? What were the objectives of the mediation? What did you envisage the objectives to be?**

345. To get the project finished.

**Q. At any cost?**

346. Not at any cost but it certainly was not going to get any more money out of the Scottish Government.

**Q. Do you know who attended the mediation to represent Scottish Ministers? Did you attend?**

347. I did not attend. Ainslie McLaughlin would certainly be there and that would be the candidate I would be interested in making sure was there.

**Q. Why were Transport Scotland officials present at mediation? What purpose would be served?**

348. To try to facilitate the mediation and bring it to a conclusion but one that was acceptable to all parties.

**Q. Were you kept up to date of developments during mediation?**

349. Yes.

**Q. Who provided those updates?**

350. Transport Scotland officials.

**Q. Were you required to sanction courses of action or possible deals to be done?**

351. I do not recall that.

**Q. The mediation resulted in a settlement agreement which took some months to reach, but heads of terms were agreed on at Mar Hall. The project budget went up to £776m as a result of Mar Hall for a truncated route. Do you know how that figure was reached? By what process was that figure reached do you know? Where did it come from?**

352. It would have been undertaken by an assessment of the relevant cost information provided by the contractors. The cost information would have been scrutinised and discussed within the mediation process as to what was judged to be valid or invalid. However, as I was saying, I was not present in the room so I cannot testify to the process.

**Q. Were you advised on the £776m figure during mediation? Were you advised that this was how much it was going to cost?**

353. I cannot recall the moments at which information became clear to me about it but my agreement about it would not be required, given the fact that there was no further call on the Government's funds that was going to be made.

**Q. Was there a risk that the higher the figure went the more of a burden it would be on the City of Edinburgh Council? You have spoken before about the Council being saddled with a large debt and that being of interest to Scotland generally/ Was there any interest in this figure going up from the perspective?**

354. The City Council were the promoters of the project and we had made clear our financial commitment and it was up to the Council to determine the basis upon which it could resolve this dispute on financial terms that it considered to be acceptable or not, it was their decision.

**Q. You touched on how the figure was reached, was it a case of the contractor making a proposal and the Council accepting it?**

355. I was not in the room so I cannot answer that question.

**Q. Would Transport Scotland officials have been authorised to assist the City Council to assess whether £776m was a realistic number in terms of the settlement?**

356. That would be a matter for the City Council to determine because they have their own responsibilities for fiscal accountability in terms of the Scottish Public Finance Manual so they have to consider these issues, that is their proper role to undertake that assessment.

**Q. Do you know the extent to which Transport Scotland officials were involved in agreeing the figure?**

357. I do not know.

**Q. What are your views on that settlement of £776m for the truncated route?**

358. It is a very significant cost for a truncated route.

**Q. In the next question I refer back to a previous email (TRS00010867) which was an email from David Middleton to Bill Reeve on 4 August 2010, copied to you, which notes that the consortium had just made an offer which would mean a cost of £660m to complete from Airport to St Andrews Square. TIE would not accept that offer. That is a few months before Mar Hall and it is roughly the same route that was agreed at Mar Hall for £776m.**

**Do you know where there was such a gap between those two figures?**

359. I do not know.

**Q. With the benefit of hindsight do you think that mediation should have been started at an earlier stage?**

360. What we have gone through today is an extensive series of moments and phases within this project where the judgement of those responsible for taking forward the project was that they had a strong ground to pursue the line of argument that they were pursuing. TIE believed it had a strong contractual position, which enabled them to do that. In making a judgement about what is the correct approach to take in terms of the public purse, we had to weigh up those factors with the opportunity for mediation which would, undoubtedly, have broken the £545m ceiling. So the judgement has to be very carefully made between using your existing contractual provision to deliver the project within the financial parameters or going to mediation which was guaranteed to deliver the project for at a greater cost. That is a very difficult public finance judgement to make when you have not exhausted the contract provisions.

