Edinburgh Tram Inquiry
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The following matters are covered in this Note:

- Introduction
- The Trams Project - General
- Events between 2004 and 2006
- Events in 2007
- Events in 2008
- Final Matters

## INTRODUCTION

1. By way of introduction, it would be helpful if you could provide an overview of the following matters:
(1) What are your main professional qualifications?

I am a Chartered Public Finance Accountant (CPFA)

(2) Between what dates were you employed by CEC?

September 1998 to present

(3) What was your job title?

1998-2002 – Trainee Accountant
2002-2006 – Accountant/Finance Manager – City Development
2006-2007 – Acting Principal Finance Manager – City Development
2007-present – Principal Finance Manager/ Principal Accountant

(4) What were your main duties and responsibilities?

I have had a variety of duties and responsibilities, depending on the teams I was working in and my level of responsibility. These are summarised below:

1998-2002 – Trainee Accountant
Completed several placements in different Finance teams, gaining work experience while completing my formal accountancy qualification.

2002-2006 – Accountant/Finance Manager – City Development
I provided accounting support for the City Development capital programme. This is included major grant-funded projects including tram and congestion charging, as well as support for the core programme.

2006-present – Principal Finance Manager/ Principal Accountant
Led various accounting support teams, providing support to different service directors and to major projects

2. In relation to the Edinburgh Tram Project:

(1) Between what dates did you have responsibilities in relation to the tram project?
2002-2008

(2) What were your main duties and responsibilities in relation to the tram project?

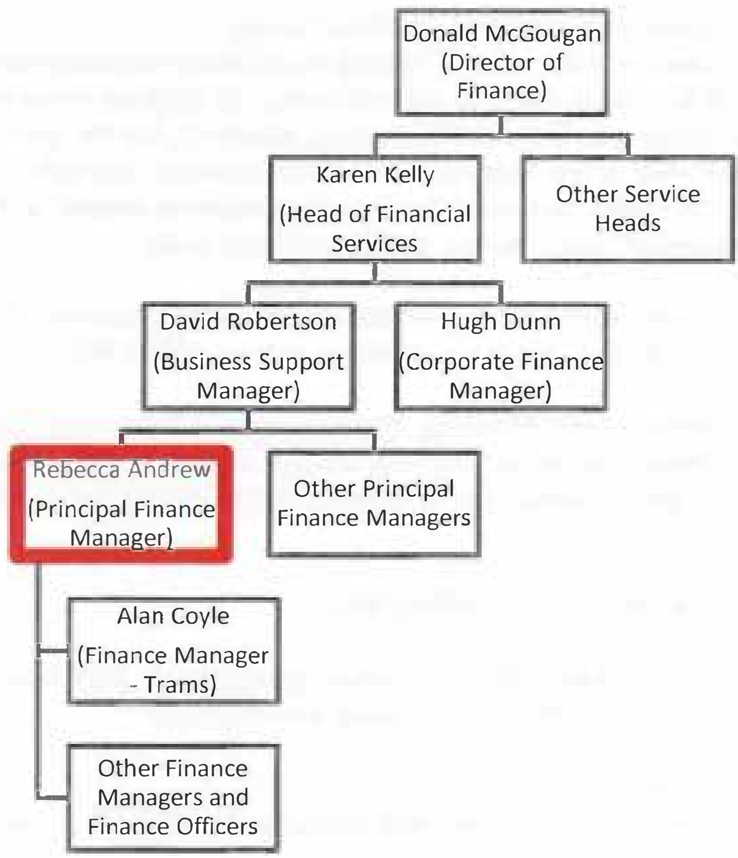
My main responsibilities were:

- Monitoring of Expenditure and Income for the project
- Provision of financial advice to council colleagues and briefing the director of Finance
- Compilation of grant claims and returns to Scottish Government/Transport Scotland
- Liaising with TIE and Transport Scotland over grant funding issues
- Monitoring the CEC staff resource employed on the project
- Arranging for payment of compensation for land acquired under the tram General Vesting Declaration

(3) To whom did you report and who reported to you?

The organisation chart below sets out the reporting relationships in the period December 2006 to December 2008. Prior to this date, I was in a more junior role, reporting to John Burns/Christine Rigouleau.

In December 2008, I went on maternity leave, returning in August 2009. Since my return I have been employed in a number of roles at the same level in the organisation, with no responsibility for the tram project.




(4) What committees and working groups etc were you a member or and/or regularly attended? What was the role of these groups? What was your role on these groups?

I did not attend any formal committees on a regular basis, other than the Council's internal planning group, detailed below. I was involved in a number of informal working groups, but I cannot remember the precise names or remits of all these groups. My role tended to be an advisory one for internal council groups or a monitoring one for groups involving **tie Ltd** staff. The groups I can remember are:

(i) The Tram Project Board.
I attended a couple of the initial meetings, but was replaced by the Director of Finance, as I was considered too junior by the chair.
(ii) The Legal Affairs Group
This group monitored progress in the achievement of key 3rd party legal agreements with entities including Forth Ports, Network rail and the Scottish Rugby Union. It was made up of CEC and TIE staff. As failure to achieve these agreements could result in delays to programme and therefore additional costs, my role was to monitor progress, understand any cost or programme implications and escalate issues to the Director of Finance and other Council officers, as appropriate.

(iii) Legal and Property Working Group
This was an internal CEC group comprising representatives from property, transport, legal, finance and planning. Its original remit was to ensure that issues surrounding land acquisition were resolved, but its remit expanded to include the monitoring of the Council's £45m contribution. Latterly its remit expanded further and the group was used to discuss concerns related to the project from a CEC perspective and how we should address them.

(5) What was your role in relation to the Chief Executive's Internal Planning Group (IPG)? Did you regularly attend meetings of the IPG?

I attended these meetings regularly during the period 2007-8. I provided advice to this group, based on my knowledge of the project. I also wrote (or arranged for Alan Coyle to write) the finance sections in the update report.

THE TRAM PROJECT - GENERAL

**It would be helpful if you could provide an overview of the matters in this section (to the extent within your knowledge).**

**Procurement**
3. In relation to the procurement strategy for the tram project:

(1) What was your understanding of the main elements and objectives of the procurement strategy for the tram project?

I understood the main objective of the procurement strategy was to derisk the project by concluding the design and utilities diversions ahead of the main contract, allowing the main contractor to price on a fixed price basis, without significant risk premium.

(2) How important was it to obtain a fixed price for the Infraco contract? How was that to be obtained?

A fixed price was important, as it should have provided cost certainty. This was particularly significant once the £500m grant from Transport Scotland had been capped. I understood it was to have been obtained by completing the detailed design work, gaining the necessary statutory approvals and diverting utilities ahead of contract award. This would have meant that the contractor would have been able to price on a fixed-price basis, taking account of any residual risk.

(3) In the event, do you consider that the aims of the procurement strategy were met (and, if not, why not)?

I do not think the aims of the procurement strategy were met, as the contract was let ahead of the completion of the design and the utility diversions. This resulted in delays, disputes and contractual variations which increased the price significantly.

**Design**

4. There were difficulties and delays in carrying out the design for the tram project. By way of overview:

(1) What was your understanding of the main difficulties and delays encountered in carrying out the design work?

I understood that there were delays in the design work, but I did not understand the reasons behind them

(2) What were the main reasons for these difficulties and delays?

See above

(3) What steps were taken to address these difficulties and delays?

See above

(4) Were these steps successful (and, if not, why not)?

See above

**Utilities**

5. Again, there were difficulties and delays in relation to the utilities diversion works. By way of overview:

(1) What was your understanding as to which organisation was responsible for instructing/undertaking the utilities investigations?

I understood that **tie Ltd** was responsible for instructing the utility works on the Council's behalf. **tie** was the contracting party instructing the works.

(2) What were the main difficulties and delays encountered in progressing the utilities works?

I was not party to the exact nature of the difficulties and delays and how they were managed. The answers below reflect my recollections of the information I did receive and the rereading of emails and documents prepared at the time.

(3) What were the main reasons for these difficulties and delays?

I understood that some of the delays were due to late and incomplete design information.

(4) What steps were taken to address these difficulties and delays?

I understood that the programme of works was organised so that sections where designs were complete could be done first. These sections may not have been on the critical path (eg sections relating to line 1B). I was also informed that opportunities where infrastructure and utility works could be combined were being explored.

(5) Were these steps successful (and, if not, why not)?

I do not think these steps were successful as the utility works were late and incomplete. Reprogramming to do sections not on the critical path did not reduce the cost of delay and doing the sections for 1b created additional costs with no benefit until such time as this section might be built. By combining infrastructure and utility works, risks that were supposed to be mitigated by the procurement strategy were reintroduced.

**Risk**

6. In relation to risk:

(1) Which body or organisation was responsible for identifying, managing and reducing risk in the tram project? Did you have any responsibilities in that regard?

**tie Ltd** was the organisation charged with project managing the tram project. As such, it was responsible for identifying, managing and reducing risk. However, as the funder and ultimate owner of the tram project, the Council had ultimate responsibility for ensuring that this activity was taking place and carried out correctly.

As a Council officer, I read meeting papers and other documents provided, met and asked questions of **tie** staff and escalated concerns I had to senior management.

(2) What were considered to be the main risks in the tram project that could lead to increased cost and delay?

The main risks, from my perspective, were considered to be
(i) Additional costs/delays arising from incomplete designs
(ii) Additional costs/delays arising from late completion of utility works
(iii) Inadequate contract management by staff at **tie**

(3) What steps were taken to avoid or reduce these risks?

The following steps were taken:

(i) Incomplete design risks – the Council received assurances from TIE that design was substantially complete and that changes/additional costs could be contained within the risk contingency. On top of this, the Council had "headroom" between the estimated cost of the project and the overall budget.
(ii) Utility diversion risks – this risk was to be managed by reprogramming the works so that they did not interfere with the programme. Where works were likely to overlap, they were to be added to the scope of the infrastructure contractor's programme. In addition, there was an element of the risk

contingency available for utilities risk.

(4) What was your understanding of the Quantitative Risk Allowance (QRA) approach adopted in the tram project?

I understood the QRA was a statistical approach which sought to quantify the financial risk associated with the tram project, so that an appropriate risks allowance could be set. TIE used a P80 report, which estimated that there was an 80% chance that the risk allowance would be sufficient.

While I understood that there was some statistical rigour behind this methodology, I also knew that its outputs depended on the quality of the risk information put into the model. For it to be an effective tool, the QRA had to include **all** project risks and these risks had to be correctly quantified in terms of financial value and likelihood.

(5) Were the steps taken to avoid or reduce risks successful (and, if not, why not)?

The steps taken to avoid risk were not successful.

Assurances from TIE regarding design were not sufficient and, with hindsight, the Council should have obtained an independent review of design and the draft contract so that risks were better understood.

As my involvement with the project effectively ended in December 2008, I am not able to provide a detailed explanation as to why the steps to reduce utility diversion risks were not successful. Alan Coyle may be better placed to answer it.

(6) Did the approach to managing risk in the tram project differ to the approach to risk adopted in other projects you have worked on?

Project managers on most projects I have worked on have maintained detailed risk registers. Risks were regularly assessed in terms of likelihood and impact and mitigations were put in place to manage these risks. By contrast, the tram project's approach to risk seemed to focus on the output from the QRA, rather than reassessing risks and ensuring they were being appropriately managed.

**In the following sections we look in more detail at particular events between 2004 and 2008. Please, of course, feel free to refer back to your previous answers if you consider that you have already dealt with these matters in your response to the above questions.**

**EVENTS BETWEEN 2004 AND 2006**

7. By way of overview:

(1) What was your involvement in the tram project between 2004 and early 2006?
During this period I was the accountant responsible accounting for and monitoring the City Development capital budget, of which the tram was one of many projects.
As part of my role I compiled grant claims and acted as a liaison on financial issues

between the Council and **tie** limited. I also provided regular updates to senior management.

(2) Do you have any comments on events between 2004 and 2006?

See below

8. In an e-mail dated 11 August 2006 to Andrew Holmes (**CEC01721890**), you attached a paper on CEC's Contribution to the tram project of £45m, an Actions Required document (**CEC01721892**) and a spread sheet showing a draft cash flow (**CEC01721891**).

The paper noted that the following contributions were anticipated, namely, £18.1m from Developers Contributions, £2.5m from Capital Investment Programme, £17.9m from Capital Receipts and £6.5m from Land Contribution.

(1) It would be helpful if, by way of overview, you could explain each of the anticipated contributions noted in the paper attached to your e-mail of 11 August 2006?

(i) Developers Contributions - £18.1m – this figure was obtained from colleagues in the Planning Service. It related to the amounts they anticipated receiving from applying the tram contribution policy to planned and anticipate developments along the route of the tram.
(ii) Capital Investment Programme - £2.5m – this was a direct contribution to the project from the Council's capital budget.
(iii) Capital Receipts - £17.9m – This represented the amount the Council might be able to achieve from selling land it owned adjacent to the tram line.
(iv) Land contribution – This represented the value of the Council land on which the tram would be built. It was a contribution in kind, rather than a cash contribution.

(2) What were your views around that time as to whether these contributions were likely to materialise?

At the time, I recognised that there were risks that these contributions would not materialise (or would be significantly later than planned), which is why I recommended further work be carried out. The contributions from the Council's budget was in the Council's gift, so I was not concerned about that. Similarly, the Council land contribution would happen as it was necessary to build the tram and it was simply a matter of agreeing a value with Transport Scotland. However, there were considerable risks relating to the developers' contribution and capital receipt amounts. Developers contributions' are reliant on development taking place and can be negotiated downwards by developers in order to make a scheme viable. The capital receipts figures were speculative at the time and required more work.

(3) Did your views in that regard change at any time (and, if so, when and why)? In the event, were these contributions realised (and, if not, why not)?

There continued to be risks over the value and timing of developers' contributions and capital receipts and it was something that needed to be continually monitored over the duration of the project and beyond. The make-up of the £45m was frequently adjusted and reported to Council during the different iterations of the business case. In addition, prior to final business case, the Council commissioned a review of its own assumptions on the £45m contribution as part of this monitoring.

I do not know the how much of the £45m was achieved as I was not involved in the project after 2008. However, I am confident that the full amount has not yet been collected. Two major reasons for this are

(i) The decision not to run the tram down Leith Walk has meant that development has not happened at the pace anticipated and (in any case) any tram contributions relating to the unbuilt section could not be applied against the current tram line. Council land contributions and capital receipts associated with that section of land are no longer applicable.
(ii) The financial crash of 2008 depressed the pace of development and the level of developers contributions that could be negotiated. It also reduced the value of any capital receipt received by the Council.

That said, the Council continues to collect developer contributions and sell land along the tram route.

9. In an e-mail dated 29 August 2006 (**CEC01722048**), in relation to CEC providing a covenant in respect of TIE's obligations under the proposed MUDFA contract, you stated that while CEC should be able to provide a covenant, *"if such a guarantee is to be provided ... I do not think the Council can sign up to it without a full understanding of the Contract entered into by tie. CEC legal will have to look at the contract and confirm that it is acceptable to CEC, should it have to take it on"*.
Colin Mackenzie produced a note in which he observed that *"it would be extremely risky for the Council to grant anything like an open-ended commitment to supporting TIE when the latter enters into contracts with third parties for construction etc. The Council is not a party to these contracts and that fact alone makes it difficult to assess and quantify risks and indemnities"*.
In the event, in an e-mail dated 4 December 2006 (**CEC01722564**) you noted that *"Nothing is needed in respect of MUDFA guarantee, as the contractor was content with a non-binding letter of comfort"*.

(1) To what extent were your views noted above in relation to the Council providing a guarantee in respect of the MUDFA contract applicable to the Council providing a guarantee in respect of the Infraco contract?

These views were also relevant to the Infraco contract.

(2) What were your views on Mr Mackenzie's comments noted above?

I accepted his legal opinion.

10. By e-mail dated 9 November 2006, Stewart McGarrity, Finance Director, TIE

(**TRS00002991**) provided sections of the Draft Final Business Case (DFBC). By e-mail dated 13 November 2006 (**CEC01797430**) you asked if it would be possible to meet to go through the Capital Cost assumptions as Mr McGougan was uncomfortable signing off the plan, as a TEL Director, without anyone in the Council having seen the detail behind TIE's cost estimates. A later e-mail (in the same thread) notes that a meeting had been arranged at which Geoff Gilbert, Tram Commercial Director, TIE, would walk CEC through the cost estimates.

(1) What were your views, in general, on the capital cost estimates around that time? Were you satisfied with the estimates? Did you (or others in CEC) have any concerns?

The Council was reliant on TIE to produce robust capital cost estimates. As an accountant I was not qualified to assess whether or not the costs reflected the proposed engineering solution so was reliant on technical expertise elsewhere in the Council and TIE. By meeting with TIE, I hoped to be able to get an understanding of the processes they used to calculate, verify and benchmark the costs, as I did not have the technical knowledge to challenge the costs on a line by line basis. I vaguely remember the meeting with Geoff Gilbert and don't remember that my colleagues and I were satisfied by the level of detail provided. I did, however, take comfort from the fact that Transport Scotland had commissioned Cyrill Sweet to independently reviewed these costs.

(2) As noted below, the DFBC was put to Council on 21 December 2006. Do you consider that CEC officers had sufficient time to gain a proper understanding of the DFBC before it was presented to Council?

Given the length of time required for committee reporting, CEC would have benefitted from more time in which to review the DFBC and indeed continued to review the DFBC and the assumptions upon which it was based after the Council meeting.

Although the report approved the business case, the report to Council's recommendations were more nuanced than a straightforward approval of the business case. The report recommended

- The continuation of Infraco and Tramco procurement, **subject to** no significant change in business case figures
- Commencement of utility diversions, **subject to** Tramco and Infraco bids showing the network was affordable **and** Transport Scotland approval
- The approval of interim funding **subject to** Transport Scotland approval

Given the degree of caveats to the recommendations, and the fact that work was still on going to review the DFBC, it would have been more appropriate to delay the report to Council a fuller analysis was carried out by both the Council and Transport Scotland.

I was not involved in the timetabling of the reporting of the DFBC to Council.

11. By e-mail dated 18 December 2006 (**CEC01722652**) you provided Mr McGougan with a draft response (**CEC01722653**) to a letter from Mrs Alison Polson.

Your draft response noted *"As the draft financial business case has significant financial implications for the Council I have carefully reviewed the document, and its optimism bias assumptions. Following this review, the Director of City Development and I have jointly recommended that the City of Edinburgh Council approve the business case".*
*"In assessing the appropriate level of optimism bias we have assessed the costing information. The procurement strategy being employed for the tram project involves advanced design and procurement, so that costs are known* ***before*** *the final decision to build is taken. As a result of this strategy, a lot of the costs are know[n] to a high degree of certainty …".*

(1) At that time, had you, personally, carefully reviewed the FBC and its optimism bias assumptions?

(2) I had reviewed the FBC and its optimism bias assumptions, from an accountant's perspective. I was reliant on others in the Council and Transport Scotland to review the more technical aspects of the FBC.

(3) Did you understand how the capital cost estimates and the allowance for risk/optimism bias had been arrived at?

I understood that the capital cost estimates had been produced by experienced engineers and had been reviewed by experts at Transport Scotland. I did not, however, have a detailed technical understanding of the cost breakdown. I also understood the theory behind the QRA process which has used to quantify the risk allowance, but was guided by people more experienced in TIE/Transport Scotland as to the appropriateness of the level of contingency set for the project.

(4) Do you have any comments on the draft letter?

I drafted the letter on behalf of Donald McGougan, in the manner I thought he would like to respond to Mrs Polson. He then reviewed it personally before signing it off. The comments on risk and optimism bias were based on what I thought was expert opinion from TIE and Transport Scotland. With hindsight, the level of risk/optimism bias should undoubtedly have been higher. I do not think, however, that a more conservative view of risk produced at the time would have reflected the extent of the projects eventual cost overrun.

