

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: Graeme Bissett

Dated: 16 June 2017

**THE EDINBURGH TRAM INQUIRY**  
**Witness Statement of GRAEME BISSETT**

**Introduction**

My full name is Graeme Bissett. My contact details are known to the Inquiry. My curriculum vitae is attached as an annex to this statement. I worked with TIE from 2003 until 2010.

The following glossary is provided to assist readers of this Statement :

Name	Definition
Bidder or Bidders	Parties bidding for the Construction Contract
Bilfinger Berger	A member of the Consortium mainly responsible for civil engineering works under the Construction Contract
Business Cases	Documents compiled in support of the Tram Project for approval, communication or funding purposes
CEC Legal Team	The Council's in-house legal advisors
CEC or the Council	The City of Edinburgh Council
Close Report	A set of documents compiled by TIE to support Financial Close
Construction Contract	The contract for construction of the tram system
Contractor or Consortium	The successful bidder for the Construction Contract
Council Tram Project Team	Council employees and consultants working on the Tram Project
Councillors	Elected Representatives on the City of Edinburgh Council
DLA or DLA Piper	Legal advisers to TIE and the Council on the Tram Project
Dundas & Wilson or D&W	Legal advisers to TIE and the Council on general matters including property related
EARL	The Edinburgh Airport Rail Link, a proposed heavy rail link from Waverley to Edinburgh Airport
Financial Close	The term used to describe completion and signing of the Construction Contract
Lothian Buses	Lothian Buses plc
MUDFA	Multi Utilities Diversion Framework Agreement, the contract for utility diversion works
Operating Agreement	The agreement between the Council and TIE or TEL as the contract requires setting out formal responsibilities for the Tram Project
Partnerships UK or PUK	A body established by HM Treasury to support major public infrastructure works
Preliminary Financial Cases	Business Case style documents prepared in support of the required tram legislation
Scottish Executive	Devolved Scottish Administration until the Holyrood election in 2007
Scottish Government	Devolved Scottish Administration from the Holyrood election in 2007
Scottish Ministers	Either Scottish Executive or Scottish Government relevant to point in time
SDS	System Design Services, being the tram design contractor
TEL	Transport Edinburgh Limited
TEL Board	TEL's Board of Directors
TIE	Transport Initiatives Edinburgh Ltd
TIE Board	TIE's Board of Directors
TPB	Tram Project Board, a formal sub-committee of the TEL Board
Tram Bills	The Parliamentary bills required to give the Tram Project the necessary legislative support
Tram Project Team	TIE employees and consultants working on the Tram Project
Transport Scotland	Scottish Executive / Government department responsible for aspects of transport policy in Scotland

## **Appointment**

1. I started working with TIE as a consultant in May 2003 as a result of being approached by the then Chief Executive, Michael Howell. I cannot remember the precise sequence of my appointment but I do recall being interviewed by the Chair of TIE, Ewan Brown, plus two or possibly three of the Councillor TIE Board members including Councillor Andrew Burns and Councillor Maureen Childs. I am not sure who formally appointed me by letter but I think it would have been Michael Howell or Ewan Brown on behalf of the TIE Board.
2. I was at that time beginning to put together my own portfolio of non-executive and consultancy interests. Prior to that point, I had been in senior financial roles with international groups and before that spent 19 years in the accountancy profession. I set up Realizzare Ltd, as a business consultancy with the idea that I would have a range of clients working through the consultancy, including TIE.
3. I qualified as a Chartered Accountant in 1982 and remain a member of The Institute of Chartered Accountants of Scotland.
4. Around 2003/04, I had a number of non-executive and consultancy appointments through Realizzare Ltd including as a non-executive Director of Macfarlane Group plc and non-executive Chairman of Black Circles Holdings Ltd. Macfarlane Group was primarily involved with packaging distribution and Black Circles was an e-commerce company selling car tyres. I have undertaken a number of non-executive and consultancy roles since that time including non-executive Director on the Board of the Scottish Futures Trust Ltd from 2009 until 2017.

## **Role in TIE**

5. I initially worked with TIE from 2003 to 2006 under a consultancy agreement. It involved me working around two days per week on average. As can be seen from my CV I held other roles while I was working with TIE. The time

commitment was dependent on the requirements of TIE and was operated flexibly. I had been managing my time as a professional advisor with multiple clients for 19 years, so I was familiar with the need to plan ahead to ensure that clients were properly supported.