## MARCH 2011 ONWARDS

**Q. Moving on to the period after Mar Hall. TIE were removed from the project and the Council essentially took control of the project. It appointed external project managers Turner & Townsend to manage the project. There is an email to Ministers dated 17 June 2011 attaching a briefing ahead of your meeting with the Council on 21 June (TRS00011520, TRS00011521 and TRS00011522). That briefing mentions that the Council is reorganising the governance structure and is proposing to wind up TIE. Instead a new project management group will be created on which it is expected that Transport Scotland will be represented.**

**To what extent were the new project management and governance structures after Mar Hall instigated by the Scottish Government?**

361. It is difficult for me to give you an answer to that question because, by this time, I am no longer carrying portfolio responsibility. Alex Neil would be looking at these questions as Minister so it is difficult for me to say exactly what role the Government would have taken at that time.

**Q. Transport Scotland staff were, ultimately, seconded to the project to assist. Do you know what assistance they provided?**

362. They essentially will have replaced the type of role that was being taken forward by a number of personnel that had been on the project before, but I am not familiar with all of the detail.

**Q. Do you think it made a difference? Did it facilitate completion of the project?**

363. What it did was ensure that the agreement that was reached after Mar Hall was able to be implemented.

**Q. What were the benefits of greater Transport Scotland involvement in the governance of the project?**

364. I do not actually think there was any greater involvement in the governance of the project. I think some Transport Scotland people were, essentially, helping the City Council to deliver the project and there is a fundamental difference between those two things.

**Q. There was a Joint Project Forum established which was meant to replace the Tram Project Board did Transport Scotland sit on the forum ?**

365. I do not know the answer and, again, we are into territory where I was not carrying portfolio responsibility.

**Q. You can see from the presentation from the Council to Transport Scotland on 21 June 2011 (TRS00011521 and TRS00011522) that there was still a bit of negotiating to do with the consortium. There are still discussions of separation and grinding on to complete to Haymarket or St Andrew Square. Are you able to comment on what was going on at this point?**

366. It was the completion of the negotiation, I suppose, and the identification of what would be the best route and how that could be achieved.

**Q. So there was still a lot to be agreed then after Mar Hall is that correct?**

367. Yes, but Mar Hall had created a more effective context within which that could be resolved.

**Q. Do you know what contribution Transport Scotland or Scottish Government provided to the following negotiations following Mar Hall?**

368. I do not know.

**Q. Why do you think the project was completed after the Mar Hall mediation within the revised budget and programme? What factors contributed to its success do you know?**

369. There was obviously clarity about contractual provisions. Once there was clarity all the other extraneous behaviours and conflicts slip away.

**Q. There is another paper to Ministers dated 8 July 2011 (TRS00011674) updating them on progress and setting out governance options. I know you have said you had moved away from this project at this stage, you were in a different post, can I just confirm that this is to you?**

370. I am still the Cabinet Secretary for Finance but I did not have responsibility for transport projects, the principal issues around capital borrowing information, non-domestic rates incomes, deferral of other City of Edinburgh Council capital projects, lease or sale of surplus tram vehicles are all material to me in my finance responsibility, whereas other issues would be relevant to Mr Neil in his role.

**Q. Are you able to comment on the governance arrangements after settlement and how they differed to the arrangements before?**

371. We got into a phase where the operation of the contract was undertaken in a very different management climate within the City Council and, obviously, that brought with it different requirements to contribute to that process.

**Q. Are you able to be more specific about how Transport Scotland played a role in the governance of arrangements for the project?**

372. Experienced Transport Scotland personnel supported the city in taking forward the Mar Hall agreement.

**Q. How did those arrangements then differ from the previous governance arrangements?**

373. The City Council had delegated delivery of the project to TIE and they had decided to change that and to remove TIE from the project. They wanted to create a resource within the City Council which they asked us to contribute to, but they had changed their delivery mechanism by removing TIE.

**Q. What improvements did the new governance arrangements introduce in your view?**

374. I think there was a contract that was capable of looking forward.

**Q. And so were the governance arrangements themselves improvement?**

375. They got the project completed.

**Q. On the point of the new governance arrangements I know that it had moved to Mr Neil at this point, TRS00013761 states that CEC remained the client under the contract but Ministers hold the power to direct strategic project decisions. I know you were not responsible for that aspect but would you say that is a difference in terms of how it had been prior to it?**

376. Yes.

**Q. In August 2011 the Council made a decision to build a tramline to Haymarket only, not St Andrew Square. A letter was drafted in the light of that decision to the Council and stating that Ministers would not be prepared to release further funding in light of the decision (TRS00011809). The Council subsequently reversed its decision at a meeting the following week.**



**Were you involved in the decision that further funding would not be provided if the tram line stopped at Haymarket?**

377. I took that decision.

**What were your views on the matter?**

378. I thought it was a unilateral decision of the Council which was a material change to the contract to which we had not consented and we were not prepared to go along with it.