12. A report to Council on 21 December 2006 (**CEC02083466**) recommended approval of the Draft Final Business Case (**CEC01821403**).
The report explained that the estimated capital cost of phase 1a was £500 million (and the estimated cost of phase 1b was £92 million).
The DFBC noted that the procurement strategy was intended to *"Transfer design, construction and maintenance performance risks to the private sector …"* (p16), that *"Following novation of SDS, the design risks pass to Infraco"* (p86), that *"Full design risk passed to Infraco post contract award"* (p95) and that *"The creation of the Infraco contract as a lump sum contract transfers the pricing risk to the private sector"* (p97).
It was noted that *"It is expected that the overall design work to Detailed Design will be 100% complete when the Infraco contract is signed"* (p84) and that risks

associated with novation would be mitigated by ... *"Detailed design being largely completed prior to award of the Infraco contract"* (p86).

It was noted that a rigorous Quantitative Risk Allowance had been applied and there was considered to be a 90% chance that costs would come in below the risk-adjusted level and that *"The level of risk allowance so calculated and included in the updated estimate represents 12% of the underlying base cost estimates. This is considered to be a prudent allowance to allow for cost uncertainty at this stage of the project and reflects the evolution of design and the increasing level of certainty and confidence in the costs of Phase 1 as procurement has progressed through 2006"* (paragraph 9.11).

It was further noted that *"TIE has continued to comply with the HM Treasury recommendations for the estimation of potential Optimism Bias and has determined, in consultation with Transport Scotland, that no allowances for Optimism Bias are required in addition to the 12% risk allowance"* (paragraph 9.12); and that *"Optimism Bias has been shown in Mott MacDonald's Review of Large Public Procurement in the UK, to be eradicated by the current stage of FBC production, in view of greater scheme certainty and mitigation of contributing procurement, project specific, client specific, environmental and external influence areas"* (paragraph 10.44).

(1) Did you have any input into the report to Council or the Draft FBC?

I assisted in the drafting elements of the report to Council on behalf of Donald McGougan. I had no input into the draft FBC.

(2) What was your understanding at that time as to the steps that would be taken to achieve the procurement objectives in the draft FBC noted above?

I understood that designs would be shared with bidders and as they were refined, these refinements would be passed on so that bidders would be bidding based on complete or near complete designs.

(3) What was your understanding of the extent to which detailed design would be complete (i) when bids were received for the Infraco contract and (ii) when the Infraco contract was signed?

I thought that they would be complete (or near complete) when bids were called for and that any minor changes between tender stage and contract signature would be reflected in the final price.

(4) Are you aware who in TIE determined, in consultation with Transport Scotland, that no allowance for optimism bias was required in addition to the 12% risk allowance? Why was that decision taken? Was CEC involved in that decision? What were your views on that matter?

I am not aware who in TIE or Transport Scotland was involved in this decision or whether CEC was involved. At the time, I felt that the allowance seemed low, but was guided by experts with experience of procurement of other light rail schemes. I was also reassured by the extent to which costs appeared to be fixed and by the fact we had a further "10% of headroom" between the cost estimate (inclusive of risk) or £498m and the £545m budget.

**EVENTS IN 2007**

13. In an e-mail dated 4 January 2007 (**CEC01722735**) you noted your concern that *"tie have failed again to make the distinction between cash (as claimed from Transport Scotland) and accruals (as reported to the TPB) and requested grant which will not be claimed in the current financial year"*.

(1) It would be helpful if you could explain the problem, how it had arisen, the difficulties it caused and whether it was resolved?

Transport Scotland paid out grant based on the amount that had been physically paid to contractors and consultants (cash), whereas TIE accounted for expenditure based on the amount of work that had been completed, but not necessarily paid for (accruals). By requesting a grant award on an accruals basis, TIE were overstating the level of grant required for the financial year. This would cause difficulties for Transport Scotland, as they would be criticised for failing to spend their allocated budget. There would also be a risk that unclaimed grant would not be carried forward to future financial years, resulting in a funding shortfall for the project. I tried to resolve the problem by establishing good working relationships with colleagues at Transport Scotland, so that they understood the likely level of grant claims and agreed to carry forward unspent grant.

In addition, accurate forecasting of cash flows would be required to ensure that sufficient cash would be available to pay contractors when the value of payments increased. Failure to pay contractors on time could result in delays and additional costs. I worked with colleagues in CEC, TS and TIE to develop a system of applications for payment, which reduced this risk.

I was also concerned that differences between accruals and cash might be indicative of undeclared slippage or problems with the design contractor, but I was unable to confirm these concerns.

14. In an e-mail dated 8 February 2007 to Mr McGougan (**CEC01723222**) you noted that you had spoken to Transport Scotland who had received a report from TIE and a report from Scott Wilson with revised costs following the receipt of Infraco bids.
The costs were broadly in line with the DFBC, the bids for phase 1a being £477m-£517m, however, TS had some reservations due to insufficient evidence, and had met TIE to ask further questions. You had requested that TIE send CEC copies of everything they had sent to TS.

(1) Around this time, to what extent were, respectively, Transport Scotland and CEC scrutinising the capital cost estimates and the bids for the Infraco works? Was one organisation exercising greater scrutiny than the other and/or taking the lead in that regard?

At around this time, Transport Scotland took the lead role in scrutinising the capital costs and bids, as they were the major funder of the project.

15. In an e-mail dated 16 March 2007 (**CEC01730251**) you provided Mr McGougan with a briefing for the Tram Project Board.
Your noted concerns in relation to reporting of "Financial and Change Control" and in relation to the Risk Register where you noted, in relation to utilities diversions that they were behind schedule and risks associated with finding unexpected utilities remained.

In addition, there were risks associated with getting the MUDFA contractor to re-programme their works, due to Transport Scotland's decision on phase 1b. You noted that *"The TPB should really have insisted that tie/MUDFA planned diversions for 1a first, with 1b at the end of the process. We all expected this would be the likely outcome the Transport Scotland sit on the TPB. How do we improve TPB governance???"*.

(1) It would be helpful if you could explain your views on the matters noted above?

My concerns over financial and change control was that overall project cost was not adjusted to reflect the changes, risks and issues reported in the board papers. In normal project reporting, I would expect to see additional costs clearly set out. If there had been mitigations to bring costs back in line with budget, then these should have been set out too. This level of clarity would have allowed the Tram Project Board to carry out its role in managing the project, ensuring costs, risks and issues were being appropriately managed, within its delegated authority.

My concerns over the programming of the MUDFA works were that funding was allocated to phase 1A, with funding for phase 1B only being available if there was any left over from 1A. In addition, Transport Scotland had only awarded grant for line 1A. Given this situation, I could not understand why there had ever been any plan to undertake 1B diversions ahead of 1A diversions. This was incurring additional and unnecessary cost as work would have to be reprogrammed and these costs would not necessarily be met by Transport Scoltand. I was surprised that the Tram Project Board had allowed this to happen, particularly as, at the time, I understood the Transport Scotland were represented at the Tram Project Board.

(2) Given the funding limitations, the Council resolved in January 2006 to build phase 1a first (see e.g. report to Council on 26 January 2006, **CEC02083547**). Do you know why, despite that decision, it appears to have been the intention throughout 2006, and in early 2007, to still carry out utility works for phase 1b (and, indeed, it appears that the utility diversion works for phase 1b were programmed to commence before the utility diversion works for phase 1a)? What were your views on that?

I do not know why it was the intention to carry out utility works for phase 1b, despite the decision to build phase 1a first. My views are set out in my answer to part (1) above.

(3) What were your concerns in relation to TPB governance around that time? Were these concerns shared by others in CEC? Were they ever resolved?

I was concerned that the Tram Project Board did not properly scrutinise the management of the tram project as it lacked independent and suitably qualified individuals to carry out an assurance role.

16. In an e-mail dated 22 March 2007 (**CEC01558752**) you noted that TIE had budgeted for the back-filling of various CEC staff, including two solicitors, but that Gill Lindsay and John McMurdo had decided not to appoint that additional cover. You noted that the Legal and Property Working Group was concerned that if legal did not take on extra staff support for the tram project would suffer.

(1) It would be helpful if you could explain the issue and whether it was resolved?

There was a lot of legal work involved in the tram project, including land acquisitions, planning issues, agreement of developers contributions as well as the review of the emerging contractual and commercial agreements for the tram works. Council legal staff were carrying out their duties in relation to tram in addition to their day jobs and backfill would have enabled them to concentrate more on the tram work. From speaking to the solicitors involved, they did not feel they had adequate resource to provide an appropriate level of support to the project. As money had been earmarked for additional CEC solicitors, it seemed a strange decision, not to make use of it.

I cannot remember how the issue was resolved, but from reviewing files I can see that in the financial year 2008/9, two additional solicitors were funded to provide backfill. I do not know to what extent this backfill assisted council legal staff on the project.

17. In e-mail dated 28 March 2007 (**CEC01558801**) you circulated a briefing paper on the tram project (**CEC01558802**).
The briefing paper noted that although the Minister had not approved the DFBC, a grant of £60m had been received from Transport Scotland for further development, procurement and utilities diversions in advance of the FBS/Financial Close in September.

In relation to Utilities Diversions, the briefing paper noted:
*"The programme for utilities diversions has had to change dramatically due to the following factors:*

- *The original programme developed by tie assumed works on both 1A and 1B, but Transport Scotland funding is for 1A only (this was not unexpected and tie should really have been challenged on this at the TPB)*
- *The designer is behind schedule on designs*
- *There is a requirement for a test site to be started pre-election for political reasons, but the main works are not expected until June. This will require the contractor to mobilise and demobilise.*

*The contractor may be entitled to substantial compensation in relation to these changes. The potential cost of compensation needs to be quantified by tie as a matter of urgency, as it could adversely impact on overall project affordability".*
Under Monitoring arrangements, you noted that you had agreed with TIE to hold regular meetings concerning the financial issues of the tram project.

(1) How did CEC receive updates on the progress of the design and utility works? Which individuals within CEC were most up to date on the state of these works?

I received my updates from receiving copies of the Tram Project Board papers. These were not very detailed. I also received regular updates from colleagues in City Development. Staff within City Development, including Duncan Fraser and Andy Conway usually had better information on these issues, as they were working on the approvals process and the Council, as Roads Authority, needed to see designs.

(2) What was your understanding of why there was a requirement for a test site to be started pre-election "for political reasons"? What were your views on whether that was appropriate?

There was a Scottish Parliament election in May 2007. The SNP had made clear, that it did not support the Edinburgh Tram Project and threatened to withdraw funding, should the party win the election. I understood the pre-election test site was to demonstrate the project was progressing to plan.

(3) Did you have regular meetings with TIE concerning the financial issues of the tram project? If so, who was present and what, in general, was discussed at these meetings? How useful did you find these meetings?

I met regularly with Stewart McGarrity and/or Miriam Thorne to discuss financial issues. I cannot remember the exact agendas, but we discussed issues relating to grant claims, financial projections and the business case. While we did discuss financial issues, I felt that information (especially relating to capital costs and risks) was not provided, as this seemed to be held by the commercial team, rather than the finance team and was considered too "commercially sensitive" to share.

Do you have any other comments in the matters in your briefing paper?

This paper was prepared for my managers to give them an overview of the project and the areas I was working on.

18. By e-mail dated 3 April 2007 (**TRS00004144**) Bill Reeve provided Transport Scotland's comments on the Draft Final Business Case (**TRS00004145**), including comments in respect of the approach taken to calculating Risk (pp7-8) (including that *"on a 'rule of thumb basis' a risk allowance equating to approx 12% for a rail-related project just entering detailed design may be viewed as being a little optimistic but this has to be qualified to the extent that it is possible there may be separate allowances for risk type items in the base costs"*) and whether the various assumptions in relation to Programme were realistic (the programme, for example, being stated to be based on the assumption of *"right first time and on-time delivery"* (pp9-10).
On 13 April 2007 you sent an e-mail (**CEC01559060**) attaching a spread sheet (**CEC01559061**) containing TS's and CEC's comments on the draft Final Business Case. The spread sheet noted:

- Governance: *"CEC have some concerns over how project is being managed.*

*Need to build in independent 'Project Assurance' reporting to TPB, to give comfort on TIE-produced reports".*

- Financial Analysis: *"Some thought needs to be given as to how information can be provided to elected members in a format enabling them to make an informed decision. The level of detail provided for the DFBC is not really sufficient for the FBC".*
- Risk: *"TS perceive 12% risk allowance to be optimistic, although conceed [sic] that some of this may be included in the base costs. further detail of cost assumptions need to be provided to make this clearer"* and *"Details of where will the residual Optimism Bias cost uplift will be allocated should be provided".*
- Programme: "[TS] *There is general concern that the programme is tight, with little float and that the programme only considers a best case scenario"* and *"This concern is shared by CEC. We are also concerned by the drive to achieve milestones prior to completion of critical activities. For example, failure to complete detailed design before commencing MUDFA is likely to cause contract variations and substantial additional costs. This will be compounded if Infraco is also let before design is complete. There is also a risk that Infraco could be delayed by MUDFA delays due to incomplete designs. All delays and changes increase cost and threaten quality. It is also worth noting that the procurement strategy required advanced design and diversions to 'de-risk' the project – commencing MUDFA and potentially Infraco prior to design completion is potentially building that risk back into the project. TIE should consider whether it is necessary to review the programme, build in more slack and if necessary delay project completion".*

By e-mail dated 18 April 2007 (**TRS00004225**) you sent Transport Scotland CEC's response (**TRS00004226**) to TS's comments on the draft FBC. CEC's response noted:

- Risk, *"Further analysis of costing assumptions is required to give confidence on 12% risk assumption"* (para 10).
- Programme, *"TS concerns are shared by CEC. We will require TIE to revisit the programme and justify its assumptions, particularly in view of the SDS and Mudfa timetables slipping. We will also require the potential costs associated with delay to be balanced against the cost/quality impact of meeting an overly ambitious programme"* (para 11).

By e-mail dated 30 April 2007 (**CEC01625190**) Miriam Thorne of TIE e-mailed you a combined response and action plan for the production of the Final Business Case (**CEC01625191**) and an Appendix containing a timescale for the action plan and FBC to be addressed (**CEC01625192**).
The combined response noted (page 7) that TS had observed that *"The risk confidence levels should be expressed at the P50 and P80 levels as costs"*, to which there was a response, *"Percentage uplifts are given to allow easy comparison with other schemes. The risk allowance was calculated as a discrete sum by applying QRA. These figures have been provided separately. The approach including the use of P90 was agreed by TS advisers as appropriate in autumn 2006".*
The combined response also noted (page 7), *"Details of how a fund for 'unknown' risks will be allocated"* and *"Details of where the residual Optimism Bias cost uplift will be allocated should be provided"*, to which there was a response, *"TIE and*

*Transport Scotland undertook an exercise in July 2004 to ascertain how OB should be applied and agreed that, as the guidance contains insufficient data to confirm that light rail schemes can be grouped with other rail projects and as an enhanced procurement strategy was being undertaken, OB would be eradicated or very low at the time of scheme investment. Instead of using OB, Transport Scotland decided to adopt a very high confidence figure of 90% in the estimate of risk allowances to cover for specified risk and optimism bias. Hence the unknown risks are taken into account by applying the P90 confidence level to the QRA".*

(1) It would be helpful if, by way of overview, you could explain your understanding of, and views on, the main matters noted above?

My views and understanding are laid out below:

**Risk**
Both CEC and TS were concerned that the level of risk in the DFBC was insufficient. While Transport Scotland's concerns and TIEs answers were focussed on the appropriateness technical application of QRA or Optimism Bias assessments, my concerns were also based on what was happening on the ground, with slippage in both design and utilities increasing the likelihood of cost overruns and building risk back into the project that the procurement strategy had been designed to avoid.

**Governance**
I was concerned that the TPB did not receive information with which to test and challenge reports produced by TIE. As TIE's main purpose was to deliver a tram project, there was a danger of over-optimism in project assumptions. An independent Project Assurance function may have provided this level of challenge.

**Financial Analysis**
Due to the stage of procurement, the information presented to elected members on capital costs at FBC was based on commercially sensitive information, a lot of which was not disclosed. When the final decision on the £500m investment would be made, more information would need to be available.

**Programme**
The programme was very tight and did not account for the slippage we were already witnessing in design and utilities work. I was concerned that adherence to an unrealistic programme, would lead to additional risks and costs to the project. I felt it would have been better to understand the cost of delaying the procurement of infraco against the additional costs/risks of sticking to the original programme despite the slippage.

(2) What steps were taken to address these matters? Did you consider these steps to be adequate?

The following steps were taken. I did not consider any of them to be adequate, but had limited power/influence to strengthen these measures:

**Risk**

TIE continued to refine their QRA analysis as the project progressed, employing a dedicated risk manager. While the statistical analysis provided a quantification of a risk allowance, this analysis was only as good as the underlying risk register. I was concerned that the quantification of the value and likelihood of known risks was understated. If this were the case, then the quantification of the risk allowance would also be understated.

At one stage, I remember holding a risk workshop with CEC and TIE colleagues, facilitated by the Council's risk specialist. The Council's approach to risk management focusses on identifying and then actively managing each individual risk with a view to reducing both likelihood and impact. The approach at TIE seemed simply to be one of quantifying risks and doing statistical analysis, rather than risk management.

**Financial Analysis**

At the time of these emails, it was the intention to provide a greater insight into capital costs for the Final Business Case, I do not think this was achieved, as the final business case was presented to Council ahead of contract close.

**Programme**

I do not remember any action taken to consider adjusting/delaying the programme as a result of design/utilities slippage.

(3) What were your views on whether the 12% risk allowance was optimistic, whether further detail of cost assumptions were required and whether there should be an allowance for residual optimism bias (in particular, given, for example, the delays and difficulties experienced with the design and MUDFA works)?

I felt that the 12% risk allowance was light, in view of the problems being encountered with delays in both design and utilities and that, as a result, costing and risk assumptions should be reviewed. I felt that the problem was more fundamental than adding on an additional allowance for optimism bias. While this would have given a little more assurance on capital cost estimates, it would not have addressed my concerns over risk and cost management. It might even have reduced TIEs incentive to manage them, as it would have created more financial headroom.

(4) What were your views on the concerns noted above under Programme? Did CEC require TIE to revisit the programme and justify its assumptions, in particular, in view of the slippages in the design and MUDFA programmes?

As noted above, I was concerned that sticking to an unrealistic programme would add risks/costs to the project. I don't remember CEC formally requiring TIE to revisit the programme, but both Donald McGougan and Andrew Holmes attended the Tram Project Board and may have asked at that forum.

(5) Did you have any concerns around that time in relation to how the project was being managed? Was consideration given by CEC to obtaining independent expert advice, to give comfort on TIE produced reports and information?

I did have concerns about how the project was being managed. Slippage on design and utilities contracts indicated deficiencies in TIEs ability to manage contractors and to bring projects in on time and on budget. I was also concerned that TIE were over-optimistic and too quick to dismiss valid concerns raised by CEC and Transport Scotland.

At that point, I do not think CEC considered taking independent advice, as limited funding was available to cover direct Council costs in relation to the project. The grant conditions from Transport Scotland stipulated that only TIE costs could be claimed against the available grant. Moreover, at that time, Transport Scotland was taking on the role of lead funder and was using independent advisers to give this comfort.

In August 2007, obtaining advice was considered. See answers to question 23.

(6) Incidentally, the appendix (**CEC01625192**) noted that it was proposed that a FBC working group would be set up, of which you were to be a member (along with representatives from Transport Scotland). Was that group set up and, if so, were you a member?

I don't remember whether or not this group was set up. I did have meetings with TIE during the development of the FBC, but not sure whether it was in this formal group and, indeed, whether Transport Scotland attended after the May 2007 election.

