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**From:** McLaughlin AC (Ainslie)  
**Sent:** 20 October 2011 13:15  
**To:** DG Enterprise & Environment  
**Cc:** Middleton DF (David)  
**Subject:** FW: Trams

Mike

Further information on SG/TS involvement on tram project board /tie board up to July 2007 is contained in the attached spreadsheet.



SG\_TS  
membership of Tie Boa

Membership of the tie board prior to the departure of David Mackay as Chairman and Richard Jeffrey as Chief Executive was made up of the following 4 Councillors and 4 external non executive members:

**Cllr Phil Wheeler**  
**Cllr Allan Jackson**  
**Cllr Ian Perry**  
**Cllr Gordon Mackenzie**  
**Kenneth Hogg**  
**Neil Scales**  
**Peter Strachan**  
**Brian Cox**

Kenneth Hogg is a senior civil servant in the Scottish Government, who was serving in a personal capacity and not as a representative of SG; Neil Scales is Chief Executive of Merseytravel and a rail industry professional; Peter Strachan is also a rail industry professional; and Brian Cox has wide experience in the bus industry and was previously a director of Stagecoach.

Ainslie

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**From:** McLaughlin AC (Ainslie)  
**Sent:** 19 October 2011 15:08  
**To:** DG Enterprise &  
**Cc:** Middleton DF (David)  
**Subject:** FW: Trams

Mike

As discussed here are the exchanges David and I had with Perm Sec the other day on tram.

Ainslie

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**From:** McLaughlin AC (Ainslie)  
**Sent:** 11 October 2011 08:26  
**To:** Middleton DF (David); Permanent Secretary  
**Cc:** PS/Transport Scotland; Housden P (Peter)  
**Subject:** Re: Trams

Katie

David's note encapsulates very well how things panned out and there's not a lot I can add.

Mr Swinney's comments are more a reflection of a gradual erosion of trust and confidence in TIE's approach over a period of months during 2010. As David says David Mackay and Richard Jeffrey led Mr Swinney to believe they were in control and would deliver but ultimately they didn't.

TIE pursued a confrontational strategy with Bilfinger which they assured Mr Swinney was founded on robust legal advice. We were never in a position to test how secure that advice was but in the end not only did the strategy not work, it made matters worse with the contractor downing tools and TIE unable to make the contract enforceable.

TIE's ultimate failure was that as a result of their approach they effectively closed off any prospect of constructive negotiation with the contractor which could have allowed construction work to resume. A potential deal similar to that eventually agreed was on the table in autumn 2010. Equally despite a lot of time and effort TIE were unable to establish grounds to throw the contractor off the job - a strategy they became increasingly fixated with towards the end.

Our view (expressed to both Minsiters and TIE) from the limited access we had was that the contract terms appeared to leave CEC/TIE in a weak negotiating position and the likelihood of beating the contractor into submission was remote. Mr Swinney himself came to recognise that there was a need to negotiate a deal with the contractor despite the fact that the final cost would be unpalatable.

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 that 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.

Ainslie

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**From:** Middleton DF (David)  
**To:** Permanent Secretary; McLaughlin AC (Ainslie)  
**Cc:** PS/Transport Scotland; Housden P (Peter)  
**Sent:** Mon Oct 10 23:25:39 2011  
**Subject:** Re: Trams

Katie

I have been at a dinner tonight and given blackberry problems today - maybe Ainslie hasn't picked up - I'll offer a couple of comments. If Ainslie is geared up to respond more authoritatively tomorrow then you and Peter can ignore this.

Ainsie or I or both of us attended a number of discussions John Swinney had with Tie - chair David Mackay (retired Scottish businessman, had run John Menzies, taken over by WH Smith, both newsagents) and most recent CE Richard Jeffrey one time CE of Edinburgh Airport.

In David and Richard's eyes Bilfinger were the bad guys but they always had a strategy to bring them to heel, although they sometimes alluded to their ideal strategy of sacking them from the job. I don't think David and Richard ever deliberately misled

JS but they led him to believe their approach would succeed and it didn't. 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. We cleared with him a line had Hugh Henry or his colleagues asked the question at PAC in March. Now JS seems to have put that out there in the TV programme - as reported.

I don't think he ever trusted Tie after March 2010. I know he was angry when David Mackay resigned 'that man gave me assurances....' And the rest is history. Some of this would be new to Sue Bruce but I doubt it would be a surprise.

But there wasn't a solemn moment when we advised 'Tie have misled you'. It was an accumulation of events. JS was keen to do the BBC programme. I think in his heart of hearts he feels he stood by the Parliament's vote and did not act in a party political way once the project was underway (or not as it happened). He wanted it to succeed for Edinburgh, gave under the radar support to Tie and subsequently felt let down - big time.

David

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**From:** Wood K (Katie)  
**To:** McLaughlin AC (Ainslie)  
**Cc:** PS/Transport Scotland; Middleton DF (David); Permanent Secretary  
**Sent:** Mon Oct 10 18:29:26 2011  
**Subject:** RE: Trams

Ainslie

Perm Sec had a couple of questions on the back of your note. Re the "media interest" paras 3 and 4, Perm sec wondered if we know specifically what concerns(ed) Mr Swinney and did we advise anything thereto.

Meeting with Sue B is tomorrow at 9:30 (and is at Council) Grateful if you get a chance to update us first thing in morning?

Katie

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**From:** McLaughlin AC (Ainslie)  
**Sent:** 10 October 2011 13:38  
**To:** Permanent Secretary  
**Cc:** PS/Transport Scotland; Middleton DF (David)  
**Subject:** RE: Trams

Katie

Please find attached a short briefing note on tram for Perm Sec's meeting with sue Bruce tomorrow. As requested it covers the story carried over the weekend about John Swinney's remarks as well as some lines on the public inquiry.

Please let me know if you need anything else.

Ainslie

<< File: trampermsec-cec.doc >>

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**From:** Wood K (Katie) **On Behalf Of** Permanent Secretary  
**Sent:** 07 October 2011 14:57  
**To:** McLaughlin AC (Ainslie)  
**Cc:** PS/Transport Scotland; Middleton DF (David)  
**Subject:** RE: Trams

Ainslie

Sorry – could this include any update on David’s e mail of 3 Oct (attached) re the Public Inquiry.

<< Message: FW: EDINBURGH TRAM PROJECT - PUBLIC INQUIRY >>

Many thanks

Katie

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**From:** Wood K (Katie) **On Behalf Of** Permanent Secretary  
**Sent:** 06 October 2011 18:39  
**To:** McLaughlin AC (Ainslie)  
**Cc:** PS/Transport Scotland; Middleton DF (David)  
**Subject:** Trams

Ainslie

Perm Sec is meeting Sue Bruce on 11 October for a general chat.

I wondered if you could provide a short brief/update on the trams ahead of that meeting? If could have something by lunchtime on 10 October that would be ideal?

Many thanks – though very happy to have a word if you would like.

Katie

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SG \_ TS  
membership of Tie Boa

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