**Q. What are your views on withholding grant money as an effective mechanism through which to exercise control over the project?**

379. You can only withhold the grant money when you are able to foresee what the consequences of that action will be. I knew full well if I withheld money at that stage the Council would have to reverse its decision to stop the line at Haymarket. If I had made such a decision at any other stage of the project I would be condemning the city to years of litigation.

**Q. So you would need to envisage a course of action resulting from withholding the grant money?**

380. You would have to foresee a route that could be taken as a result of withholding grant money. There is no point in simply stopping the funding, where would we go next? When I withheld the grant money, I knew what would happen next, the City Council would have to reverse its decision because it was a contested decision. If I had stopped the money at another point the consortium would have sued the Council or the government.

**Q. On 2 September 2011 Ainslie McLaughlin sent a memo to ministers advising them on how Transport Scotland might take a more direct involvement in the tram project in order to provide a higher degree of**

confidence in its delivery (TRS00013310). It is mentioned that a take-over of the project where TS becomes the client was done on the Borders Rail and GARL projects. However that would be complex and time consuming and may lead to the contractor walking away.

Instead, in order to give TS a greater say in the running of the project, TS should work in partnership with CEC. A recommended solution was a variation of the arrangements put in place for the M74 and AWPR. On both of those projects Scottish Ministers were principal funder, as on trams, and the councils were clients for the various contracts, although Scottish Ministers were to be ultimate owners of the projects. TS exercised control of those projects through agreed protocols and TS teams provided direction and day-to-day management.

**Was consideration given to this model for Transport Scotland's involvement in the tram project in the summer of 2007? If not, why not?**

381. Because this was a local City Council project in which the City Council were the promoters of the project.

**Q. So this is a fundamentally different project from the ones that are mentioned in that memo?**

382. That is correct.

**Q. Was it ever considered as a solution when you became aware of problems in the project?**

383. There was a contractual arrangement in place and we have gone through the fact that the delivery agents of the project were confident in their legal position to effect the terms of the contract. We allowed TIE to exhaust their options in that process and, although the project was clearly in difficulty, we were exercising an influence to try to get it on to a better path within the framework

that had been agreed. Ultimately, we had to intervene to try to address the problems.

**Q. After this memo was sent, was an arrangement put in place for the tram project similar to the other projects, can you remember?**

384. I would have to refresh my memory on the exact composition of the mechanism, but I would imagine that the approach that was taken in relation to the tram project would have been similar to that suggested by Ainslie McLaughlin. Transport Scotland's input would have been more in supporting the City Council in taking forward the project through the provision of Transport Scotland staff.

**Q. TRS00012495 is a chain of emails containing correspondence between David Middleton, Ainslie McLaughlin and the Permanent Secretary dated 10 October 2011. It provides an explanation of your thinking and attitude towards the project as it progressed. That email chain was generated in response to a short paper produced by AM and attached to the chain (TRS00012622).**

**TRS00012622 is a paper that provides the current position on the tram project. It said a team of four TS people were now working with CEC project team. It mentions your appearance on a BBC documentary about the tram project. In the documentary you admitted that you had contemplated stepping in on a number of occasions and had come close, but the implication was that you relied on the assurances that TIE had given you.**

**In that email chain (TRS00012495) David Middleton said *"I don't think there was a 'mislead Parliament' moment but there did come a formal point when we were told the costs would inevitably exceed estimates (around March 2010) and JS reacted with more surprise and outrage than we thought. We had a very serious think about intervening but in the middle of a contractual dispute judged such a move impractical. After***

*that he told us to get quietly closer to Tie without shifting the formal position. Interestingly our considered intervention never surfaced". David Middleton goes on to say that you "wanted [the project] to succeed for Edinburgh, gave under the radar support to TIE and subsequently felt let down".*