19. You provided Mr McGougan with a briefing paper for the meeting of the IPG on 17 April 2007 (**CEC01559075**).

You noted that the most concerning issue under MUDFA was delay in programme (now expected to be five months beyond the original duration). There was also the risk of finding and diverting additional services (nine additional services having been found at the test site).

In relation to Infraco, the total project costs for 1a were now projected by TIE as £517m (compared to the £500m in the DFBC). That figures was net of savings assumed by TIE for "bid equalisation" and the real figure could be closer to £545m. For commercial reasons, that information was not included in TPB papers etc.
In an Update on Other Issues, you noted (page 3), that key parts of the programme were slipping (notably detailed design and MUDFA) and that you and your colleagues in City Development were becoming increasingly concerned on the impact on costs.

You noted that the procurement strategy was founded on design and MUDFA works being done in advance to "derisk" the project and therefore reduce the risk premium built into the Infraco contract.

*"However what has happened is that the MUDFA contract has been let and will shortly commence in earnest with detailed designs only 50% complete, due to SDS slippage. This means that MUDFA is likely to take longer than planned and could require numerous variations. This will undoubtedly lead to claims from the contractor. The contract price for MUDFA is £45m with a risk element taking the total cost to £61m (it should be noted that the risk element is for unforeseen diversions, not contract mismanagement!). City Development (unofficially) would not be surprised if the final cost of MUDFA was as high as £100m".*

*"Infraco is scheduled to be let by 30th September. If this is also let without detailed designs in place, tie could be leaving us open to much larger claims. There is also the risk that as MUDFA has started late with inadequate designs that it could delay Infraco, leading to further claims. Given that the Infraco contract is about £300m a 10% cost overrun could cause costs to rise by £30m".*

*"The TPB need to be considering these issues urgently".*

(1) Do you know whether the TPB did consider, and address, these issues?

I do not know the extent to which the TPB considered these issues. It was concerning that the TPB were not being provided with update financials in their papers. By raising the issues with Donald in this note and discussing them with him, I understood that he would raise them at the TPB.

With hindsight, it is clear that the issues were not properly addressed. Designs were not complete for the procurement of Infraco and design risk was not transferred to the contractor.

(2) What steps did CEC take to address these issues?

The design and utilities contracts were being managed by TIE, so there was little CEC could do address delays, other than by challenging TIEs assumptions and asking them to provide regular updates.

That said, CEC ensured that City Development staff prioritised granting necessary approvals, despite receiving designs late. In addition, I understand that City Development staff sought to engage with TIE to understand the completeness of design works so that decisions could be made on a sound basis.

(3) Did CEC discuss these issues with Transport Scotland?

I cannot remember whether I or other CEC colleagues discussed this with Transport Scotland.

(4) Were members of the Council advised of these issues?

I do not know, as I had limited contact with elected members. Any briefing of members would have been done by senior Council officers.

(5) Do you have any other comments on this briefing paper?

This briefing paper was prepared for Donald McGougan ahead of meetings with senior CEC staff and the TPB and contained what in my view were the main risks and issues of which he needed to be aware.

20. You provided Mr McGougan with an updated briefing paper on or about 2 May 2007 (**CEC01552369**).

In relation to the MUDFA works, you noted that TIE gave a presentation on MUDFA to the April TPB, in which they indicated minimal additional costs associated with the delays, which could be mitigated by employing the MUDFA contractor on packages of advanced infrastructure works. You noted, however, that *"The presentation was lacking in detail and we need to have more reassurance that costs will not increase. It seems difficult to see how an extension of 5 months to the contract length, will not have an impact on cost"*.

In relation to the Infraco contract, you noted that the contract was under negotiation, you had little detail on how things were proceeding and that the procurement process was being managed by the Procurement sub-committee of the TPB (of which Andrew Holmes was the Council's representative).
As detailed design was still awaited, there was a need to integrate it with the procurement process.

The same concerns were noted as had been previously noted in relation to the risks to the programme (and increased costs) arising from slippage in the detailed design and MUDFA works.

In relation to Project Governance Issues (page 5), you noted that a weakness in the operation of the governance arrangements was that *"there is no independent review function (as recommended by Prince 2), to independently assess the project and challenge tie's recommendation"*.

You noted, *"I am also concerned by the quality of CEC representation as Andrew Holmes does not always read the papers to enable him to raise matters of concern (although he is thoroughly briefed by his staff)"*.

(1) Do you have any comments on these matters?

This was a regular briefing note for senior managers within the Finance department, setting out the issues and concerns I felt they should know about. The matters highlighted about reveal my concern about the lack of detail made available to Council officers as well as the lack of effective challenge and scrutiny of the project and its management.

(2) It would be helpful if you could explain the reference to "Prince 2"?

Prince 2 is a recognised best practice project management methodology and it is Council policy to use it to manage all its major projects. TIE also produced numerous project governance documents using Prince 2 terminology. Prince 2 states that there should be project assurance role reporting to the project board, which is independent from the project manager. In the case of the tram project, TIE assumed the project manager role, but there was no project assurance to ensure TIE's work was properly scrutinised.

(3) How had your concerns in relation to Mr Holmes arisen e.g. was that something you had come to your own view on through your own observation and experience and/or had concerns about Mr Holmes been reported to you by others (and, if so, by whom)?

I cannot remember how these concerns had arisen. However, I suspect they came about following a conversation with Duncan Fraser who briefed Andrew Holmes on these issues. It is also worth noting that the director of City Development had a wide area of responsibility and a very busy schedule and it is unlikely that anybody in his position would have had the capacity to take on the detailed challenge and scrutiny required.

(4) Did you discuss your concerns about Mr Holmes with Mr McGougan and/or with any other senior officer in CEC? If so, what was their response? Was anything done to address these concerns?

I routinely discussed all my briefing notes with Mr McGougan, although I cannot specifically remember discussing this issue or his response. I do not know whether anything was done to address this concern, although at some point Mr McGougan also started attending the TPB on a regular basis.

(5) Did you continue to have concerns in relation to Mr Holmes and the quality of CEC's representation on the TPB?

Yes, insofar as both Mr Holmes and Mr McGougan were taking on this role as part of extremely busy jobs and did not have the same amount of time to dedicate to it as their counterparts at TIE.

21. The Highlight Report to the IPG on 31 May 2007 (**CEC01566088**) noted (page 2, para 2.1) that the latest MUDFA programme, revision 5, showed a revised start date for the MUDFA works of 2 July 2007 and an end date for the phase 1a MUDFA works of November 2008.

(Page 4 of the report showed the dates the different work areas were to be tackled under both revisions 3 and 5 of the programme. Under revision 3 of the programme, the end date for phase 1a was May/June 2008).

(1) Did the slippage in the MUDFA programme from revision 3 to 5 cause any concern and/or discussion (i) within CEC and (ii) with TIE, as to whether the MUDFA works would be finished before the start of the Infraco works?

I cannot remember whether slippage from revision 3 to 5 sparked any discussion or concern over the potential overlap of MUDFA and utility works. However, given TIEs track record with both the design works and MUDFA programming, there was concern that there would be an overlap. I had raised this concern in briefing notes quoted in previous questions. I cannot remember any discussion with TIE, but that is not to say it did not take place.

(2) How confident were you and your colleagues in CEC, around that time that the MUDFA works would be completed by November 2008?

CEC colleagues and myself were sceptical of TIE programmes and this included the MUDFA works. However, I do not think we had any evidence to say that this date could not be achieved.

(3) Did there come a time when your views in that regard changed (and, if so, when and why)?

My views on the timescale for the completion of the MUDFA works only changed insofar as delays materialised and confirmed that the initial scepticism had been valid.

22. Following the Scottish Parliament election on 3 May 2007, and the debate in Parliament on the trams project on 27 June 2007, the Scottish Government decided to continue to fund the project subject to an absolute cap of £500m and that Transport Scotland would no longer be represented on the Tram Project Board (see e.g. letter dated 2 August 2007 from Malcolm Reed, Transport Scotland, to Tom Aitchison, **CEC01566705**).

(1) What were your views on that decision?

From a financial perspective, this transferred all the risks of cost overrun to the Council, compared to about 10%, if overruns had been shared proportionately to overall funding commitments.

(2) What changes were there in TS's involvement in the project after that decision? (see e.g. your e-mail dated 30 August 2007 to Duncan Fraser which noted, in relation to the Grant Offer Variation, that deleted paragraphs *"refer to requirements ... Transport Scotland had in relation to governance, communications protocols and the development of the FBC. Now TS are having less involvement they no longer require these conditions"*, **CEC01560926**). Did you notice a change in TS's involvement in, and scrutiny of, the project?

Following the decision, Transport Scotland's interest in the project seemed limited to monitoring of grant claims. They no longer participated in the TPB or were involved in business case development. The project no longer had access to their pool of experts which had ranged from external consultants reviewing of capital costs to HM treasury staff advising on risk and optimism bias.

(3) What consequences did the decision noted above have for the Council?

As stated above, the decision increased the Council's exposure to cost overruns, while at the same time greatly reduced the level of scrutiny and support provided by Transport Scotland.

(4) What did the Council do in response?

I cannot remember what, if anything, the Council did in response.

23. In an e-mail dated 2 August 2007 to Duncan Fraser (**CEC01551800**) you noted that, *"In general, I have some concerns over the lack of contingency in the programme and budget"*. In his reply of the same date (in the same chain), Mr Fraser observed *"If read literally we are now accountable for the delay and also for an unrealistic programme, which was confirmed today as have no float – unrealistic!!!"*.

By e-mail dated 20 August 2007 (**CEC01560743**) you sent Mr McGougan and Andrew Holmes a revised briefing paper (**CEC01560744**) for a meeting with Councillor Mackenzie. The paper noted (para 7) that, between now and the recommendation to Council on 25 October, Council and TIE staff would be assessing and quantifying risk in order to determine an appropriate level of financial headroom. Financial close was programmed for January 2008.

By e-mail dated 23 August 2007 (**CEC01560815**) you provided Mr McGougan with an update on the latest position on identifying the risks in the Infraco and Tramco contracts. You noted, *"We don't think we have sufficient internal resource in CEC to get this, and Andrew and Gill are both reluctant to engage external advisors (or even to approach TIE on jointly commissioning them)"*, and sought Mr McGougan's views.

A draft Infraco contract and risk matrix were circulated on 24 August 2007 (**CEC01650759**, **CEC01650760** and **CEC01650761**).
In an e-mail dated 28 August 2007 to Gill Lindsay (**CEC01560895**), you noted that *"Given the size of the contract and the extent of potential financial exposure to the Council, [DM] is keen that we are able to understand the risks and quantify them as a matter of urgency, in order to calculate the required level of financial headroom and to advise members"*.

In an e-mail dated 31 August 2007 to Ron Hardwick (**CEC01566895**), Fast procurement of consultants to work on tram business case, you advised that *"We'd like to procure consultants to analyse and quantify the risks in the tram business case, to give comfort on the work carried out by tie ltd and its advisers"*.

An e-mail dated 31 August 2008 from Alasdair Sim, TIE (**CEC01560935**), attached a paper for that afternoon's Legal Affairs Committee, namely, a report dated 29 August 2007 by DLA Piper, "Report to CEC on the Development of the Contractual Risk Allocation in the Infraco Contract" (**CEC01560936**).

In the e-mail dated 31 August 2007 (**CEC01566895**), you again raised the question of CEC procuring consultants *"to analyse and quantify the risks in the tram business case, to give some comfort on the work carried out by TIE Ltd and its advisors"*.

The minutes of the meeting of CEC's Property and Legal Group on 4 September 2007 (**CEC01561179**) noted (page 2) that *"Council Solicitor declined [the]* *opportunity to appoint independent solicitors, instead choosing to rely upon DLA letter of comfort to act in the Council's interest subject to agreeing the appointment of DLA .... Group seeking confirmation through Council Solicitor that the advice on contract from DLA (Infraco) can be relied upon in full. It is the belief that it is still prudent to seek legal advice before enabling the contractual approval".*

By e-mail dated 10 September 2007 to Ron Hardwick (**CEC01561154**), you stated that *"I can confirm that the Director of Finance is prepared to sign a single source justification form to appoint Cyril Sweett"* (albeit other advisers were being considered), the *"Project brief will be to identify the risks to the Council in the tram project, and to quantify them financially".*

You prepared a short brief to procure the review competitively (**CEC01561296**) which stated that *"It is anticipated that work will be carried out by qualified professionals with experience of similar large-scale infrastructure projects in the transportation sector"*. The report was to be submitted to CEC on or before 14 October.

In an e-mail dated 12 September 2007 to Susan Clark of TIE (**CEC01630955**), you noted that CEC wished to procure an external adviser because *"CEC officials do not have appropriate experience to perform their monitoring/assurance role, particularly given the extent of the risks involved".*

In an e-mail dated 12 September 2007 to Colin Mackenzie (**CEC01561331**) you described the commissioning of an independent review as a "nightmare". You advised that you were pressing ahead with the advert and that it would be at the discretion of Mr McGougan and Mr Holmes whether to appoint or not.

By e-mail dated 24 September 2007 (**CEC01652668**), Duncan Fraser advised Susan Clark that the Directors of Finance and City Development were in agreement with the appointment of Turner and Townsend to carry of the review.

In an e-mail dated 27 September 2007 (**CEC01567757**), Susan Clark advised Malcolm Hutchinson, Chair of the Office of Government Commerce (OGC) review, that CEC had been looking for a separate review of risk and asked whether that would be something that the OGC team would be able to cover in their review the following week.

In an e-mail dated 28 September 2007 (**CEC01567757,** same chain), Matthew Crosse, Project Director, TIE, advised Duncan Fraser that Mr Hutchinson had agreed to add a separate assignment to their remit to include a risk review and indicated that they may bring in one of their specialists.

In an e-mail dated 2 October 2007 to Jim Grieve (**CEC01567757,** same chain) you expressed concern that *"the OGC review might be at too high a level and that our need to have comfort over the details of the risks will not be met".*

We understand that, in the event, as well as carrying out a Gateway 3 review in October 2007 (**CEC01562064**), the OGC team also undertook a review of risk (**CEC01496784**).

(1) Do you have any comments on these matters?

During this period, I was concerned that the level of contingency in the project budget was insufficient. I was therefore seeking to gain a greater understanding of the risks to determine whether the level of contingency proposed by TIE was sufficient.

The process of seeking this information as frustrating, as TIE were resistant to the independent review I was seeking and appeared to put pressure on senior management within CEC so that it did not take place. In the end, a short piece of work was commissioned as part of the gateway review process, which I did not think would provide the level of comfort I was seeking.

(2) Which individuals in CEC (and TIE) were primarily responsible for assessing and quantifying risk and the estimated capital costs?

I do not think anybody within CEC was responsible for quantifying risk and estimated capital expenditure. This is something that had been delegated to TIE. As part of a monitoring role, I was seeking to gain an understanding of how TIE had done this and whether their estimates were reasonable on behalf of Donald McGougan. Duncan Fraser and his team were seeking to do the same on behalf of Andrew Holmes.

Within TIE no one individual had responsibility for this. I think it lay somewhere between Finance Director, Stewart McGarrity and Commercial Director, Geoff Gilbert.

(3) Why did CEC wish to procure an external adviser?

At the DFBC stage, Transport Scotland had commissioned a similar review and had found it useful. CEC did not have the skills in house to review TIE's work and TIE had not engaged independent advisers to review their own assumptions.

(4) Who within CEC agreed to the proposal that the OGC team would undertake a separate review on risk rather than external advisers appointed by CEC?

I understand that Andrew Holmes and Donald McGougan agreed to this.

(5) What were your views on that proposal?

I did not think the proposed review went into a sufficient level of detail to give the Council the assurances it required, but I thought it was better than not undertaking any review at all.

(6) Can you remember why you sent your e-mail dated 2 October 2007 noted above to Jim Grieve (rather then, for example, to Mr McGougan)?

This email was forwarding on an email from Donald McGougan further to a conversation I had had with Jim. I had already explained to Donald why we required an external review, but he had agreed to TIE's proposal.

(7) What were your views on the OGC's review of risk (**CEC01496784**). Did it address your concerns?

I cannot remember what my views were. I see from some of the emails you have asked me to comment on in question 26, that I had concerns over TIEs ability to manage the contract and the format of the contract itself.

(8) Did you consider, at that stage, that you had a good understanding of the risks to CEC arising from the tram project, including the quantification of these risks?
No. At this stage I had *an understanding* of the main risks to CEC, but did not have a detailed understanding of these risks to enable me to quantify them personally. Quantifying risks in a project of this nature requires technical specialists and is not a task for which an accountant is professionally qualified, even if the information had been available.

24. E-mails on 11 September 2007 (**TIE00035961**) noted slippage in design and that, while steps had been taken to try and address the slippage, David Crawley, Engineering and Approvals Director, TIE, was not yet comfortable. Willie Gallagher noted that he was waiting to see the deliverables that week and that it did not look positive.

(1) What was your awareness around that time of the difficulties and delay in design?

I was aware of delays in design (but usually only after delays had occurred) and had no understanding of the reasons behind the delays, the precise implications of these delays, nor what was being done to address any issues.

25. An e-mail dated 5 October 2007 from Mark Hamill, Tram Project Risk Manager, TIE (**CEC01547983**) attached a paper of the same date, "Contractual Risk Matrices" (**CEC01547984**) and various risk matrices and related documents (**CEC01547985**, **CEC01547986**, **CEC01547987**, **CEC01547988**, **CEC01547989**, **CEC01547990**).

(1) In general, how helpful did you find these documents in understanding the risks to CEC and the quantification of these risks?

I did not find these documents particularly helpful. While it was useful to see individual risks set out, it felt like I was receiving raw data, and I had no means of confirming its accuracy or completeness.

The contractual risk matrices were useful background, but since I had had no involvement in the contractual negotiation, I had no understanding as to how these positions had been negotiated, or how they would operate in practice.

The QRA seemed to provide a comprehensive list of the risks, but I was concerned that the impact or the likelihood of some of the more significant risks may have been understated. This could then have led to the understatement of the risk allowance when the statistical modelling was run to determine the P90 allowance. I was also concerned that the analysis may not have taken account of risks being linked (eg if risk A occurred, the probability of risk B occurring would increase).

I was also concerned that the management of each of these risks was not always described and I could not see a process for monitoring the effectiveness of mitigation measures.

26. In an e-mail dated 19 October 2007 (**CEC01399632**), you noted two concerns raised by the OGC team reviewing risk and also forwarded an e-mail of the same date from Duncan Fraser setting out three critical issues, including concerns about the MUDFA works being behind programme with the potential for cost impact on Infraco and that the risk of change after financial close was *"very high"*.

An e-mail dated 22 October 2007 from Alan Coyle (**CEC01399641**), noted that Mr McGougan had had a conversation with Andrew Holmes on TIE's *"current lack of contract management skills and to the OGC recommendations (which was very dismissive)"* and that Mr Holmes was going to discuss the matter with Willie Gallagher.

(1) What was your understanding of, and views on, these matters?

I had been concerned for some time over TIE's ability to manage major construction contracts, as they did not have a good track record. There was the issue of slippage in the design and utilities contracts. In addition, the management of other capital projects (eg Ingliston Park and Ride and Fastlink) did not compare favourably with similar projects managed directly by the Council.

I thought that the recommendations in the OGC report and the fact that the Council was negotiating operating agreements with both TIE and TEL, gave the council an opportunity to insist that TIE strengthen its contract management capacity. However, I fully expected TIE to resist this level of Council control over their activities.

(2) What were Mr McGougan's views?

I think Mr McGougan shared these concerns over TIE's ability to manage contracts.

(3) What was done in response to these concerns?

While there may have been an intention for this to be included in the operating agreement, the process of negotiating the agreement with TIE resulted in any requirements for good contract management, were diluted to from clear requirements to "best endeavours".