*Ainslie Mclaughlin said that you gradually lost trust and confidence in TIE during 2010. Tie had led you to believe that TIE were in control and would ultimately deliver. Ministers were not in a position to test the advice that formed the basis of TIE's contractual strategy. "It was the breakdown in negotiations towards the end of 2010 and a subsequent meeting Mr Swinney had with Bilfinger that led him to encourage CEC to bypass TIE and go down the mediation route in order to try to break the deadlock. He also agreed to a greater supporting role from TS via the mediation. Our advice even at the point was to resist any further intervention until the mediation was concluded and in particular TIE left as a problem for CEC to sort out. The conclusion of that mediation and re-structuring process provided a natural point for Ministers to step in."*

**Insofar as these documents record events, and your actions and views at the time, are they accurate?**

385. I will go through them so that we are clear about that. The first bit is relevant to me as it mentions my appearance on a BBC documentary about the tram project. TRS00012622 notes that in the documentary I admitted that I had contemplated stepping in on a number of occasions and had come close to doing it, but I relied on the assurances that TIE had given me. I think that is broadly my position, I consider different approaches but, ultimately, I accepted the assurances that TIE had given me.

**Q. Did you consider stepping in on a number of occasions?**

386. I considered it but, as I have said, what could I do? There was a contract with dispute resolution mechanism, do we overturn that? If you overturn that you

are just opening the cheque book so you have got to allow it to take its course. What I think that comment summarises is my unease about the condition of the project, my unease at different stages, but ultimately, what do we do when we have a contract and contractual processes to follow.

In relation to David Middleton's comment in TRS00012495, I do not think there was any misleading, I can only assume that David Middleton was referring to any moment where a Minister has not told Parliament about information that they were aware of, certainly about costs being greater than were anticipated. I am not aware of any such moment because it is not absolutely crystal clear where we were heading on cost until probably around March 2010. The fact that the project would not be delivered within £545m was becoming clearer in the latter part of 2009 but I do not think it was crystal clear.

**Q. David Middleton goes on to say "Interestingly our considered intervention never surfaced". Can you comment on that? What was the considered intervention at that time?**

387. I think that was me, essentially, consistently telling Transport Scotland to keep a close eye on what TIE were doing. That is why I do not think the inference, in a number of the questions that you have put to me, that somehow Transport Scotland were not close to the project is not borne out by the documentation which shows what Transport Scotland were actually doing.

**Q. David Middleton's comment implies that some kind of proposed course of action could have been taken – "Interestingly our considered intervention never surfaced". That seems to imply that there was some form of action that could have been taken?**

388. No. I think you are reading that wrong. I would think it is about the persistent pressure we were applying to the project to get parties to reach a solution.

**Q. David Middleton said you “reacted with more surprise and outrage than we thought”. Do you think he took the view that you were expecting that the cost would exceed the estimates and he was surprised that you were that surprised?**

389. Probably, yes.

**Q. But just to be clear around about March 2010 you were suspicious that this project was not going to be delivered on time and on budget?**

390. Part of the difficulty and the challenge of all of this was getting to a point whereby people could be definitive about it. I think we have gone through material showing that Richard Jeffrey could not be definitive and said so; but it was kind of heading in that direction.

#### **STIRLING-ALLOA-KINCARDINE RAIL PROJECT**

**Q. Do you know why TIE was removed from the Stirling-Alloa-Kincardine rail project?**

391. Because it was not going well.

**Q. Did you think it was TIE’s fault that it was not going well?**

392. I was not absolutely certain it was TIE’s fault but their role contributed to the lack of project clarity and leadership clarity so undoubtedly there were too many cooks, which then influenced my thinking about what the proper structure for the trams project should be. I was anxious to avoid a situation where you had essentially two centres of influence leading the project, either the City Council or the Scottish Government, or, worse, both.

**Q. In terms of saying it was not going well could you expand slightly on what was going wrong with it?**

393. It was behind schedule and over budget.

**Q. This is not an inquiry into the SAK project but it is interesting that TIE's involvement in the project had some bearing on how the tram project was treated or on your views on the tram project. In the SAK project who was in charge of it, was it Transport Scotland, TIE or Network Rail?**

394. I think the local authorities were also involved in it as well, yes, because I think the sponsors of the project were Clackmannanshire Council if my memory serves me right.

**Q. So your opinion of TIE was informed by the performance in SAK?**

395. Partly, but what was of more relevance to me was the clarity about project leadership, that was of greater significance to me.

**Q. You will see there is an email from Richard Jeffrey to David Mackay regarding evidence given by you to the Transport Committee on 21 September 2010 (CEC00128947). You said that lessons had to be learned from SAK where it was thought that too many people were thought to be in control. I think you have explained what you meant by that. Have you anything to add to that?**

"from Richard Jeffrey to David Mackay" should be "from Mandy Haeburn-Little to Richard Jeffrey"

396. That sums up what I have been saying to you all day.

#### PUBLIC AUDIT COMMITTEE

**Q. SCP00000017 is a document of written questions on the Edinburgh tram project. In response to a question from Wendy Alexander (p.12) you said that information submitted to the PAC on major capital projects did not include information on the tram project because it was a project being delivered by a local authority.**

**Do you think that is a flaw in the system of review of major capital projects? If so, has it now been rectified?**

397. There is a distinction between the trams project and national projects. The Government takes forward national projects and we are accountable to Parliament for them. If a local authority is taking forward a major project, albeit one that we are the funders of, the local authority is responsible for delivering the project and should be accountable to its members. If I start saying to local authorities in Scotland that they have got to account to Parliament for a project then that is the first thing they would complain about. We have a range of projects that we commit to and should be accountable to Parliament for. But if a local authority is taking forward a project, albeit one that we are funding to a very significant extent in capital expenditure every year, it is a slightly different question.

**Q. In terms of accountability to Parliament for the expenditure of that amount of money, do you think there are ways in which it could be improved, do you think Parliament should be able to hold the government to account in relation to the £500m spent in this project?**

398. Of course. I was a Member of the House of Commons. The Scottish Parliamentary scrutiny of Government expenditure compared to the House of Commons scrutiny is night and day. The intensity of scrutiny in relation to budget provision, expenditure to budget, outturn, revisions to budget, and annual budget setting is all significantly greater in the Scottish Parliament than it is in the House of Commons. That is before you get anywhere near the Public Audit Committee. So I think there is a very strong accountability around these matters. In relation to the expenditure in relation to the tram project, Ministers were being held to account for our contribution to this project, and there were plenty of opportunities for Members of the Scottish Parliament to pursue those issues.



**Q. So you do not think that local authorities should be held to account for expenditure on projects?**

399. They are. They have got their own accountability arrangements that are presided over by the Accounts Commission. I think it is an interesting question about whether it should be accountable to Parliament for their expenditure. I think local authorities would have something pretty significant to say about that because they are already scrutinised by the Accounts Commission in that respect.

### **FINAL THOUGHTS**

**Q. How did your experience of the Edinburgh Trams Project compare with other major infrastructure projects that you have been involved with (both previously and subsequently)?**

400. Previously I had not served as a Minister until 2007, so I had not had intimate involvement in the management of such projects. As I said earlier, I lived through the Holyrood building project and I read, with care, Lord Fraser's Inquiry report and took part in the parliamentary debates about it. I thought that Inquiry was very effective and many of the lessons that were identified by Lord Fraser were part of my thinking in relation to the tram project. In other capital projects that I have been associated with, I think this Government has had a very strong record in relation to the delivery of capital projects within budget and within timescales. We have taken care to prepare the projects properly and to make sure that risk transfer was properly clarified in the contractual process and we have, therefore, been able to hold contractors to account and been able to deliver on those projects. That would be my reflection.

**Q. What are your views and what were the main reasons for the failure to deliver this project in time, within the budget and to the extent projected?**

401. I think undoubtedly the contract negotiation process did not provide a suitable framework within which a timetable and a budget could be assured. I think that was where the problems stemmed from. The City Council and TIE had a different interpretation of the contract to that held by the contractors, and everything spiralled from that.