27. On 25 October 2007 the Council's approval was sought for the Final Business Case, version 1, in respect of phase 1a (Airport to Leith Waterfront). A joint report was provided by Andrew Holmes and Donald McGougan (**CEC02083538**).
The report to Council noted that:

- The SDS had prepared preliminary designs and were currently finalising the detailed designs. (para 3.22)
- *"It is anticipated that the SDS and Tramco contracts will be novated to the provider of the infrastructure works. This means that significant elements of the responsibility for the design and vehicle provision and the risks associated are transferred to the private sector" (para 3.27).*
- The estimated capital cost of phase 1a was £498m; *"There is detailed information behind [the] estimates, which take due allowance for risk contingency and further scope for savings, but a fuller breakdown cannot be provided at this stage for reasons of commercial confidentiality"* (para 4.2).
- *"The infrastructure costs are also based on the fixed prices and rates received from the recommended infrastructure bidder. However, there is scope for this cost to move slightly, prior to contract close as further design work is required to define more fully the scope of the works to allow a firm price to be negotiated. There is a risk allowance to take account of these variations. The price also assumes that savings can be made on the proposals through certain Value Engineering innovations proposed by ... TIE and the infrastructure bidder"* (para 4.3).
- The estimates included a risk allowance of £49m, which had been calculated based on the perceived cost and likelihood of over 400 risks in the project risk register. A statistical analysis known as Quantified Risk Assessment was carried out at a 90% probability level and had concluded that there was a 90% chance that final costs would be within that risk allowance, which *"demonstrates a higher than normal confidence factor for a project of this scale and complexity"* (para 4.10).
- It was noted that *"The risk contingency is designed to cover additional unforeseen costs, but it is recognised that there is an element of residual risk of costs exceeding current estimates. It should also be notified that the risk contingency does not cover major changes to scope. The scope of such changes will be reviewed after completion of the Tram works and commencement of Tram operations"* (para 4.32).
- "Fixed price" and contract details would be reported to the Council in December 2007 before contract close in January 2008. (para 5.3).
- The Final Business Case, version 1 (**CEC01649235**) noted:
- *"The level of risk allowance so calculated and included in the updated estimate represents 12% of the underlying base cost estimates. This was considered to be a prudent allowance to allow for cost uncertainty at that stage of the project. It reflected the evolution of design and the increasing level of certainty and confidence in the costs of Phase 1 as procurement had progressed through 2006. TIE continued to comply with the HM Treasury recommendations for the estimation of potential OB and had determined, in consultation with TS, that no allowances for OB were required in addition to the 12% risk allowance above"* (paragraphs 10.13 and 10.14) (these provisions were essentially the same as the provisions on risk and optimism bias included in the draft FBC dated November 2006, **CEC01821403**, paras 9.11 and 9.12).
- *"By the time of the DFBC, OB was effectively eradicated, as per the findings explained in the Mott MacDonald Review of Large Public Procurement in the UK. This was in view of greater scheme certainty and the mitigation of factors built into the procurement process, as well as project specific risks and environmental*

*and external risks. Instead of using OB, TS and CEC adopted a very high confidence figure of 90% (P90) in the estimate of risk allowances to cover for specified risk, unspecified risk and OB"* (para 11.43).

(1) Did you have any input into the report to Council or the FBC, v1? (see e.g. your e-mail dated 22 August 2007 to Miriam Thorne, TIE, which noted that you would be putting together the sections on risk etc in the report to Council, **CEC01566826**).

The FBC was a TIE document and I had minimal input into it.

I did however work with Duncan Fraser and other Council colleagues to pull together an early draft of the report to Council, based on the message we thought our respective directors wished to convey. In this early draft sections on risk and financial implications will have been drafted by either myself of Alan Coyle. This draft was then reviewed and edited by numerous TIE, TEL and Council colleagues before a final draft was agreed by the directors of Finance and City Development.

(2) Do you have any comments on the report?

On rereading the report with the benefit of hindsight, while the main risks were discussed, the level of concern held by Council Officers is not reflected in the report.

(3) Do you consider that the report to Council fully and accurately reported on the delays in relation to design, approvals and consents and utility works and the risks arising from these delays?

No. While paragraphs 4.3 and 4.4 state that costs were likely to change due to further design work, there is was no reference to the fact that the requirement for further work was due to delays.

(4) What was your understanding of how the Infraco contractor could provide a fixed price, and how design risk could be transferred to the private sector, given the delay in design, approvals and consents (and given, for example, the design and TRO milestones noted at page 191 of the FBC, whereby detailed design for phase 1a was not expected to be completed until September 2008)?

I understood that the Infrastructure contractor had priced based on designs that were available and that prices were likely to move between final business case and contract close, as designs were refined. I do not think I fully understood how the novation of SDS would transfer design risk at contract close in the case of incomplete designs, but I understood this to be the intention. That said, I was not aware of the extent to which the designs were incomplete.

With hindsight, a legal review of draft contracts would have made the assumptions surrounding fixed price clearer as it is difficult to see how it works from looking at the risk matrices. In addition TIEs assurance that Infraco costs were 70% fixed and the main elements outstanding related to value engineering, should have been questioned more strongly.

(5) Do you have any comments on the paragraphs of the FBC noted above?

The FBC paragraphs were prepared by TIE and I had no involvement in drafting them.

(6) Did you agree that from late 2006 onwards optimism bias had been effectively eradicated and that it was appropriate to make no further allowance for optimism bias in addition to the risk allowance?

I was concerned that the risk allocation should be appropriate, but did not have a strong view as to which method was used to obtain it (QRA or Optimism Bias). I did have concerns that the risk allocation may have been light so also took account of the headroom between overall project cost (including risk) and the available budget when assessing how much contingency was available.

28. By e-mail dated 12 November 2007 (**CEC01551406**) Andrew Fitchie circulated a 23 page issues list for the Infraco contract suite (**CEC01551407**).

(1) In general, how helpful did you find that type of document in coming to an understanding of the main risks to the Council arising from the Infraco contract?

I did not find this type of document very useful as it refers to a contract I had not seen and contained abbreviations, defined terms and legal terms with which I was not familiar.

29. An e-mail dated 13 November 2007 from Bill Reeve of Transport Scotland to Donald McGougan (**TIE00061147**) noted, *"Of particular concern is the very high accrual which the project is currently reporting and which we have been raising with CEC for some months now"*.

(1) What was your understanding of, and views on, that matter? Did the "very high accrual" cause you (or others in CEC) any concern?

The high accrual represented the difference between the cost of work done (as reported by TIE) and the amount of grant claimed from Transport Scotland, which was based on the amount of cash TIE/CEC had paid out.

From memory there were two main reasons for the high level of accrual:

(i) The delay between issuing general vesting declarations and settling compensation claims on land acquired
(ii) Higher level of reported design and utilities spend than was actually being paid out.

I was not concerned by the land accrual, as this process can often be lengthy and was reliant on landowners engaging, but did not impact on the programme. I did however have some concern on the design/utilities accrual as it suggested there may have been more issues and delays than TIE were reporting.

I was also concerned that failure to resolve this issue would damage relations with Transport Scotland and could impact on the level and timing of available grant.

30. The Property & Legal group met on 20 November 2007 (you sent your apologies). The minutes noted (**CEC01397445**):
Duncan Fraser was to e-mail Mark Hamill of TIE *"regarding how does QRA Risk Register take full account of tie entering into a fixed price contract without having any approved designs with the Council"*.

*" ... there is a concern that the Final closure price will increase for a range of reasons including lack of agreed technical and prior approvals and mismatch between the current designs and BBS assumptions. Consequently the concern is that any variation to a fixed price contract results in increased scope of works and delay or disruption claims ... Pricing by BBS based on 60% detailed design approved which is unapproved. Consequently there should be a risk premium of £25m to take account of unapproved design. £498m + risk"*.

(1) What was your understanding of, and views on, these matters?

I was concerned about the gaps in design and the potential impact on the eventual cost of the infrastructure contract. I did not understand what the cost implications would be, or which elements of the design were missing as the information was not detailed enough. There did not seem to be an official channel by which TIE informed the Council on design programme and its implication of wider costs and programmes and we were only picking up bits that Duncan and his team could glean from their work on the approvals process.

31. By e-mail dated 28 November 2007 (**CEC01400081**) Nick Smith listed a number of key issues that would be useful for Directors to be aware of to inform their decision making.

(1) What, in general, were your views on the matters in Mr Smith's e-mail?

I was concerned by the ongoing risk arising from the incomplete design and the perceived difficulty in transferring this to BBS, as it had potential to add significant costs to the project, but I was unable to quantify this.

I was also keen that the Council/TIE resolved the outstanding agreements ahead of signing any contract, so as not to add additional risks/costs to the project.

On the financials, I was concerned that TIE had not adjusted their estimated outturn to take account of movements in the commercials and suspected that we were not being informed of the price implications of a lot of the changes.

I was also concerned that project governance was not as strong as we would like it to be. The TPB had no formal authority and the Council's ability to control TIE through an operating agreement was weakened by the fact that TIE would have no professional indemnity insurance.

32. By e-mail dated 29 November 2007 (**CEC01397535**) Alan Coyle asked Mark Hamill of TIE for a version of the QRA or a matrix that summarised the document. He noted that Duncan Fraser had advised that the risk allowance drops from £49m to £34m at contract close and asked for the reasons for that change, to enable CEC officers to report to the Council on 20 December the risks that had been closed out. By e-mail dated 3 December 2007 (**CEC01397535**) Mr Hamill sent Mr Fraser a graph showing the risk exposure profile (**CEC01397536**) and a Risk Allocation Report (**CEC01397537**).

By e-mail dated 3 December 2007 (**TIE00090785**) Steven Bell, Engineering and Procurement Director, TIE stated that while he was happy to discuss the content of the Risk Allocation Report and risk exposure graph with you and Alan Coyle, he strongly believed that these details *"must not be shared in this detail in the council report"*.

He further stated, *"In any event the items can only be closed once the risk events have been confirmed as concluded (and many of those apply at actual contract close not in advance) and I believe this level of detail in your report to council is not appropriate and counterproductive in commercial negotiations with BBS"*.

(1) What was your understanding of, and views on, these matters?
(2)

I understood that TIE had sought to reduce the risk allocation, as risks were closed out at contract close. I am not sure I understood why these risks were being reduced *before* contract close.

I understood the need for commercial confidentiality in not revealing to bidders how much risk we had set aside for specific items, but it may have been possible to disclose information about the overall risk allowance, which covered more than just the Infraco contract.

(3) To what extent did the Risk Allocation Report assist you in understanding the risks to the Council arising from the tram project? Do you consider that you (and others in CEC) had a good understanding of these risks?

The risk report partially helped me in understanding the risks, in that provided a detailed list of risks to which the project was exposed. However, it contained TIE's assessment of the likelihood and value of each risk and I was unable to validate this. I was also not able to confirm the completeness of the register.

I do not think that CEC officers had a good understanding of the risks. While we were able to highlight what we considered to be the most significant risks, we did not understand them fully enough to quantify them. This was because we did not understand the state of the design, the draft contract, the commercial positions advanced by TIE and BBS or the quality of the MUDFA works.

(4) Was there a tension between, on the one hand, the need to provide members of the Council with sufficient information to enable them to come to an informed

decision and, on the other hand, not providing commercially sensitive information that may prejudice TIE's negotiations with the contractor? Was that tension ever resolved? Are you aware of any practical steps that were, or could have been, taken to resolve the tension/satisfy both objectives?

There was a tension between providing sufficient information to members of the Council and putting sensitive information into the public domain which may have prejudiced TIEs negotiations. I am not aware of any steps taken to resolve this tension. Mechanisms which could have been considered might have been:

(i) Members may have considered parts of this report in private (on the Council's B agenda). Given the public interest surrounding the project, it would have been inappropriate to consider the whole report in private, but commercial elements may have been considered separately.
(ii) Detailed briefings could have been given to members in advance of the Council meeting
(iii) A separate data room could have been created for members only, giving them access to commercially confidential information.

33. On 7 December 2007, Colin Mackenzie sent a briefing note to Gill Lindsay, which he described as having been "*put together with our colleagues in finance*" (**CEC01400190**, **CEC01400191**). He stated that it "*reflects our very real concerns about the Council report, and indeed whether there should be a report on 20th December*".

The Briefing Note was discussed at a meeting of the Chief Executive's Internal Planning Group on 11 December 2007 (and formed Appendix 3 of the Highlight Report to the IPG, **CEC01398245**, pages 7 and 90) (see, also, the Action Note, **CEC01391159**).

(1) Did you have any input into the Briefing Note?

Yes, I input to and commented on drafts of this note. It was a joint piece of work compiled by Council officers working on the tram project prepared in order to escalate our concerns to senior management.

(2) What were your views on the matters in the Briefing Note?

I was concerned that some of these matters would could result in a significant increase in project cost and that TIE were rushing to achieve contract close without resolving them.

(3) What was done in response to the concerns raised in the Briefing Note

Senior management raised the issues with TIE senior management. A set of deliverables was agreed that needed to be completed before Council Officers agreed to sign off the contract. See answers to question 36.

(4) Did you consider these steps to be adequate to deal with the concerns in the Briefing Note?

I was pleased that these concerns were being taken seriously by senior management and I felt that if we could get satisfactory responses to each of these then this response would have been adequate. In retrospect, I think that any comfort that we might have taken from these deliverables, was undermined by the fact that Council Officers we did not have a full understanding of the contract scope and therefore the risks the Council was accepting.

(5) What were your views on the extent to which, if at all, Council members should be advised of the concerns in the Briefing Note and whether it was appropriate for there to be a report to Council on 20 December 2007 at all?

I think I was concerned that members were not getting the full picture and knew there were gaps in officer knowledge of the risks involved. However, I did not have regular contact with members and would have been guided by senior management as to what should be reported and when.

34. The minutes of the meeting of the Legal and Property group on 11 December 2007 (**CEC01397823**) recorded:

In relation to the terms of the price: *"Fixed price for structures, fixed price from Airport to Haymarket, re-measured price from Haymarket to Newhaven".*

"*Council is not clear on Scope of Works and it is not clear tie is clear on Scope of Works. Needs to be a fuller understanding of this position to enter into a fixed price contact.*" While there was a need to get a fixed price, *"will a fixed price put the cost of variation e.g. during design approvals, it may result in a rise of costs".*

Donald McGougan was noted to be keen to have control over the contract with a sensible price instead of a compressed price.

(1) What was your understanding of, and views on, these matters?

In order to minimise risk to the Council, we were seeking cost certainty. There was a danger that if we pushed for a fixed price contract on a design that was subject to change, then we would be exposed to contractor claims. This could then increase the price and not achieve our objectives.

(2) Do you consider that the Council and/or TIE were ever clear, prior to contract close, about (i) the scope of the works and (ii) the price that had been agreed with BSC?

I do not consider that the Council fully understood the scope of works and price that had been agreed with BSC. I am unable to comment on the extent to which TIE understood them.

(3) What was your understanding as to what Mr McGougan meant by wishing to have control over the contract with a "sensible price" instead of a "compressed price"? Was that achieved?

By trying to keep the price in line with previous estimates additional risks may have been retained by the public sector. I understood that Mr McGougan would have preferred this price to increase so that the risks could be transferred to and managed by BBS.

This was not achieved, as risks remained with TIE/CEC.

35. On 12 December 2007 you sent an email to Geoff Gilbert, TIE (**CEC01494469**) identifying matters on which CEC wished comfort before signing off on its report. They included the contract price, details of the split between firm prices and estimates, and justification that the risk allowance was sufficient. You noted that a meeting had been scheduled for the next day. By e-mail dated 12 December (in the same chain) Mr Gilbert proposed an agenda for the meeting. We note the slides for a presentation to CEC on Risk on 13 December 2007 (**CEC01546424**).

By e-mail dated 14 December 2007 (**CEC01397774**) Duncan Fraser referred to the presentation by TIE the previous day and asked certain questions about the Quantified Risk Allowance, including querying the provision made for the likely change in scope given the incomplete/outstanding design, approvals and consents.

(1) Do you have any recollection of what was discussed at the meeting on 13 December 2007?

No – I don't have a detailed recollection of this meeting.

(2) Do you recall whether the meeting fully answered the matters listed in your e-mail of 12 December? Did the presentation answer all of your queries on Risk?

As stated above, I do not recall this precise meeting. However, from the presentation slides, I do not think this information was sufficiently detailed to answer the queries I had.

(3) What was your understanding of, and views on, Mr Gilbert's response? Did you consider that Mr Gilbert's response adequately dealt with Mr Fraser's concerns?

I cannot remember receiving this email. From looking at both Mr Fraser's questions and Mr Gilbert's response, I do not think Mr Gilbert answers the questions adequately.

(4) Were the matters listed in your e-mail ever answered to your satisfaction (and, if so, how and when)?

No.

36. The Legal Affairs Group met on Monday 17 December 2007 (**CEC01501051**). At the meeting Susan Clark presented a paper proposing the deliverables that would require to be completed to allow TIE to be given authority to enter into the contracts (**CEC01501053**).

(See also (i) your e-mail dated 8 January 2008, **CEC01384528**, which noted items that should be added to Susan Clark's paper in respect of Risk, Pricing, Funding, NR assurances and SDS assurances and (ii) an e-mail dated 16 January 2008 from Alan

Coyle, **CEC01395098**, attaching a revised deliverables spread sheet, **CEC01395099**).

(1) Do you have any recollection of what was discussed at that meeting?

I remember agreeing the deliverables, but I do not have a precise recollection of the meeting.

(2) Do you have any comments on these documents?

These documents represented Council officers' understanding of the main risks and issues which needed to be resolved and a plan to address them, which at the time seemed to be sufficient. However, with the benefit of hindsight it is likely that this list of measures would have been insufficient, even if we had had satisfactory answers from on each point. There was no independent review of the contact and its related schedules in this list. I do not think that it adequately covers the project's scope and the extent to which design elements fell outside that scope.

(3) Ms Clark's paper noted that you, on behalf of CEC, would require signing off on Risk and Pricing. Were you primarily responsible in CEC for these matters?

As a relatively junior Council officer I did not have responsibility for these matters. Ultimately Donald McGougan was responsible in his role as director of Finance and my role was to advise him.

37. An e-mail dated 18 December 2007, sent on behalf of Duncan Fraser (**CEC01397825**), attached a note, Tram Project Board Critical Issues (**CEC01397826**), in relation to a meeting of the Tram Project Board on 19 December 2007.

The note stated: *"1. Negotiations. Firm prices – 97% fixed leaving Picardy Place and Lindsay Road as re-measurable … 2. Budget … The Approvals Risk is now allocated to TIE with a £10m provision for Change Control …".*
(1) Do you have any comments on these matters?

As I had little understanding of the design, it is difficult for me to comment on these matters. By firm/fixed prices, I understood that these were based on agreed/finalised designs and where designs were less than complete, then they would be based on the works required by the emerging design. I did not understand the extent of design changes required to achieve approvals, or indeed to complete the project. If I had had full knowledge of the true contractual position, I would not have considered the prices 97% fixed and would have considered the £10m provision to be inadequate.

38. We understand that discussions took place at Wiesbaden, Germany, in the middle of December 2007 between representatives of BBS and TIE in relation to the pricing provisions of the Infraco contract and that, on 20 December 2007, an agreement, or heads of terms, were reached (the Wiesbaden Agreement) (**CEC02085660**).

(1) What did you understand to be the purpose of that meeting? (see e.g. the minutes of the meeting of the Legal Affairs Group on 5 December 2007, **CEC01551016**, which noted, at page 4, that you expected *"A report on the final price from BBS following WG and MC's meeting in Germany on 13/12/07"*).

I understood the meeting was to agree key elements of the contract and the contract price, but I had no details of the proposed agenda.

(2) What was your understanding of the outcome of that meeting?

I was not provided with detailed feedback from this meeting.

(3) Was the outcome of the discussions at Wiesbaden reflected in the report to Council on 20 December 2007 noted below? If not, were members informed of the Wiesbaden agreement later (and, if so, when and how)?

The outcome of the discussions cannot have been reflected in the report to Council, as the Council Officers drafting the report were not privy to the agreement. I am not aware of members being informed of this agreement at a later date.

39. On 20 December 2007 Andrew Holmes and Donald McGougan presented a joint report to Council (**CEC02083448**) seeking members' approval on the Final Business Case, version 2.

The report appears to have evolved as follows:

- By e-mail dated 29 November 2007 (**CEC01383999**) Stewart McGarrity sent a copy of the draft report (**CEC01384000**) containing comments by himself and Miriam Thorne. The version of the draft report in existence at that stage noted that a further contingency of £25m was recommended to cater for changes from the preliminary design to final design (paras 3.3 and 4.3). An Appendix on Risks noted that designs were not complete and that *"If the designs are built into the contract at contract close and the decision is made to change them at a later date, this will lead to additional costs and potential delay"* (para 5). The Appendix also noted that if designs required to be reworked to obtain planning approval then, again, a variation order would be required at additional cost and delay (para 6).
- An e-mail dated 30 November 2007 by Duncan Fraser to you (**CEC01384035**) stated *"I have compressed the report as requested by Andrew to show what can be done. However I still have concerns about the completeness of information that informs the members decisions"*. In the compressed report (**CEC01384036**) the reference to an additional contingency of £25m in relation to design changes had been deleted.
- By e-mail dated 6 December 2007 (**CEC01397621**) Alan Coyle sent a draft of the report (**CEC01397622**) *"for TPB circulation"* following comments by Donald McGougan. The draft stated that *"A Supplementary Report may be issued for the 20 December 2007 Full Council setting out the latest negotiated position with the Infraco contractor (BBS)"* (para 5.5). .
- By e-mail dated 12 December 2007 (**CEC01397706**) Alan Coyle sent Mr Fraser the most recent update of the draft report (**CEC01397707**).

- By e-mail dated 13 December 2007 (**CEC01397719**) Alan Coyle circulated a further draft of the report (**CEC01397720**). The reference to the possibility of providing Council with a Supplementary Report had been deleted as had the Appendix on Risks.
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(1) It would be helpful if you could explain, in general terms, the process by which the report was drafted and finalised, including which individuals, from which organisations, had an input into drafting the report? Did you have any input?

From recollection, Duncan Fraser pulled together the first draft of this report. This was then circulated to colleagues in CEC and TIE for comment. Following particularly critical comments from TIE, which were fed back to senior management within the Council, Alan Coyle and I worked with Duncan to produce further iterations, in response to comments from TIE staff including Graeme Bissett and Stewart McGarrity and instructions from Andrew Holmes and Donald McGougan.

While some of this work was required to make the report more understandable, we were also required to take out sections which were considered "commercially sensitive".

(2) To the extent that information in the report was provided by individuals' outwith CEC, what steps, if any, were taken to confirm the accuracy of that information?

Information in the report claim primarily from TIE. In the run-up to the report, we had sought external verification of elements of the procurement and business case as well as back-up documentation from TIE so this could be fed into the report. We had had limited success (see answers to previous questions).

(3) Do you know why the reference to an additional contingency of £25m for design changes and the Appendix on Risks were deleted from the final report? What were your views on whether that was appropriate?

There was no science to the £25m figure. I think Duncan included it to alert members of the issue and to provide an extra contingency against an unquantified risk. TIE did not want to include it for commercial reasons and because it increased the £498m headline cost of the project. While I did not support quoting an unrealistic cost, I could see why we shouldn't advertise the figure we had made available for contractor claims. At that point, we also had sufficient budget above the £498m, from which we could cover this risk. At the same time, I supported Duncan's intention to give members a greater level of information about this risk.

I had stronger views on the appendix on risk as I felt the Council should be aware of the risks it would be taking on by signing the infrastructure contract.

Ultimately, the decision to remove these items was not mine to make.

40. On 20 December a report was provided to Council (**CEC02083448**) along with version 2 of the Final Business Case (**CEC01395434**).

The report to Council noted:

- *"The cost estimates for the project reflect provision for evolution as the detailed design will be completed in the coming months. The design is completed under the Infraco contract from the point of award of that contract through novation of the System Design Services contract with Parsons Brinkerhoff to Infraco"* (para 3.2).
- *" ... Some cost allowance has been made for the risk associated with the detailed design work not being completed, at the time of financial close ..."* (para 8.1).
- The estimate of £498m for phase 1a inclusive of a risk allowance as reported in October 2007 remained valid. The current price estimate was based on a compressed construction programme (para 8.2).
- *"The fundamental approach to the Tram contracts has been to transfer risk to the private sector. This has largely been achieved"* (para 8.10).
- *"Risks retained by the public sector and which therefore bear upon the Council are explained in the Final Business Case section 11. These risks include:*
    - *Agreements with third parties including delays to utility diversions.*
    - *Finalisation of technical and prior approvals.*
    - *The market cannot provide Professional Indemnity Insurance to TIE vis-à-vis a claim by the Council against TIE, because TIE is wholly owned by the Council"* (para 8.13).
- *"There are additional risks such as third party agreements and consents where discussions and negotiations are continuing to reach an acceptable position in respect of allocation of risks"* (para 8.15).
- *"The risk contingency does not cover major changes to scope. It should be noted that the current construction programme is compressed to reduce the length of disruption and provide best value. Changes to the programme could involve significant costs, not currently allowed for in the risk contingency"* (para 8.16).
- It was anticipated that the Notification of Infraco award would be issued on 11 January 2008, the Tramco and Infraco contracts would be awarded on 28 January 2008 and that construction on phase 1a would commence in February 2008 (para 8.19).
- The Conclusions included that, *"The preferred bidder negotiations, in terms of price, scope, design and risk apportionment, give further reassurance that Phase 1a can be completed within the available funding and are consistent with the Final Business Case"* (para 9.2) and that *"The total forecast project cost is consistent with the final business case. TIE is confident that risk contingencies and the final approved design can be accommodated within the funding available"* (para 9.3).
- Authority was sought from members for the award of the Tramco and Infraco contracts by TIE subject to price and terms being consistent with the FBC and subject to the Chief Executive being satisfied that all remaining due diligence was resolved to his satisfaction (paras 1.2 and 10.2).

(1) Did you have any input into the FBC?

No. The FBC was prepared by colleagues in TIE.

(2) Do you have any comments on the report to Council?

On rereading the report, I do not consider that it provided the Council with adequate information to approve the award of contract. At this stage, the Contract had not been finalised and Council officers were not able to recommend award and instead recommended the delegation of this decision to the Chief Executive. Given the complexity and magnitude of this contract, I do not feel this was appropriate.

At the time, I understood that this delegated authority was required to ensure that the project (despite delays to design and utilities) remained on target for completion in 2011. I am not entirely sure what the motivation for this was, although I think there may have been desire for completion before elections in that year. There was also a rumour in the Council that senior individuals in TIE had bonuses that were linked to the contract award (although this was never verified to my knowledge).

(3) What was your understanding at that time of the extent to which the Infraco contract was for a fixed price (and the extent to which, and in what circumstances, the price was liable to change)?

I understood that the price was largely fixed, save for a few remeasurable sections. I understood that the price might change slightly as part of the approvals process, but understood that designers had been working with CEC requirements as planning and roads authority and that the changes required to obtain the necessary approvals would be manageable within the overall budget, if not the £498m.

(4) It was noted that the risk contingency did not cover "major changes to scope". What was your understanding of "major changes to scope"? Can you give examples?

I understood major changes to scope to be items such as:

Restrictions on planned Traffic Management arrangements (eg limited or delayed closure of Princess Street)
Improvements to roads and pavements adjacent to the tram line.
Major additional utility works, over and above those allowed for in the risk contingency.

(5) Do you consider that the report to Council adequately set out the delays in relation to design, approvals and consents and utility works?

No. While the report does highlight some risk associated with approvals, it does not cover the extent of the delays and the additional risks this had added the project.

**EVENTS IN 2008**

41. The minutes of a meeting of the Legal Affairs Group on 7 January 2008 (**CEC01486372**) noted (page 4), SDS Design Status:

*"SDS have completed 70% of detail design. BBS are prepared to accept SDS under*

*novation agreement (quality of design, programme and commercial position). This will be set out in the Novation Schedule which form[s] part of the SDS contract".*
*"Consents and approvals remains an area of risk that BS are not happy to sign up to, as there is no time obligation on SDS to deliver all necessary approvals, whereas the Infraco contract has a liquidated damages mechanism in place which has a tiem [sic] dependency. The tie commercial team are currently working through these issues with BBS".*

*"MC to prepare a paper for the 14/01/08 LAC meeting and to ask DF and DS to present the current design status/approvals process to the group".*
The minutes of the meeting of the Legal Affairs Group on 14 January 2008 are **CEC01398264**.

The minutes of a meeting of the Legal Affairs Group on 21 January 2008 (**CEC01476409**), noted, in relation to Consents and Approvals (para 8), *"NS [Nick Smith] asked who would be liable if SDS does not work to the programme -- MC [Mathew Crosse] noted that the SDS Novation Agreement will take care of this. At NS's request MC will confirm that the Agreement contains details of who will take the risk on knock on effects of delays".*

(1) What was your understanding of these matters?

I understood that TIE were having difficulties novating the design contract to BBS as the SDS contract was not aligned with the BBS one (presumably because it had not been envisaged that this contract would novate prior to completion of design and receipt of approvals).

It was unclear how TIE were proposing to resolve these difficulties and what impact this would have on the contract's risk profile.

42. An e-mail dated 22 January 2008 by Nick Smith (**CEC00481318**) noted a *"significant issue with regard to design approvals and consents"* against the background *that "the design process is now over 12 months late in delivery".*

You were copied in by Duncan Fraser on his reply.

(1) What was your understanding of the matters in these e-mails, including which party bore the risks and costs arising from (i) incomplete design, any changes to design and delays in finalising design, (ii) outstanding statutory approvals and consents and delays in obtaining such approvals and consents and (iii) any delay to the Infraco programme and works caused by these matters?

At this point it was unclear as to which party bore the risks and costs for these matters, as we did not have a complete understanding of employers' requirements or the novation agreement. The issue was the extent to which the costs and the costs of delays would be attributable to Council betterment (Council risk) or sub-standard design (contractor risk). There was also lack of clarity of how these risks would be shared in the event that there was both Council betterment and sub-standard design.

43. By letter dated 24 January 2008 (**CEC01221901**) Tom Aitchison accepted the grant offer, with conditions, set out in the accompanying letter dated 17 January 2008 by Bill Reeve, Director of Rail Delivery, Transport Scotland.
(1) Do you have any comments on the grant letter or conditions?

The grant letter formalised the fact that risk of cost overrun would be borne entirely by the Council. This was not unexpected following the Scottish Parliament vote in 2007. The main challenges had been to ensure that all relevant costs could be eligible for grant and that the grant was sufficiently flexible to allow for programme acceleration or slippage.

44. By e-mail dated 1 February 2008 (**CEC01386002**) Susan Clark sent Alan Coyle a number of documents including a Programme Summary and Risk Report (**CEC01386003**), a Risk Register (**CEC01386004**) and a draft Risk Management Report (**CEC01386005**).

The Programme Summary and Risk Report noted that the construction programme was primarily constrained by the delivery of design, the delivery of the MUDFA works and consideration of potential resource constraints on particular skills.
The report also noted, under Programme Risks (page 5), that if Design Delivery failed to meet the required programme then Infraco would be unable to achieve contract close which could impact the programme by between three to six months. There was an allowance of £3.8 million within the project risk allowance for this risk.
It was also noted, if Utility diversions failed to meet the required programme, that there was a potential delay to specific areas of the Infraco works but that this was considered unlikely due to programme logic being based on MUDFA rev 06 construction programme. Delays within any expected areas were anticipated to be less than four weeks. There was an allowance of £1.35 million within the project risk allowance for this risk.

By e-mail dated 5 February 2008 Mr Coyle advised Ms Clark that he was "disappointed" with the quality of information provided by TIE in respect of risk registers and that it was "unacceptable" that there was no quantification of "black flag" risks (**CEC01508100**) and (**CEC01508101**).

(1) What were your views on these matters?

I discussed these matters with Alan.

I was concerned that the risk register did not accurately reflect the project risks. Some risks which had been closed out remained on the risks register, which suggested that risks were not being regularly reviewed and updated.

I was also concerned by the apparently low level of provision against the particular risks you quote. I might have accepted that this as the QRA is used to provide an overall risk pot on the basis that not all risks will occur. However, as I had concerns over the quality of the register, the low values did not inspire confidence.

Finally, we needed to know the value of the black flag risks (ones which resulted in project cancellation), so that we could understand what the worst case scenario would be so that senior Council Officers and members could make informed decisions.

45. By e-mail dated 13 February 2008 (**CEC01393753**) Alan Coyle copied you in on an e-mail to Mr McGougan noting the main actions points arising from a recent meetings with TIE, and attaching various papers presented by Andrew Fitchie, namely, Parent Company Guarantees (**CEC01393754**), CEC Guarantee (**CEC01393755**), SDS Contract (**CEC01393756**), Core Indemnity Provisions (**CEC01393757**), Liability Caps (**CEC01393758**), Liquidated and Ascertained Damages for Delay (**CEC01393759**) and Bonding Position (**CEC01393760**).

The paper on SDS Contract (**CEC01393756**) noted, in relation to Post Novation Contractual Recourse, Financial Liability, *"BBS prolongation cost as a result of delay form [sic] SDS failure to obtain consented design in accordance with Consents Programme"*.

(1) What was your understanding of which party bore the risk of BBS prolongation costs arising from delays in the consents programme?

I cannot remember my understanding of this at the time. From re-reading the papers now, it looks like TIE bore the risk associated with prolongation.

(2) What was your understanding of the control, if any, that TIE would have over the quality and timing of design after the novation of the SDS contract to BBS?
I did not think TIE would have any direct control over SDS post novation.

46. On 18 February 2008 BBS produced a Design Due Diligence Summary Report, based on design information received by BBS by 14 December 2007 (**CEC01449100**). That document raised various concerns about design, including that *"more than 40% of the detailed design information"* had not been issued to BBS.
(1) Were you aware of that report at the time?

No

(2) Do you remember whether the report was made available to, and discussed within, CEC?

No. It was not made available to me at the time and I am not aware of it having been made aware to CEC colleagues.

(3) Did the state of completeness of Detailed Design noted in the report accord with your general understanding around that time?

As stated above, I was not aware of this report. From reading this now, the state of design was far less complete, with greater potential for additional costs and delays, than I understood it to be at the time.

(4) How was the report reconciled with the deliverables for contract award, which were to include a statement from the preferred bidder that they accepted the

emerging quality of design (**CEC01501053**, item 4, Due Diligence)?

I do not think this report could have been reconciled with such a statement.

47. A meeting took place on 28 February 2008 between TIE and Donald McGougan, Andrew Holmes, Gill Lindsay and Alan Coyle (referred to in an e-mail of that date by Graeme Bissett, **CEC01546728**). In his e-mail Mr Bisset stated that *"overall we believe that the existing £498m budget remains within reach if it is accepted that the balance between calculated cost and risk contingency will change and that some areas will be controlled post-Close rather than negotiated into the ground now"*?

(1) Are we correct in our understanding that you did not attend that meeting? Can you recall whether Mr McGougan or Mr Coyle reported back to you on what was discussed?

I cannot remember attending this meeting. As Alan reported to me and we discussed the project daily, I am sure that he reported these discussions back to me.

(2) What do you understand Mr Bisset to have meant by his comment noted above? Did that accord with your views? Was there an understanding, and acceptance, within CEC that some areas would be controlled post contract close rather than negotiated and agreed before contract close (and, if so, which matters and how was that reflected in the contract price and/or risk allowance)?

I think we understood that negotiations were complicated and that some issues would not be resolved, but be covered by provisional sums or additional risk allowance. What I do not understand is that in this email, Graeme is both suggesting that costs will be controlled post-contract (additional risk allowance required), while at the same time suggesting that the risk allowance will reduce to allow for increased costs.

48. By e-mail dated 29 February 2008 (**CEC01398912**) you advised Alan Coyle that *"The latest at the IPG is that we are to prepare a two pager saying everything is fine and notification to award is about to be made. If things are not resolved and delays persist, then there will be no report!"*.

(The Highlight Report for the meeting of the IPG on 29 February 2008 is **CEC01246993**).

(1) It would be helpful if you could explain your comment noted above?

Alan had been working on a detailed report for members on the final contract position (when it was agreed). The decision from the IPG was to reduce this to a much shorter report with little detail, only to be issued if outstanding issues were resolved enabling the Chief Executive to authorise contract award.

(2) What was the reference to a "two pager" (was it e.g. a reference to the note for the Chief Executive on contract award that was first produced in March, **CEC01390848**, and signed on 13 May 2008, **CEC01244245**)?

No. It referred to a report to Council (or a relevant Council committee)

(3) What were you views on whether such a note adequately set out the risks to the Council?

I did not think it was possible for a two page report to adequately set out the risks. Alan and I had already discussed producing a much more detailed report and he had even produced an early draft.

Furthermore, I do not think the documents you quote above fully set out the risks (although I do not think that was the purpose of these documents).

(4) What matters did you consider had still to be resolved at that stage? What were the "delays"?

There were a number of issues still to be resolved. The major ones related to SDS novation and agreement on price and risk. The delays related to contract close, which by this time was over a month later than had been reported to Council in December.

49. By e-mail dated 19 February 2008 Colin Mackenzie advised Gill Lindsay that *"The position regarding novation of the SDS contract to BBS was given next to no clarification last night, with a contradictory explanation from TIE"* and recorded his concerns about TIE's lack of transparency and co-operation with Council officers (**CEC01400919**).

(1) Did you have any concerns, at any stage, in relation to TIE's lack of transparency and co-operation with Council officers?

I had concerns about TIE's lack of transparency and co-operation with Council offers throughout my dealings with the company. This dated back to work on the congestion charging project and continued throughout my involvement with the tram project.

There was not a systematic or proactive way for sharing important information with Council officers. Officers would pick up partial information from board papers or conversations with TIE staff and then ask follow-up questions.

If difficult or awkward questions were being asked, senior TIE/TEL staff would complain to Council senior management. I experienced this personally when after attending a meeting of the TPB, Donald McGougan was approached and I was requested not to attend future meetings. As experienced and highly paid experts, it felt as if TIE did not understand that Council officers had a duty to question them to ensure that the Council's interests were being protected.

There were some helpful individuals within the company, but they tended to be at a more junior level (for example Miriam Thorne always seemed to answer my questions or point me in the direction of somebody who could).

50. By e-mail dated 3 March 2008 (**CEC01506052**) TIE provided CEC with a breakdown of the Quantified Risk Allowance (**CEC01506053**).

(1) What was your understanding of the allowance, if any, made in the QRA in respect of the risks arising from incomplete and outstanding design, approvals and consents?

I cannot remember my understanding at the time.

The way the QRA is set out makes it difficult to work this out. From a review of the spreadsheet, it looks as though around £5m (£2.5m under design/approvals headings plus additional risks relating to design under the infraco heading) relates to these issues. In addition, there are related risks in the section of the spreadsheet assumed to be closed at contract close, which does not make sense given the contractual position at the time.

51. By e-mail dated 10 March 2008 (**CEC01393819**), Graeme Bissett circulated drafts of the Close Report (**CEC01393820**), DLA Risk Matrix (**CEC01393821**), DLA letter to CEC (**CEC01393822**) and DLA Report on Infraco Contract Suite (**CEC01393823**).

The e-mail noted that while, generally, the documents were in final form, negotiations on a range of issues continued.

The main outstanding issues in the draft Close Report included, *"the section on the pricing schedule (being finalised)"* and *"the Appendix on design and consents will require to be updated to the final position on submission and consent status"*.

On 10 March 2008, Stewart McGarrity, Finance Director, TIE, sent you an e-mail (CEC01506128), answering various questions about the QRA. The exchange included the following points.