**Q. Do you have any comments, with the benefit of hindsight, on how these failures might have been avoided?**

402. To agree to a contract that has a level and a degree of clarity that avoids that happening in the future.

**Q. Was the decision to withdraw Transport Scotland from active participation in the project after the vote in June 2007 a mistake, or do you consider that the outcome in relation to this project would have been the same if Transport Scotland had remained in the role it had prior to summer 2007?**

403. The issues here were about the quality and the effectiveness of the contract close process. That was an matter for the City of Edinburgh Council and TIE to take proper advice on, to enable themselves to be satisfied that they had done the right thing. That advice should have been made available to assure us, as funders, that that was the case. Therefore, I do not think participation on the Board would have had an effect on that and I reiterate the fact that Transport Scotland took extensive steps to protect the interests of the Scottish Government in the project through their persistent involvement in the project.

**Q. Before Transport Scotland came off the Tram Project Board there was an amendment made to the grant arrangement which meant that Transport Scotland would not review the project at the preferred bidder stage and would not review the final business case. Was that appropriate?**

404. Edinburgh City Council should be able to perform those roles which are essential in terms of the management of public finances.

**Q. There were a number of reviews carried out in this project at different stages. They consisted of Office of Government Commerce Reviews and Peer Reviews. Obviously the project encountered difficulties and ended up costing a lot more than had been budgeted for. Do you have any views on why that happened despite these reviews being carried out? There is perhaps an issue with the review process of infrastructure projects. Is there an issue with the review process?**

405. I have seen a number of Peer Reviews and Gateway Reviews of major infrastructure projects which have been very effective and very informative in ensuring projects are able to meet the expectations, so there may have been something weak about these processes in this case. I have seen plenty of good examples where projects have turned out well, they have had issues which were flushed out by the Gateway Reviews and they have got to a good outcome. I think, inherently, that review process is good but, obviously, I would have to accept that if it has not flushed out issues that are relevant in the tram project, then it may not have worked effectively in the circumstances. I do not know why the review process might not have worked effectively in this situation.

**Q. Have project reviews changed in any way since the reviews that were carried out in the tram project?**

406. I would not have thought there would be that much change but, again, I would come back to the fact that I can think of good value that has been generated by Gateway Reviews on other projects, so I do not have any lingering doubts about the effectiveness of that process.

**Q. Do you think any further improvements could be made to the review processes in relation to infrastructure projects?**

407. We certainly should be open to that but, again, I come back to the fact that I have seen very good review processes being implemented.



**Q. To what extent do you consider that project governance failures were a factor in the project exceeding its budget and its programme?**

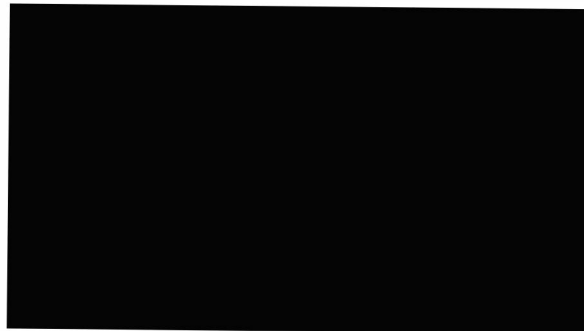
408. I think the problems that faced this project were the result of the contractual agreement.

**Q. I am not focussing on Transport Scotland's role here, but also TIE's or the Council's role, would you have any views on whether their role had an effect on the project?**

409. I certainly have highlighted a number of weaknesses that I think were existent within TIE and that is material to this.

**Q. Are there any final comments you would like to make that fall within the Inquiry's Terms of Reference and which have not already been covered in your answers?**

410. I think we pretty comprehensively gone through the issues. I have nothing further to add.





Deputy First Minister and Cabinet Secretary for  
Education and Skills  
John Swinney MSP



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22 February 2018

*Dear Lord Hardie,*

## **EDINBURGH TRAM INQUIRY**

During the course of my evidence to the Edinburgh Tram Inquiry on 23 January 2018 I had undertaken to come back to you on certain points. Those were:

- Whether or not it was my decision that Transport Scotland should take direct control of the Stirling-Alloa-Kincardine rail link project.
- What is was from Lord Fraser's report of the Holyrood Inquiry that shaped my views about the governance arrangements for the Edinburgh tram project.
- Whether my meeting with Bilfinger Berger in November 2010 was minuted.