You had asked for a "*note on the risks of delaying contract signature versus the risks of signing the contracts if any of the items in the matrix are not resolved*". Mr McGarrity's response was that, assuming the SDS novation was agreed and the Network Rail agreement signed up, "*then the only significant additional public sector risk compared to December is the delay in post close SDS design delivery. This would only go away if we waited for the design to complete which would in say September* [sic.]. *Six months inflation on the programme would cost £15m to £20m alone. More likely is that either BBS or the TS funding or both would walk away and we'd have no project.*".

You noted that, "*we were reassured by your statement that the current level of the risk allowance (approximately £30m) as determined by QRA was sufficient, based on your knowledge of the project and considerable experience of other major projects.*".

Mr McGarrity noted that some items had been added to the QRA to arrive at the final risk allowance of £32m.

(1) Do you have any comments on these documents?

At this point, it is clear that key issues on design, consents and pricing were still outstanding and the documents do not provide the level of reassurance the Council was looking for.

My comment in my email to Mr McGarrity stating that I was "reassured" was perhaps overstating the situation. The tone of my email is clearly designed to gather further information and I was trying to be persuasive.

(2) To what extent was the decision to recommend proceeding with the project in May 2008 influenced by the estimated cost arising from delaying financial close to allow completion of the design and/or Mr McGarrity's prediction that delay would lead to BBS or TS "*walking away*" from the project?

I was not close enough to the procurement and negotiations with BBS to be able to assess this how likely it was that they would walk away and whether this was influencing decision-making. I did not think additional delay would mean that TS would walk away as I thought they would be supportive of measures taken to reduce risk and increase cost certainty. Certainly, slippage at earlier stages in the project had always been accommodated.

In general, I felt that delay to procurement to allow the design to catch up had never been considered an option by TIE, even at a much earlier stage (eg invitation to negotiate or even invitation to submit BAFO) when it would have made a lot of sense.

(3) Had CEC received and reviewed the QRA which had come out at £30m by this time?

No I think I was referring to the one detailed in question 50, and had rounded it.

52. By e-mail dated 10 March 2008 to Gill Lindsay (**CEC01399016**), Colin Mackenzie advised that he could not support a letter from the Chief Executive of CEC that changes were within tolerable limits and confirmed his view that the Chief Executive should report to Council again on the various material changes.

(see also Mr Mackenzie's e-mails to Ms Lindsay dated 12 February 2008, **CEC01401419**, and 28 February 2008, **CEC01400987**, raising similar concerns).
(1) What were your views? Did you share Mr Mackenzie's concerns?

I agreed that the changes (or at least changes in the Council's understanding of the position) were material. However, I was less experienced than Mr. MacKenzie in Council governance and could not advise as to whether these changes required the Chief Executive to seek further approval from Council.

From a public accountability perspective, I felt that members should have a better understanding of the risks involved.

53. By e-mail dated 10 March (**CEC01393819**) Graeme Bissett circulated drafts of the Close Report (**CEC01393820**), DLA Risk Matrix dated 14 December 2007 (**CEC01393821**), DLA letter to CEC (**CEC01393822**) and DLA Report on Infraco

Contract Suite (**CEC01393823**).

In his e-mail Mr Bissett noted that while, generally, the documents were in final form, negotiations on a range of issues continued.

The main outstanding issues in the draft Close Report included, *"the section on the pricing schedule (being finalised)"* and *"the Appendix on design and consents will require to be updated to the final position on submission and consent status"*.

In an e-mail dated 11 March 2008 (**CEC01393828**) Colin Mackenzie noted that the "B team" had considered the documents and noted a number of crucial points that were outstanding prior to a meeting to be held with TIE later that day.

(1) Do you have any comments?

I do not have a detailed recollection of receiving these documents or of attending the meeting that followed. These documents were long and sent close to the meeting with TIE, so the Council did not have sufficient time to digest them. From my perspective, it is concerning crucial information on pricing, design and consents, risk and capital cost was missing or incomplete.

The reports are Graeme Bisset's and DLA's analysis of the contractual position and have not been independently reviewed. With hindsight, it is clear that the level of risk was understated.

54. By e-mail dated 11 March 2008 (**CEC01544518**) Duncan Fraser, CEC, advised TIE that CEC required a statement confirming the elements of the SDS designs that are being re-designed by BBS, if any, the working assumption to date having been that all of the SDS designs were to be adopted by BBS.

In a reply, Graeme Bissett stated *"the information you want is embedded in the Infraco proposal ... As I think we discussed today, the liability would sit with BBS/SDS in relation to any redesign"*.

(1) What was your understanding of which party bore the risks arising from any redesign?

My understanding was that BBS/SDS bore that risk, except under the circumstances where this redesign was the result of a TIE/CEC change. That said, I did not have a detailed understanding of the contract and was being advised by others.

55. By e-mail dated 11 March 2008 (**CEC01407769**) Alan Coyle gave an update following a meeting with TIE that evening.

By e-mail dated 11 March 2008 (**CEC01490289**) Mr Coyle advised TIE that in order for CEC to approve the Intention to Award (ITA), CEC would require a letter from Willie Gallagher on certain matters, including that *"the price is now fixed (excluding know (sic) estimated costs)"*.

On 12 March 2008 Willie Gallagher sent a letter to Tom Aitchison confirming TIE's view that it was now appropriate to issue the Intention to Award letters (**CEC01399076**). Mr Gallagher's letter also noted that the Tram Project Board had met earlier that day and had concluded that the final negotiated Infraco terms were consistent with the terms of the Final Business Case approved in December 2007. Mr Gallagher's letter did not, however, state that the Infraco price was fixed or address the other matters in Alan Coyle's e-mail dated 11 March.

A full meeting of the Council took place on 13 March 2008. From the agenda (**CEC02083387**) and minutes (**CEC02083388**), members do not appear to have been given any update of the tram project.

By e-mail dated 13 March 2008 (**CEC01399079**) you set out your comments on various matters. In relation to advice on procurement challenge, you noted *"There is still a big chunk missing in tie's document regarding price"*.

By e-mail dated 13 March 2008 (**CEC01401628**) Colin Mackenzie attached a letter from SDS to Willie Gallagher (**CEC01401629**) which noted that further effort was required to align the Employer's Requirements and the Infraco Proposals.

On Friday 14 March 2008 an e-mail was sent to Alan Coyle (**CEC01386275**) attaching a Note that had been approved by Gill Lindsay (**CEC01386276**). The Note, to be signed by Andrew Holmes, Donald McGougan and Ms Lindsay confirmed that it was appropriate for Tom Aitchison to authorise TIE to immediately issue a Notice of Intention to award the Infraco contract to BBS.

By e-mail dated 17 March 2008 (**CEC01399109**) Alan Coyle circulated a revised Contracts Approvals spread sheet (**CEC01399110**).

By e-mail dated 18 March 2008 (**CEC01399116**) Colin Mackenzie forwarded an e-mail chain to the effect that a dispute about liability for uninsured losses had delayed notification of contract award.

By e-mail dated 18 March 2008 (**CEC01399118**) Mr Mackenzie forwarded a risk allocation matrix (**CEC01399119**), noting *"I have never been a big fan of this document, it is a bit too abstract and one would really need to read the entire contract suite to put it in context and gain a full understanding. I still have concerns about the general movement of the more significant risks from Private to either Public or Shared. Enough has no doubt been said on that before"*. **CEC01399119 should be CEC01399118**

The Notice of Intention to Award the Infraco contract was issued on 18 March 2008. By e-mail dated 21 March 2008 (**CEC01491920**) Willie Gallagher advised Mr McGougan and others, *"Last night, we successfully concluded agreements on the price schedule and the Infraco detailed contract. There is no change to the overall price, scope and Programme reported to the Board"*.

(1) Do you have any comments on these matters?

At this point in time pressure was building to conclude the contract as it had been a long time since the report to Council in December. At the same time, there was a desire for the contract to be signed before the end of the financial year, so that the project could drawdown Transport Scotland funding. I am not sure whether this pressure was generated by individuals in TIE or whether there was any external pressure on senior Council and Transport Scotland staff.

The emails show that the Council did not fully understand what it was signing up to and was reliant on assurances provided by TIE.

(2) Why were members not given an update on the tram project at the Council meeting on 13 March 2008? Did you consider that they ought to have been given an update?

I do not know why members were not given an update at the Council meeting on 13 March 2008, as I was not part of the decision-making process concerning the Council agenda and did not attend Council meetings. I can only surmise it was because (i) Council agendas and reports are prepared and circulated in advance of the meeting, (ii) the position on the tram project was still fluid, so it would have been difficult to prepare and update, and (iii) senior management considered that they had delegated authority to award the contract without reporting to Council.

This was an extremely busy period and I cannot remember whether I gave any thought as to whether we should be reporting to Council.

I am also unaware of the extent of any informal briefing which may have been undertaken at the time.

(3) Do you consider that it was appropriate for notice of intention to award the contract to be issued (and for TIE to reach agreement on the Infraco contract and price) without (i) the matters in Mr Coyle's letter of 11 March having been expressly addressed and (ii) the matter having gone back to Council for approval?

I do not think it was appropriate for the intention to award the contract to have been issued given the number of matters unresolved at that point in time (the matters were more extensive than simply those specified in Mr. Coyle's email). I also think that Council should have been advised of the changes in the position since the previous report.

56. The IPG met on 19 March 2008.

The Action Note for the meeting (**CEC01391254**) recorded that Duncan Fraser had tabled a risk report, which was "noted". It was also recorded that Gill Lindsay, Donald McGougan and Andrew Holmes were to meet at the end of the week to discuss final sign off issues.

The Action Note for the meeting of the IPG on 17 April 2008 (**CEC01228374**), however, changed the Action Note for the meeting on 19 March 2008 from the risk report being "noted" to "*the IPG analysed the risk register presented in the Highlight report, discussed and noted and agreed the appropriate treatment of these risks*".

(1) Do you remember whether you attended the meeting of the IPG on 19 March

2008? Are you aware whether at that meeting the IPG analysed the risk register presented in the Highlight report and agreed the appropriate treatment of these risks?

I have no recollection of this meeting.

(2) Do you know why (and at whose request) the Action Note of the meeting of the IPG on 19 March 2008 was amended as noted above?

I cannot remember why the action note was changed.

57. On 14 and 15 April 2008, Colin Mackenzie and Alan Coyle exchanged e-mails to the effect that, in light of developments since the Council had approved the Final Business Case on 20 December 2007, it was not appropriate for the Chief Executive to exercise his delegated authority for tie to proceed to financial close, and that full Council approval should be obtained (**CEC01399489**).

(1) What were your views on that matter?

I agreed with Colin, as the legal expert in these matters. However, like Alan, I recognised that the decision would ultimately be taken by senior management.

(2) What did you understand to be the main developments, or changes, since the FBC had been approved by the Council on 20 December 2007?

From my perspective the main changes were the increase in price and changes to the risk profile, particularly in relation to the novation of the SDS contract.

58. By e-mail dated 15 April 2008 (**CEC01245223**), Stewart McGarrity sent Alan Coyle, Andy Conway and yourself the latest version of the cost analysis spread sheet (**CEC01245225**) and Schedule 4 (Pricing) of the Infraco contract (**CEC01245224**).

There were further e-mails in relation to the QRA and risk allowance (**CEC01247693**).

(1) What was your understanding, in general, of what the cost analysis spread sheet showed, including the sum that had been allowed for risk, in particular, in relation to (i) the risk arising from changes to design and (ii) the risk of delays in the design and the utility works impacting on the Infraco works?

I understood the spreadsheet represented a detailed breakdown of TIE's estimate of project costs, based on contract values and included a £32.3m risk allowance.

I understood the QRA to be an estimate of overall project risk, taking account of the probability and likelihood of each identified risk occurring. This meant that breaking down the allowance to an individual risk level was of limited value. That said, TIE had grouped risks and their allowances showing £8.6m for design and £6.7m for utilities with a further £6.9m for Infraco.

(2) In relation to Schedule 4:

- Was that the first time you had seen Schedule 4? Did you read it? What were your views? Did it cause you any concerns?

  This was the first time I had seen Schedule 4. I read it, but find it difficult to distinguish between views I held at the time and views I now hold with the benefit of hindsight. Without seeing the detail of works in Appendix A (there is a blank page in the copy we received), the Council was not in a position to assess the level of risk that these designs would need to change.

- To what extent was Schedule 4 (and its likely effect) discussed (i) within CEC and (ii) with TIE?

  I cannot remember any specific discussion of Schedule 4 either within CEC or with TIE. This is not to say that it did not take place and we did discuss some of the issues it raised.

- What was your understanding of the purpose of fixing a Base Date for Design Information of 25 November 2007?

  I understood that a fixed set of designs was required for BBS to provide a price. I was surprised that it was fixed as early as November 2007, as design had progressed in the interim period and I had naively assumed that this updated design would feed into the contract.

- What was your understanding of the purpose, and effect, of the various Pricing Assumptions in Schedule 4?

  I understood the assumptions were to transfer the risk of design changes in respect of approvals and third party agreements to the public sector. This is the position I understood TIE to have reached with Infraco. However, I understood that changes to designs to complete them would be a risk for Infraco.

- Paragraph 3.2 of Schedule 4 stated that “certain” Pricing Assumptions represented factual statements that the parties acknowledged were not consistent with the actual facts and circumstances that applied, and would result in a Notified Departure. Did CEC know (or seek to clarify) the Pricing Assumptions/factual statements that were not consistent with the actual factual circumstances that applied (and would result in a Notified Departure)? If not, do you consider that CEC had any basis for knowing the likely number and value of Notified Departures and whether the risk contingency was adequate?

  I do not know the extent to which the Council was aware of Pricing Assumptions that were inconsistent with actual factual circumstances. In particular, I do not think the Council had a full enough understanding of the design to be able to estimate this. I am unaware of any Council attempt to clarify this potential liability, although more general questions were asked regarding the potential cost of changes.

I do not think the Council had any basis of knowing the likely number and value of Notified Departures.

59. In an e-mail dated 16 April 2008, re Infraco Exclusions (**CEC01245274**), Andy Conway asked a general comment as to whether TIE had identified costs for all items that will require TIE changes.

He also asked, *"The scope of the works related issues refer to the status of the design as of 25 November. Our concern is that if the design has changed, or at least developed, since then (and say a prior approval has been granted) then a change will need to be issued. Have tie undertaken an exercise to determine the extent and cost of changes that will be required since the design freeze in November?"*.

Susan Clark replied that *"BBS are contractually obliged to construct to the designs that SDS produce and get consented. We have been identifying significant changes as design has progressed to ensure that we have made financial provision – e.g. Burnside Road. Normal design development is a BBS risk as described in Schedule 4 of the Infraco contract"*.

(1) Do you have any comments on these matters? What was your understanding?

Information on the state of design and contractual implications tended to be picked up by the Council as we went along, rather than TIE informing us upfront.

I was concerned as to the extent and design change since November 2007 had had an impact on price and whether TIE had allowed for this.

(2) What did you understand Ms Clark to mean by *"normal design development"*? Can you give examples?

I did not have a clear idea of what constituted *"normal design development"*, as I am not and engineer and had not seen any or the designs or the design manual. I assumed it meant all the design that was required to bring the design from where it was to something that could be built and operated. Examples might be:

- Finalising the positioning of building fixings
- Precise positioning (and number) of poles
- Changes to track alignment within agreed limits of deviation
- Configuration of control systems

60. A report provided to the IPG on 16 April 2008 (**CEC01246992**) noted that the Planning and Roads Departments had written to TIE recording their concerns about the delay and quality of submissions for approvals and consents. There was concern that prior approvals may require to be revisited if there were substantial changes in design. The report noted, ***"There is potential for the approvals to cause a delay to the construction programme"*** (original emphasis).

(1) Did these matters cause you concern?

Yes. Any delay to the construction programme had the potential to cause significant increases in costs.

(2) What steps were taken to address these matters?

I cannot remember what steps were taken to address this matter, other than the letters from the Planning and Roads departments.

(3) Did you consider the steps taken to be adequate?

Given the track record of TIE and SDS, I was concerned that the matter would not be properly addressed.

61. By e-mail dated 28 April 2008 (**CEC01312358**) Mr Bissett circulated a letter dated 28 April 2008 from DLA to CEC and TIE (**CEC01312368**) and a DLA/TIE Risk Matrix as at 22 April 2008 (**CEC01312367**).

The e-mail also circulated a Report on Infraco Contract Suite (**CEC01312363**) which noted, in relation to Price, that *"A number of core pricing and programming assumptions have been agreed as the basis for the Contract Price. If these do not hold, Infraco is entitled to a price and programme variation known as "Notified Departure"* (p4) and, in relation to Programme, that *"Following contract signature, it is expected that BBS will seek a Notified Departure on Programme due to SDS delay in design production"* (p4).

That appears to be a reference to the Pricing Assumptions contained in Schedule 4 of the Infraco contract, which was sent to CEC by Stewart McGarrity's dated 15 April 2008 noted above.

(1) Did Mr Bissett's report prompt any discussion within CEC of the purpose and effect of the Pricing Assumptions and Schedule 4?

I cannot remember any discussion on these items following receipt of the report. Graeme has written that *"BBS and SDS have a contractual obligation to mitigate"* and that "the exposure has been assessed in detail by tie and confirmed as acceptably within the risk contingency". These may have appeared to give some reassurance.

(2) Did the report prompt CEC to seek advice from these matters from TIE and/or DLA?

See answer to part 1.

62. A meeting of the Council on 1 May 2008 was provided with a report dated 23 April 2008 by Tom Aitchison (**CEC00906940**).

The report sought refreshment of the delegated powers previously given to the Chief Executive to authorise TIE to enter the contracts with the Infraco and Tramco bidders. The report noted:

(1) The cost of the project was now £508m (comprising a base cost of £476m and a revised QRA of £32m), which increase was largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the crystallisation of the

risk transfer to the private sector as described in the Final Business Case.

(2) 95% of the combined Tramco and Infraco costs were fixed with the remainder being provisional sums which Tie had confirmed as adequate (para 3.4).

(3) TIE had reported that the utility work *"is progressing to programme and budget"* (para 3.6).

(4) *"As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. TIE Ltd advise that the outcome is the best deal that is currently available to themselves and the Council. Both TIE Ltd and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms"* (para 3.10).

(5) *"A written statement from tie Ltd has been provided stating that they are satisfied that £32m is an adequate level of risk allowance"* (para3.11).

The report contained no mention of Schedule 4 of the Infraco contract (despite Schedule 4 having been sent to the Council on 15 April), or that Pricing Assumptions had been agreed (some of which were known not to be factually true) and which were likely to give rise to Notified Departures, and an increase in the contract price.

(1) Did you have any input into the report to Council?

The initial draft of this report was prepared by Alan Coyle and Andy Conway along the lines requested by the IPG. As Alan's manager, I discussed this draft with him. The draft was subsequently revised following comments from CEC senior management.

(2) Do you have any comments on the matters noted above?

My comments are reflected in my answers to subsequent questions. However, I think it is also worth commenting on the number of times the report refers to TIE carrying out activities or providing information/ assurance to the Council. I think this wording reflected the nervousness of Council officers over TIE's management of the process (it was a recommendation from TIE rather than from CEC officers). However, given that the Council had ultimate responsibility for the project, this level of reliance on TIE was inappropriate.

(3) Did you consider that there had been a crystallisation of the risk transfer as described in the Final Business Case (and, if so, in what way had the risk transfer crystallised)?

I considered there had been a crystallisation of risks. The risk allowance in the FBC had included the risk of price movements between the selection of preferred bidder and eventual contractual close and this risk had crystallised. I think that describing this movement as *"risk transfer to the private sector"* is slightly misleading as there was less risk transfer to the private sector than had been envisaged at the FBC stage.

(4) What was your understanding of whether the utility work was progressing to programme and budget? Were you, or others in CEC, aware of the difficulties and delays that had been experienced in the utilities works, in particular, since the commencement of the "on-street" sections earlier that year?

At the time of this report I was not aware of the difficulties and delays that were being experienced and do not think others in CEC were aware of them. I had received an email from Duncan Fraser on 5th March stating that the work was on programme. However, shortly after this report was considered by Council (mid May), we became aware that only 78% of planned utilities work had been undertaken and that there was a 2 week impact on the critical path, which TIE were seeking to address.

(5) What was your understanding of (a) the "new risk area" that had emerged as a result of the overlapping period of design and construction and (b) the steps that would be taken by TIE and CEC to reduce the risk?

I thought this related to the to the fact that as designs were not complete and approvals not obtained before the contract, additional risks were being retained by the Council. I believed that the Council (as roads authority) would prioritise these approvals and seek to avoid unnecessary "gold plating" to reduce additional costs to the project and adverse impacts on programme. I cannot what remember steps TIE were to undertake.

(6) What were your views (and the views of others in CEC) on whether the risk allowance of £32m was adequate? To what extent were CEC in a position to come to their own view on that matter and to what extent were they reliant on the views of TIE?

I had some concerns that the £32m was not adequate, particularly given TIE's track record. This was shared by other officers in the "B team". While I would have preferred a higher contingency, I had no evidence upon which to base it. Instead, I took some comfort from the fact that there was an additional £37m headroom between the £508m project cost and the £545m budget.

(7) Do you know why Schedule 4, the agreed Pricing Assumptions, the risk of Notified Departures and the risk/likelihood of an increase in the Infraco price were not mentioned in the report? Should they have been?

Reports to Council do not detail this level of contractual information. However, the risks surrounding cost increases could and should have been set out in this report (to the extent that we were aware of them). The report was a short update report, designed to renew delegated authority, rather than a fuller report which might have provided the opportunity to go into greater detail on the risk implications to the Council.

63. By e-mail dated 2 May 2008 (**CEC01222466**) Colin Mackenzie sent Gill Lindsay a report (**CEC01222467**) prepared by the "B" team *"prior to the hiccup on price"*. The report noted the need to review the risk associated with consents and approvals and whether the present risk allowance of £3.3m was adequate.

(1) What were your views on these matters?

I was concerned that TIE's risk register (and the QRA generated from it) did not adequately reflect the risks of cost increase relating from consents and approvals. This concern was based on the track record of TIE and SDS as well as other Council colleagues assessments of the latest programme.

(2) What was your understanding of the risks covered by the sum of £3.3m?

The £3.3m was a statistically generated figure, based on TIE's estimate. In this respect, it did not cover to any specific risk, but was part of the calculation to create the allowance for all the projects risks. I understood it to be based on TIEs assessment of the best, worst and most likely cost arising from contract changes and delays associated with gaining approvals and the likelihood of each scenario occurring.

(3) What steps, if any, were taken, and by whom, to review whether the risk allowance for risks arising from design, approvals and consents was adequate?

Council colleagues, particularly Alan Coyle and myself, regularly questioned TIEs assumptions within the QRA, including those dealing with approvals, but we never succeeded in getting TIE to change any of their inputs. As a result of this, an assurance statement was requested from TIE, but we recognised this neither independently assessed risks nor provided the Council with any financial protection.

64. By e-mail dated 2 May 2008 (**CEC01222041**) Duncan Fraser sought comments on the latest draft of the Close Report.

Item 2.2 noted *"Programme inconsistent with version 31 [of the design programme] and confirmation",* to which TIE commented, *"Any variation between V26 [of the design programme] and V31 which has an impact on the BBS programme will be dealt with through the contract change process"*. Nick Smith, in turn, commented *"at whose risk is the change – if tie/cec is this risk catered for in QRA?"*.

It was further noted, *"Risk of delay to Infraco and Mudfa is this adequately taken account of"*, to which TIE commented *"BBS programme based on V6 of MUDFA. Continual reviews of MUDFA programme to avoid conflicts with Infraco undertaken by tie. This evaluation has been consistently evaluated & updated in the QRA"*. Nick Smith commented, *"CD to confirm happy"*.

Item 8.4 noted, *"Review risk associated with consents and approvals on basis of SDS delivery of programme to date and in relation to programme 31"*. It was further noted that there was a risk allowance of £3.3m for this and a £6.6m general risk cover. The question was asked *"Does SDS design and consents risk cover require to be increased?"* to which there was the response, *"TIE's view is that risk allowance is sufficient"*. Mr Smith commented, *"Do CEC agree with this assessment? Given delay to date it is foreseeable that further delay could have major cost impact"*.

See also, under items 5.2/7.1, the query and comments in relation to the risk costs of

delay appearing to vary between £6.6m for the entire programme moving out by 2-3 months and £3.3 relating to BBS costs for standing time and other prolongation costs.
In an e-mail dated 6 May 2008 (in the same chain) you noted that you did not have much to add to Mr Smith's comments. You also noted that your concerns included, *"QRA provides insufficient cover for design risks (we are reliant on tie's project management and risk management expertise to set an allowance at an appropriate level)"*. You also noted that *"We can take comfort from the fact that the OGC said the £50m at FBC stage was 'about right' and would have expected this number to come down at final deal"*.

(1) Do you have any comments on the above matters?

The document shows several concerns Council officers had about the robustness of TIEs contract close process and the risks that would be left with the Council. While TIE were sharing some information, which enabled these questions to be asked, the information was not provided in full. Having said that, there was not the expertise or capacity in the CEC team thoroughly review everything and there was an over reliance on TIE.

(2) Do you know who Mr Smith meant by "CD"?

I think he meant the Council's City Development department.

(3) Do you consider that you (and others in CEC) had a good understanding at that stage of the main risks to CEC, and the quantification of those risks, including, in particular the risks arising from incomplete and outstanding design, approvals and consents and the risks arising from delay in the MUDFA works affecting the Infraco contract and works?

No, at this stage we knew what the main risks to CEC were, but we had no way of quantifying them.

(4) You noted that CEC were reliant on TIE's project management and risk management expertise to set an allowance at an appropriate level. Did you, or others in CEC, have any concerns in relation to TIE's project management and risk management expertise at that time?

Yes, I had concerns over both TIE's risk management and project management skills.

In terms of project management, TIE did not have a good track record and the projects they managed tended to slip considerably.

I felt that the approach they applied to risk management, was overly reliant on the statistical QRA quantification process, rather than the continual assessment of risks and the development of appropriate mitigations.

I also felt there was a tendency for over optimism to creep into both risks and project management due to lack of independent review of assumptions.

65. On 12 May 2008 (at 18.49 hours) Graeme Bissett circulated an e-mail (**CEC01338846**) attaching a final set of TIE's internal approval documents.
The following documents (both clean and tracked changes copies) were attached to the e-mail:

- Financial Close Process and Record of Recent Events dated 12 May 2008 (clean copy, **CEC01338847**; tracked changes, **CEC01338848**).
- Assessment of Risk of Successful Procurement Challenge, **CEC01338849**; **CEC01338850**).
- Report on Infraco Contract Suite (**CEC01338851**; **CEC01338852**).
- Report on Terms of Financial Close (Close Report) (**CEC01338853**; **CEC01338854**)

The Financial Close Process and Record of Recent Events dated 12 May 2008 (clean copy, **CEC01338847**; tracked changes, **CEC01338848**) noted that a response was received from BBS on 7 May 2008 which proposed a payment of £9m to BBS and *"Further examination of the contract terms surrounding the design management process, which although unclear pointed to an extended design and consent programme with potentially material adverse consequences for the construction programme"* (p4).

(1) What was your understanding of the passage noted above, including whether that would create additional risk, and cost, for TIE?

I cannot remember what my understanding of the passage was at the time. From rereading the note nine years later, I do not understand what BBS were proposing and Mr Bisset described his understanding as "unclear". Furthermore, I had limited knowledge of the ongoing negotiations.

The note suggests an extended programme, which would have increased costs. However, if by extending the programme, it became more realistic, then BBS could plan accordingly and costs may actually have been lower than they eventually were.

(2) Do you have any further comments on these documents?

While providing useful background, these documents did not allow CEC to fully understand the contractual position and the risks to which the Council was exposed. They were received very close to the eventual contractual close and I do not think I had sufficient time to full understand all the implications arising from them.

66. On 7 May 2008 you sent Gill Lindsay an e-mail (**CEC01222074**) attaching a draft report by the Chief Executive for the meeting of CEC's Policy and Strategy Committee on 13 May 2008 (**CEC01222075**). The draft report noted that the overall estimated cost had increased from £508m to £517.2m.

Ms Lindsay's response the same day (**CEC01248981**) noted, *"Appropriate forum re Committee choice was discussed today with Council Secretary and Jim Inch"*.

By e-mail dated 8 May 2008 (**CEC01248988**), Stan Cunningham, Committee Services Manager, advised that the current plan for tabling the report meant that *"it may be the first time that many of the members are aware of this matter. This is not satisfactory ..."*.

(1) What was your input into the report?

I worked with Duncan Fraser on the initial draft of the report, based on a steer given to us from CEC senior management. I then revised the report based on comments from senior management.

(2) What were your views on the correct Council forum to consider the report? Did you share Mr Cunningham's concerns?

I did not have strong views as to which committee should consider the report and deferred to more senior Council colleagues.

(3) Why was the report (and the further increase in price) not reported to a full meeting of the Council (perhaps by convening a special meeting) or to the Tram sub-committee?

I do not know.

67. On 13 May 2008 the Council's Policy and Strategy Committee considered the final version of the report by the Council's Chief Executive (**CEC01246115**).
The report advised that the estimated capital cost for phase 1a was now £512.2 million. The report stated that *"Offsetting the increase in cost is a range of negotiated improvements in favour of TIE and the Council in order to reduce the risk of programme delays and minimise exposure to additional cost pressures, as well as better contractual positions"*.

Again, the report contained to mention of Schedule 4 of the Infraco contract, or that Pricing Assumptions had been included which were likely to give rise to Notified Departures and increase the contract price.

The report contained no mention of the utilities works.

(1) We understand that at the beginning of the meeting of the committee the Council Leader, Councillor Dawes, was appointed as convenor of the committee. Why did that occur?

I did not attend the committee and do not know the reason behind this.

(2) When was the report made available to members of the committee? Do you consider that members of the committee had sufficient time to consider the terms of the report? (see e.g. e-mail dated 12 May 2008 from Deirdre Wynn, **CEC01352287**, which had attached a further draft of the report, **CEC01352288**, and invited comments by close of business so the report could be signed, ).

The report would have been made available to elected members either late on 12

May 2008 or on the morning of the meeting itself. Given this timescale, I do not think members had sufficient time to consider the report.

(3) Were the documents sent by Graeme Bissett with his e-mail dated 12 May 2008 (**CEC01338846**) made available to members of the committee and, if so, when? Did members of the committee have sufficient time to consider these documents?

I did not have direct contact with elected members and cannot confirm whether they were made available. However, I do not think that they would have been circulated.

(4) Did CEC officers verbally advise members of the committee of the contents of the documents sent by Mr Bissett with his e-mail dated 12 May 2008? Do you consider that you (and other CEC officers) had sufficient time to consider these documents before the meeting of the committee?

I did not have direct contact with elected members and do not know what discussions took place.

(5) What are your views on the statements in the report to the committee noted above in relation to "better contractual positions"? Do you agree with it? If so, what do you consider were the "improvements" and "better contractual positions" that reduced the risk of programme delays and minimised exposure to additional costs?

I did not fully understand the previous contractual positions so am unable to comment on whether the new positions were "improvements". However in his paper (CEC01338847), Graeme Bisset had set out 5 items which *appeared* to be improvements, namely (i) closing out of TIE positions that BBS lawyers had been querying, (ii) eliminating risks of claims from mobilisation and advanced contract works, (iii) capping of TIE's exposure to road reinstatement changes, (iv) capping of roads-related prolongation exposure to 8 weeks and (v) accepting TIE's terms for CAF's entry into the consortium. The principle of incentivisation payments for adhering to the programme could also increase the likelihood that the project would be completed on schedule.

In hindsight, it is clear that these changes did not materially reduce the risk of programme delay or minimise costs.

(6) Again, do you know why Schedule 4 and the risk of Notified Departures, with a corresponding risk of increase to the Infraco price, was not mentioned in the report? Should the report have mentioned these matters?

As stated above, it is not usual for contractual documents to be referenced in Council reports, and I do not think that mentioning it would have improved the decision-making process. However, I think that the risks arising from it should have been set out clearly in previous report to Council and restated (or at least referred to) in this one.

I cannot remember why these risks are not mentioned in this report. Like the previous report, it was a short update designed to renew delegated authority and I do not think it gave members to the opportunity to fully understand the risks they were agreeing to.

68. Infraco contract close took place on 14 and 15 May 2008, as part of which a number of contracts were signed, including the Infraco contract (**CEC00036952**) and novation of the SDS contract to BSC.

By way of overview, what was your understanding of the following matters at contract close:

(1) The extent to which detailed design was complete (and all necessary statutory approvals and consents had been obtained), the extent to which these matters were outstanding and when the detailed design would be completed (and all approvals and consents obtained)?

I cannot remember how much of the detailed design I thought was complete (and given the technical nature of this work I do not know how much I would have understood about the financial implications). However, from reviewing my emails, I can confirm that I was aware that the design programme and the statutory approvals process were both continuing to slip. Based on tram project board papers I knew that SDS were behind in submitting designs to CEC for approval, compared with the v31 of the programme, which was included in the contract. I also knew that CEC were behind programme in granting approvals and had concerns over design quality.

(2) The extent to which utilities diversions were complete, the extent to which these works were outstanding and when these works would be completed?

I cannot remember how much I knew about the total level of utility works that had been completed and when they were expected to complete them all. From the same TPB papers I knew that only 77% of the planned works had been completed and it was having a 2 week impact on the critical path.

(3) The likely effect on the Infraco works and contract (and the cost of the tram project) if the outstanding design (and approvals and consents) and outstanding utilities diversion works were not completed within the anticipated timescale?

I did not fully understand the impact on the infrastructure contract of the delays in design and approvals. If approvals were delayed as a result of Council failures, then I understood TIE/CEC would be liable for the costs of any delay. Similarly, if the approvals process required design changes, then the Council could also be liable. However, I understood that if delays resulted from failure to manage SDS to ensure that the programme/quality was adhere to, then I thought Infraco would be liable.

I understood that if MUDFA was delayed to the extent that it overlapped with the Infraco programme, then TIE/CEC would be responsible for the cost of delay.

(4) The provision made in the risk allowance for these matters?

There was £3.3m in the QRA at financial close for consents risk, but I cannot track down the corresponding figure for utilities delay. However, I understood that the total QRA at financial close was £30m to cover all risks. Due to the way the QRA was calculated I felt that it could be misleading to break it down, as the allowance for any one particular risk did not cover the full cost of that risk should it occur.

69. The pricing provisions of the Infraco contract were set out in Schedule 4 (**USB00000032**). Schedule 4 contained a number of Pricing Assumptions.

(1) What did you consider were the main Pricing Assumptions that were likely to change and result in Notified Departures and why?

I did not have a technical understanding of the base design so my ability to comment on this is limited. I considered that the following were likely to lead to Notified Departures:

- Changes to design required to secure approvals
- Delays to utility diversions

(2) Approximately how many Notified Departures did you consider were likely to arise?

I was not in a position to be able to estimate this.

(3) What did you consider to be the likely total value of the Notified Departures?

I was not in a position to be able to estimate this.

(4) Pricing Assumption 3.4 dealt with design development. What was your understanding of the meaning of that Pricing Assumption, including which party bore the risk that design development would result in a contract change?

I understood that this risk was shared. To the extent that the design would need to change to gain a contractual approval or meet a third party requirement, TIE/CEC bore the risk; in other circumstances, I thought the risks lay with Infraco.

70. In an e-mail dated 20 May 2008 to John Ramsay, Transport Scotland (**CEC01246322**), you noted that *"there have been a number of changes in price and risk profile of the contract between the position reported in the Final Business Case and the eventual settlement"*.

(1) It would be helpful if, for the avoidance of doubt, you could indicate what you considered to be the main changes in price and risk profile between the FBC and contract close?

The overall cost had moved from an estimated £498m at FBC to £512m at financial close. Within this the contract prices had increased and the risk allowance had been reduced as risks associated with price movement up until financial close were removed.

At the same time, TIE/CEC had taken on additional risks associated with design/approvals as the level of risk transfer achieved in the novation of the design contract was less than had been anticipated at FBC stage.

71. By e-mail dated 21 May 2008 (**CEC01249269**) Alan Coyle circulated the latest version of the contract approvals matrix (**CEC01249270**).

The matrix appeared to show that a number of deliverables were outstanding e.g. under Contract, *"Obtain copy of Novation agreement"* and *"Obtain final copy of [DLA risk] matrix"*; under Programme, Mudfa – risks related to QRA, *"Obtain update to QRA"*; under Risk, *"Obtain update of QRA"*; under Pricing and Funding, item 7.4, *"Obtain Appendix F from TIE"*.

See also the Highlight Report dated 9 July 2008 to the IPG (**CEC01236707**) which noted (page 3, item 4), TIE's deliverables for Contract Award, *"Although good efforts have been made to conclude the major contracts, information is still awaited from tie ltd regarding their deliverables for contract award. To ensure good administration and to protect the Council's interest, it is recommended that the Director of Finance formally writes to tie ltd to resolve this"*.

(1) Do you have any comments on why these deliverables do not appear to have been obtained before contract close? Should they have?

These documents should have been provided to CEC prior to contract close. I suspect they were not provided on time because the Council gave consent to contractual close without them so TIE prioritised other activities.

72. Donald McGougan and David Anderson provided a joint report to the first meeting of the Council's Tram Sub-Committee on 16 June 2008 (**TRS00017180**). The report noted that the increase in cost, to £512m, had resulted in transferring further risks to the private sector.

(1) Did you have any input into that report?

I cannot remember the extent of my involvement in this report, as the contact from Finance is Alan Coyle, who reported to me. However, much of the text is lifted from the report to Policy and Strategy Committee of 13 May, for which I was involved in the initial drafting.

(2) What was your understanding of the further risks that had been transferred to the private sector?

As stated above, I did not fully understand the previous contractual positions so am unable to comment on whether the new positions were further transfers of risk. However in his paper (CEC01338847), Graeme Bisset had set out 5 items which *appeared* to be improvements, namely (i) closing out of TIE positions that BBS lawyers had been querying, (ii) eliminating risks of claims from mobilisation and advanced contract works, (iii) capping of TIE's exposure to road reinstatement changes, (iv) capping of roads-related prolongation exposure to 8 weeks and (v) accepting TIE's terms for CAF's entry into the consortium. The principle of incentivisation payments for adhering to the programme could also increase the likelihood that the project would be completed on schedule.

73. Following contract close, a major dispute arose between TIE and BSC in relation to the interpretation and application of the Infraco contract and Schedule 4. By way of overview, what was your understanding of:

(1) The main matters in dispute?

I was not privy to the details of this dispute.

(2) The main reasons for, or underlying causes of, the dispute?
I was not privy to the details of this dispute.

74. In July 2008 a Peer Review (led by Malcolm Hutchinson) was carried out (**CEC01327777**).

The report noted, under MUDFA Lessons Learned, that *"The fact that the completion date remains uncertain (works 60% complete) will have an increasing impact on the Infraco works".*

The report noted, under Contract Issues, *"It is unclear to the review team where risk lies for design development. BBS and tie in interview considered risk lay with the other party".*

(1) Did these matters cause you concern?

I was concerned by the risks associated with both MUDFA delays and design development. However, I was unaware of
(i) the extent of MUDFA delays and
(ii) the differences in the interpretation of the contract between TIE and BBS
Furthermore, I did not see this review report.

(2) To what extent, if at all, were you (and others in CEC) aware of these matters prior to Infraco contract close?