I will deal with each in turn.

### **Stirling-Alloa-Kincardine Rail Link**

When giving evidence to the Inquiry I could not at that time recall whether it was my decision that Transport Scotland should take over direct control of the SAK project, because I was unsure whether this was something that had been set in train by the previous administration.

On checking the position with my officials I have confirmed that I made an initial visit to the SAK project site on 28 May 2007 as part of an initial review of the projects within my portfolio. I have also confirmed that on 27 June 2007 the then Minister for Transport, Infrastructure and Climate Change, Stewart Stevenson MSP, made a statement to Parliament that it was our administration's intention to implement a simpler project structure to strengthen governance and take the project through to opening in the spring of 2008. It is therefore clear to me that it was our administration which took this decision.

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Having newly entered office, no significant decisions were taken at that time regarding matters within my portfolio without my approval. I can therefore confirm that it was my decision that a revised project structure be implemented on the SAK project. Part of that revised structure involved Transport Scotland having a much greater role on the project, including the provision of a TS Senior Project Manager to support Clackmannanshire Council.

### **The Holyrood Inquiry Report**

As I said during my evidence, my view, in 2007 and now, is that clarity of leadership is essential on major projects such as the construction of Holyrood and the Edinburgh Tram. I had formed this view based on my observation of other projects, including Holyrood and Stirling-Alloa-Kincardine.

As I said, what I took from Lord Fraser's report was that there was ineffective project management and a lack of clarity about decision-making between the various players who were involved in delivery of the project.

Having looked again at relevant passages from Lord Fraser's report I note that, among other things, Lord Fraser:

- Heard evidence that, when construction management is used, it is necessary to have well-defined roles and responsibilities from the start, plus an experienced and efficient team with good leadership. (para 6.6)
- Identified the lack of clear lines of responsibility as between the Project and Architect as an issue. (para 8.31-8.32)
- Observed with regret that, in the parliamentary debate and the papers which informed it, mixed messages were sent as to the precise role envisaged for the Holyrood Progress Group. (para 10.41)
- Cited as "*another example of the blurred lines of communication that have plagued this Project*" the fact that Dr Gibbons acted as both the *de facto* leader of the Holyrood Project Team and sat as a member of the body whose role was to oversee him and his Team. (para 10.45)
- Recommended that "*Where civil servants are engaged on public projects, governance should be as clear as is now required in the private sector.*" (Recommendation 6 – pg 260)

In my thinking and decisions about the Edinburgh tram project, I did not have any of these specific points from Lord Fraser's report in mind, as I did not at the time recall the report at that level of detail. However, looking over Lord Fraser's report now in order to provide a response to the Inquiry, I consider these points to be the source of the impressions that I had formed about Lord Fraser's report – impressions which, in part, shaped my views about the governance arrangements for the Edinburgh tram project.

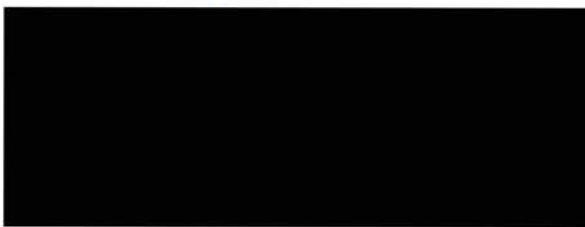
### **Minutes of Meeting with Bilfinger Berger**

I have had Transport Scotland officials search for any minutes of my meeting with Bilfinger Berger on 8 November 2010 but they have been unable to locate any such minutes, which suggests that the meeting was not minuted. All that they have been able to locate is an internal electronic diary entry for the meeting which only shows that the meeting with Bilfinger Berger/Siemens was scheduled to take place from 14.00 to 14.45 on the 5<sup>th</sup> floor of St Andrews House and invited attendees from the Scottish Government were me, my private secretary Katherine Hart and Ainslie McLaughlin.



I hope this information is useful to the Inquiry. If there is anything else that I can assist the Inquiry with, please let me know.

*Yours sincerely,*



JOHN SWINNEY