I was aware of the difficulties that had been encountered on MUDFA, but prior to financial close I understood that they were working to a revised programme to minimise any impact on infraco.

I was not aware of any difference in contract interpretation between TIE and BBS.

I do not think others in CEC had any more knowledge of these matters at the time.

75. An e-mail dated 10 July 2008 from Stewart McGarrity (**CEC01341456**) noted that Transport Scotland were very unhappy about TIE's four weekly report in that, in

particular, it did not give them a clear picture as to how TIE were addressing programme slippage (see also your e-mail dated 27 August 2008, **CEC01047161**).
(1) What were your views on that matter?

I felt that the information they provided was the minimum they had to provide and did not give officials at Transport Scotland sufficient detail with which to monitor the project. Council officers received additional information in the form of the Tram Project Board papers. However, I still had concerns that issues highlighted in these papers were not reflected in reported financial forecasts and programmes.

At the same time, I felt that Transport Scotland's insistence on receiving information in a particular format and to a set timetable did not help matters.

(2) Were steps taken to address TS's concerns?
(3)
Alan, Duncan and I worked with Transport Scotland and TIE to refine the papers so that they better fitted Transport Scotland's requirements. However, I still had concerns that the forecasts were overly optimistic.

76. In relation to your continued involvement in the tram project:
(1) We understand that after summer 2008 you (with Duncan Fraser) continued to attend monthly meetings with John Ramsay of Transport Scotland. Is that correct?

I attended these monthly meetings until autumn 2008.

(2) Did you have any other substantive involvement in the tram project after summer 2008?

I continued to manage Alan Coyle, who was more involved with Council's the day to day financial monitoring of the project until December 2008. I also continued to attend meetings relating to the project with both TIE and CEC employees and provide advice to senior management as required.

(3) For completeness, when (and why) did your involvement in the tram project come to an end?

I was on maternity leave from December 2008 until August 2009. Alan Coyle covered my post during this period. On my return it was decided to split the role, and that he would manage the Council's financial overview of the tram project while I would manage the financial support to the rest of the City Development Department's activities.

## FINAL MATTERS

### Project Management and Governance

77. In relation to TIE:

(1) Did you have any concerns at any stage in relation to TIE's management of the tram project?

I had concerns about TIE's project management throughout my involvement with it. In particular I felt that

(i) most staff were from the private sector so did not have experience of public sector decision-making processes

(ii) it did not represent value for money - staff were highly paid (including those who had simply transferred from the Council), tie occupied expensive offices with a long lease, and there was not the level of cost scrutiny over overheads that there is in the Council

(iii) risk management seemed to be focussed on quantification, rather than effective risk management (from reviewing the risk register, it was evident that some risks and their mitigation plans were not complete or kept up to date)

(iv) they had a poor track record of managing contracts, with problems being encountered on Fastlink, Ingliston Park and Ride, SDS and MUDFA, as all these projects had all experienced either slippage or overspends.

(v) there was a relatively high turnover of staff, potentially meaning that key commercial knowledge was lost (the tram director changed at a key point in the project and the commercial director left at financial close)

(vi) problems were blamed exclusively on others (for example, SDS slippage was blamed on the contractor, but I understood from colleagues in City Development that some of this slippage was because TIE had not provided necessary information)

(vii) the Council and Transport Scotland were kept at arm's length, preventing the funders from fully understanding the project (to receive information, Council officers had to review papers in detail and then ask for further information on matters of importance, rather than this information being provided in a proactive manner)

(viii) there was a lack of independent review of the project (while the project did undergo gateway reviews, there was no regular project assurance and the company resisted an independent review of the capital cost assumptions and contract documentation, proposed by the Council)

(2) Did you have any concerns at any stage in relation to the performance of any of TIE's senior personnel or Board members?

I did not work closely enough with any of the senior management or board members to provide an objective assessment of their performance. However, I felt that some senior individuals lacked experience of similar large-scale transport projects.

(3) Did you have any concerns at any stage in relation to TIE's reporting to CEC (or others)? If so, what were these concerns and what was done to try address them?

My main concern with TIE's reporting was that information we were aware of was not factored into forecasts, and an overly optimistic position seemed to be reported.

I raised this directly with TIE staff and highlighted these issues in my regular updates to Donald McGougan so that he might raise them at the Tram Project Board. I did not notice a significant improvement.

78. In an e-mail dated 29 May 2008 to Ian Stirton (**CEC01222545**) you noted *"We are aware that Willie Gallagher is not the only Executive Chair of a Council Company, which is contrary to the Cadbury Code (and presumably its successor codes), but the fact that he is on both the audit and remuneration committees is also bad practice. It is my understanding that these committees should only comprise non-execs"*.

(1) What were your views on these matters? Did they cause you any concerns?

I was concerned that there was no independent scrutiny of the TIE and the tram project. The failure to separate the roles of Chief Executive and Chairman added to this concern. Moreover, the fact that Mr. Gallagher sat on the remuneration and audit committees caused additional concern, as these committees are essentially scrutiny committees. His membership of the remuneration committee was particularly concerning as I felt he may be able to unduly influence the level of his own salary and performance bonus.

(2) To what extent were these matters discussed with or among CEC senior officials?

I cannot remember whether these matters were discussed with CEC senior management. However, concerns over the transparency of remuneration arrangements were discussed with senior management when the TIE operating agreement was under negotiation. Senior management agreed that earlier drafts of the agreement where the Council had some oversight of these arrangements be replaced with the final agreement where CEC had no influence over salary or bonuses.

(3) Mr Gallagher was appointed as Chair of TIE in June 2006 and as Executive Chair shortly thereafter. Why was the issue of Mr Gallagher acting as Executive Chair (and being a member of the audit and remuneration committees) not addressed earlier?

At the time, the Council had executive chairs in charge of several of its arm's length companies, so I do not think raising this issue would have resulted in any significant change. I cannot remember whether I had been aware of Mr Gallagher's role on the audit and remuneration committee before this point. In any case, efforts to improve governance over TIE in 2007/8 had been to agree a robust operating agreement. Following the finalisation of an operating agreement, which was much weaker than we had hoped, we were seeking to improve governance through TIE's company structure.

79. In relation to CEC:

(1) How were important matters relating to the tram project reported by TIE to CEC (including by whom and to whom)?

Information on the tram project was reported in the monthly tram project board papers, which went to the Directors of Finance and City Development as board members. Outside of this forum, Alan Coyle and I would receive emails and phone calls from Stewart McGarrity and his staff and Duncan Fraser and his staff would have similar contact on the technical side. For particularly important matters there would be letters and phone calls from senior TIE staff to senior CEC officials.

(2) How were the views and requirements of CEC fed back to TIE?

Formal requirements were given to TIE in the form of letters from senior Council officials. Other views and requirements were provided by emails and phone calls to relevant staff in TIE.

(3) In general, how were members (including the Council Leader, the Finance and Transport Convenors, Group Leaders and individual members) advised of developments in relation to the tram project?

Elected members were mainly advised of developments by committee reports. Some members were also board members of TIE and received a more detailed update at this forum. There were also regular meetings between members and senior CEC officials, but I am not aware of the extent of tram information shared at these meetings.

(4) To what extent did the need for commercial confidentiality conflict with the need to keep members informed of matters relating to the tram project? What steps were taken to address that conflict? Were these steps successful?

During the procurement process and contractual negotiations there was a conflict between keeping members fully informed and ensuring commercial information was not inadvertently shared with BBS. I do not think sufficient steps were taken to resolve this conflict.

(5) Did you have any concerns, at any stage, in relation to whether matters relating to the tram project (including, in particular, in relation to price and risk) had been properly and fully reported to members?

I was concerned that the information provided to members supporting the final business case did not fully explain the capital costs and risks and that information was removed from that report in the drafting process.

(6) Do you consider that members were in a position to take properly informed

decisions in relation to the tram project (and, if not, why not)?

I do not consider that members were in a position to take properly informed decisions. Reports lacked adequate information on costs and risks, Council officials were not fully aware of all the risks and there was insufficient independent scrutiny of TIE's recommendations.

(7) Did you have any concerns at any stage in relation to the performance of senior CEC officials or members?

I felt that CEC senior management was sometimes influenced by members of TIE's senior management. While it seemed like they agreed with positions taken by the "B Team", their opinions would sometimes change following a phonecall or email from somebody at TIE or TEL. I appreciate, however, that these changes of opinion may have been based on additional information, of which I was not aware.

(8) Which officer (or officers) in CEC do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?

Given the scale of the project and the fact it crossed departmental boundaries, I think the Chief Executive was ultimately responsible for the project.

80. In an e-mail dated 10 September 2007 (**CEC01566964**) you noted that in the current year, approximately £900,000 of staff costs (agency staff working on the tram and/or backfill) was being funded from the tram capital budget, which was controlled by TIE. In an e-mail dated 29 October 2007 (**CEC01399791**) you noted that Tom Aitchison had given a commitment to cease any recharge of CEC staff costs to the tram project from 1 April 2008.

(see also (i) a paper dated 9 January 2008 to the TPB on CEC Tram Staff Resources, **CEC01505830**, (ii) your e-mail dated 5 February 2008 to Mr McGougan on Capitalisation of Tram Staffing Costs, **CEC01393724**).

(1) It would be helpful if, by way of overview, you could explain how CEC staff costs associated with the tram project (e.g. CEC staff working on the tram project in CEC, CEC staff seconded to TIE, backfilling of staff etc) were dealt with in the tram budget?

I can only answer this question for the period up to the end of 2008 as I am aware that rules changed later in the project.

Permanent CEC employees working on the project in CEC were not charged to the project, but paid from existing Council revenue budgets.

CEC staff seconded to TIE Ltd were billed to TIE. Their costs were then included in TIE's applications for payment from CEC.

Where CEC had taken on additional staff to support the project (either to work on elements such as land compensation or the approvals process, or to provide backfill for CEC staff working on the project), these costs were billed to TIE and then included in application for payment.

As not all CEC staff were backfilled, not all the costs were captured in the tram budget.

81. An e-mail dated 27 September 2007 from Colin Mackenzie (**CEC01653317**) noted a proposal to settle a claim by SDS for a sum in the region of £1 million despite a recently approved remit of the Council's Tram sub-committee stating that the Tram sub-committee was empowered to take the final decision with respect to the settlement of any financial claims that may arise against TIE/the Council, subject to ratification by the full Council for amounts in excess of £500,000.

(see also Mr Mackenzie's e-mail dated 1 May 2008 on the subject, **CEC01247775**).

(1) Is it the case that a claim from SDS had been settled without proper authorisation?

Yes

(2) More generally, to what extent was the Tram sub-committee involved in decision making/authorisation in relation to the tram project? (see e.g. the Action Note for the meeting of the IPG on 11 June 2008, **CEC01236706**, which noted *"some continued lack of clarity regarding the remit of the subcommittee and the appropriate frequency and sequencing of meetings"*)

I don't know the extent to which it was involved later in the project. Certainly, during my involvement in the project up to December 2008, I did not think that it had a significant role in decision-making, despite its agreed remit.

82. In relation to the Tram Project Board (TPB):

(1) How were important matters relating to the tram project reported to and from CEC and the TPB?

Board papers were circulated in advance of the TPB meetings and Council officials could read them and advise the directors of Finance and City Development who could raise issues at the meeting. Following each meeting the directors of Finance and City Development would brief their staff and the IPG of developments.

(2) Did you have any concerns at any stage in relation to the performance of the TPB or any members of the TPB?

I did not attend the TPB so am unable to comment on its performance or that of its members.

83. In relation to TEL:

(1) How were important matters relating to the tram project reported to and from CEC and TEL?

I cannot remember very much about communications between CEC and TEL except that TEL were represented at the Tram Project Board, David MacKay seemed to deal only with senior Council Officers.

(2) Did you have any concerns at any stage in relation to the performance of TEL or any members of TEL

TEL was set up as a company to combine bus and tram operations to avoid the two businesses competing against one another. I felt that its role should have been limited to operational aspects of the business case, so that it could have been informed by the experience of Lothian Buses. I could not understand what TEL's role was in the construction side of the project.

84. In relation to Lothian Buses:

(1) Did Lothian Buses cause any difficulties for the tram project? How were any such issues addressed?

I recognised Lothian Buses were hostile to the tram business, and they were reluctant to share commercial information or to promise to reduce bus numbers on proposed tram routes. However, I cannot remember any specific difficulties they caused.

85. In relation to Transport Scotland (TS):

(1) How were important matters relating to the tram project reported to and from CEC and TS?

I held monthly meetings with John Ramsay to discuss the project. These were sometimes attended by Duncan Fraser, who was able to provide more technical information. In addition we exchanged frequent emails and telephone calls.

At a more senior level, Donald McGougan/Andrew Holmes met and held telephone conversations with Bill Reeve, but this was only when significant issues arose.

If a matter was of particular importance letters were exchanged between senior officials.

(2) What was your involvement in that? (we note e.g. an e-mail dated 15 October 2007 from Lorna David of TS, **CEC01565345**, which noted that monthly meetings were to take place between you and John Ramsay of TS, with quarterly meetings being held between senior staff).

See above.

(3) Did you have any concerns at any stage in relation to the performance of TS or any senior officials of TS?

I did not have enough insight into what Transport Scotland was doing to comment on its performance.

86. In relation to the governance arrangements for the tram project:

(1) What are your views, in general, on the governance arrangements for the tram project?

The governance arrangements for the project were unclear. There were too many boards, working groups making decisions regarding the project (TPB, TIE board, TEL board, IPG) and the elected members, who should have ultimately made these decisions were effectively excluded from the process.

Furthermore, decisions were made without appropriate external scrutiny or assurance.

(2) Did you have concerns in relation to the governance arrangements? See e.g. Colin Mackenzie's e-mail dated 26 September 2007 (**CEC01561555**). Did you share these concerns?

Yes, I shared Colin's concerns. By as Colin puts it "diluting" the Council's influence, the risk that decisions would be made that were not in its interest.

It was also concerning that governance arrangements were developed by Graeme Bissett in TIE without reference to the Council's own governance requirements.

(3) What are your views on whether there too many bodies and organisations involved in strategy and decision-making?

I do not think that the problem was necessarily involving a lot of different bodies, as I think good decision-making requires extensive stakeholder engagement. However, ultimately decisions should have been made by the Council, as this is where the financial risk lay.

(4) Which body or organisation do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?

I consider the Council was ultimately responsible for ensuring that the tram project was delivered on time and within budget. However, by attempting to delegate that responsibility to TIE, it lost control of the project, so that it was unable to ensure these objectives were met.

Having said that, I am not sure where the requirement to create TIE came from, and it may be that Scottish Government insisted that the project be delivered at arm's length. If this is the case, then Scottish Government must also be considered responsible.

**The Contractors**

87. In relation to the main contractors involved in the tram project (including, in particular, the design, utility and Infraco contractors):

(1) Did you have any concerns at any stage in relation to the performance of any of the main contractors?

I was aware that there were performance issues with both MUDFA and SDS.

(2) If so, what were your concerns and what did CEC do to seek to address them?

I did not have specific concerns, so cannot say what was done to address them.

(3) Were these steps successful and, if not, why not?

See answer to (2) above

**Final Thoughts**

88. By way of final thoughts:

(1) How did your experience of the Edinburgh Tram Project compare with other projects you have worked on (both previously and subsequently)?

I have worked on a variety of different projects, both successful and unsuccessful. Where projects have been successful, the project team worked well together, had clear objectives, which were aligned to political priorities and actively managed all issues and risks.

The wider tram project team did not work well together, particularly as it was spread over organisational boundaries and there was distrust between the different organisations involved.

While the objectives of the tram project were clear, it did not have overwhelming political or public support. I think this may have contributed to making short-term decisions aimed at getting the project to the next stage. By the time the project was at the point of financial close, tens of millions of pounds had been spent and it would have been difficult to stop the project.

Risk management in the tram project was poor compared to other projects. While the project employed a dedicated risk manager and a had a detailed risk register, the impact and likelihood of risks were understated and little seemed to be done to actively manage the risks.

(2) What do you consider were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?

I consider the main reasons for failure to be:
(not in any particular order)

(i) Arm's length project management

By setting up TIE to deliver major transport projects in Edinburgh, the Council and Transport Scotland had less control over the project and did not have the necessary information to make informed decisions on the project. Furthermore, with grant conditions requiring all project management funding to go to TIE, the Council was unable to resource independent assurance on the project.

Creating a company whose sole purpose was to deliver the tram project meant that TIE's objectives differed the wider objectives of Transport Scotland and the Council.

(ii) Lack of consistent political support

From 2007 onwards the project was not supported by the Scottish Government. Following this decision, Transport Scotland became less involved in the project. This meant that advice from government experts and independently procured consultants was no longer available to the project.

(iii) Failure to recognise when things were going wrong and ploughing on accordingly

The project's procurement strategy was based on reducing risks by completing the design and diverting utilities in advance of the main contract. However, once these two advanced works packages began to slip, there was no delay to the main contract, building the risks back into the project.

This failure to recognise when things were going wrong could also be seen in the early stages of the main contract, where initial disputes with the infraco contractor were not reflected in project forecasts.

(iv) Capping the project budget £545m

Following the Scottish Parliament vote in 2007, the grant was capped at £500m and the Council only made £45m available, largely from non-core budgets. I think this budget cap, may have inhibited TIE from recognising the true cost of the project and building in appropriate risk allowances. Given that the project's eventual cost was reported as £776m for a reduced scope, building more costs in at an earlier date may have led to a more successful project in the long-run.

(v) Procurement Strategy

While the procurement strategy was developed from reviewing lessons learned from other projects, it had not in itself been tried and tested. While problems arose from not adhering to the strategy, there may have been problems with the strategy itself, namely

- completion of detailed design may have reduced the contractor's ability to innovate and drive costs down by value engineering
- novation of a particular design contract may not have resulted in full risk transfer, even if designs had been complete, given the difficulties encountered with design novation
- fixing prices where the contractor could not control risks may have driven the contractor to make up losses through contractual claims. A target cost model may have been more appropriate, whereby the contractor's costs would have been met, but there would have been incentives for mitigation

(vi) Contracts and Contract Management

The contracts entered into by TIE were bespoke and there was little understanding as to how they worked. Using standardised contracts may have reduced disagreements over interpretations.
Notwithstanding the form of contract, a hands on approach to contract management may have allowed issues to be resolved earlier reducing the potential for delay and for contractual disputes.

(vii) Insufficient risk management

The project had an over-optimistic approach to risk and failed to allow a sufficient contingency, either through optimism bias or a robust assessment of risk. In addition, the risks that were identified were not actively managed to reduce their likelihood or impact.

(3) Do you have any comments, with the benefit of hindsight, on how these failures might have been avoided?

While it is easy to see failures with the benefit of hindsight, it is more difficult to suggest alternative actions that would have been free from risk.

TIE was set up because the Council did not have staff with either the capacity or the necessary experience to deliver a transport project of this scale. An alternative approach could have been to increase in-house project management resource and support this with external consultants/contractors working directly for the Council. This might have ensured better public sector control and oversight over the project.

The project had developed its procurement and contractual strategies based on lessons learned from other projects. However, its response was to develop an untested strategy, which proved to be more costly than the projects from which it had attempted to learn. A less innovative strategy may have delivered better value for money.

More of the projects budget could have been set aside for independent review of project management capacity, contractual documentation and cost and risk assumptions. This may have allowed problems to be identified and quantified earlier and actions taken to address them. It would also have meant that a more appropriate risk allowance could have been built into the project's budget and programme.

(4) 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 to the above questions?

In this statement I have described a number of concerns I had during my involvement with the Tram Project. While there is some evidence that I set these out in emails and briefing notes I wrote, these concerns were also expressed in conversations and telephone calls with colleagues at the Council, TIE and Transport Scotland which have not been recorded.

I confirm that the facts to which I attest in the answers contained within this document, consisting of this and the preceding 78 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature.[redacted]........

Date of signing...12/6/2017..................