6. During the early stages following my appointment the key people in TIE were the Chief Executive, Michael Howell, who was very experienced in that type of role and the Board led by Ewan Brown, along with, so far as I can recall at that time, Councillors Andrew Burns, Maureen Childs, Alan Jackson and Ricky Henderson. There were also three highly competent private sector Directors: Gavin Gemmill, who had previously been with Baillie Gifford; John Richards, who at the time was the Finance Director of the Miller Group; and Jim Brown, who was a senior Director in Scottish Water. I thought that the Board under Ewan, who I had known for a long time and have huge respect for, was very competent. There was considerable contact with Council officials as well as the Councillors on the Board. Both they and the individuals from the private sector in my view contributed well to the execution of the Board's responsibilities.
7. My role in that early period with respect to the Tram Project related mainly to the development of the financial aspects of the early Business Cases, which were then being prepared to support the Holyrood legislative process. I had a contract, effectively as part-time Interim Finance Director, reporting to Michael Howell. My role was as I had expected. I was not required to undertake any additional tasks that were outwith my remit or expertise.
8. When I started working with TIE, the company led by the Chief Executive was in the process of developing Business Cases for a range of transport projects, including the Tram Project and the congestion charging scheme. The Board oversaw these activities which were executed by staff, some of whom were employees and some who were engaged on temporary contracts, with extensive use also of expert consulting firms. The accountancy requirement in TIE, which was a very small organisation, was handled by a competent accountant, Stuart Lockhart. However, additional experience was needed to

look at the financial aspects of the Business Cases. I think the Board and Michael Howell were looking for someone like me who had worked for 20 plus years in finance and the commercial world to undertake that role. I hope I brought commercial knowledge and challenge, but not from a technical engineering expertise point of view. I am not an engineer and I would not pretend that I contributed anything to engineering, design, or construction. My contribution was to provide a broad commercial approach rather than technical expertise.

9. When I was working on TIE business, I was at the TIE office for the vast majority of the time. I was also on call and responded to email and telephone calls when not in the TIE office and outwith office hours.

#### **Role of TIE and impact of changes within TIE**

10. The Tram Project was the main project that TIE was handling at the time. However, it was not the only project that TIE was engaged with. The projects were collectively part of the Integrated Transport Initiative which included a range of far reaching projects in Edinburgh including the tram network, the congestion charging scheme, the fast bus link to the West of the city, park and ride schemes and, from around 2004-5, the proposed heavy rail link to the Airport known as EARL. All of these projects were handled through TIE during the time I worked with the company, until around 2007-8. My role focussed on the Business Cases and similar documents in relation to these projects. In the early days, the tram network and congestion charging projects formed the bulk of the role.
11. The completion or termination of projects falling within TIE's remit was a big challenge for TIE and the Council. As a general proposition, there was a lot of change within TIE over the early years of my involvement. The team had to be expanded to handle the projects as they progressed and then redeployed or made redundant when projects were completed or terminated. For example, there was a team of people who had worked intensively on the congestion charging scheme for more than two years, which was terminated

as a result of the referendum in around 2004 or 2005. The same applied to the proposed tram line 3 which was dependent on funding from congestion charging and also to the EARL project which was terminated around 2007. There were quite a number of people who lost their jobs when those projects were terminated. On reflection, I think staff changes within TIE were handled quite well, in a way that was sensitive to the individuals affected. Despite these challenges, I do not think the changes negatively affected the continuing projects in any material way. The Tram Project was, generally speaking, well-staffed and the team evolved over time to meet the demands of the project. I do not think it was either damaged or enhanced by the changes elsewhere in the TIE portfolio.

12. In the earlier stages of the Tram Project, there were a number of attempts to capture development value on the planned tram route. I worked quite closely with colleagues in the Council, in particular the Director of City Development, Andrew Holmes, to ascertain what TIE and the Council could do, within the proper confines of planning legislation, to exploit the earning opportunities for the Council in areas where the private sector could potentially benefit from the tram.
13. Throughout the project, a reasonable amount of work was done with the stakeholders on the governance structure supporting the project as it developed through to construction and toward revenue service. The aim was to ensure that accountabilities and responsibilities were clear and to create a robust decision-making structure which accommodated the interests of all the key stakeholders. Legal and taxation considerations were also important to the Council and to Lothian Buses.
14. Around 2005, the senior members of staff were Michael Howell as CEO (to whom I reported), Ian Kendall as the Tram Project Director and Stewart McGarrity as the TIE Finance Director. Subsequently, new senior team members included Andie Harper (Project Director), Colin McLaughlan (HR Director), Matthew Crosse (Project Director) and Steven Bell (Project Director). Stewart McGarrity had joined in 2005. I had recommended that the

company hire a full time Finance Director as the workload was clearly expanding. Stewart managed the preparation of the Business Cases from that point. My own role was largely to review and comment on iterations of the draft Business Cases.

15. Around 2006 or 2007, Willie Gallagher, who had been appointed as Executive Chairman, asked me to give more time to TIE because the project was entering quite an intensive period in the run-up to and through the construction contract procurement process. I was happy to do this, again subject to making sure I was able to balance all my business interests. I reported directly to Willie Gallagher when he succeeded Michael Howell. Toward the end of 2008 so far as I recall, with the project in construction, it became clear that my role was changing because progress was not being made on the project due to an increasing level of dispute with the Consortium. As a result, a decision was made at my suggestion to revert to more of a "project on-call" consulting type of service.

#### **Overview – Tram Project**

16. I am asked to provide some overall comments on the conduct of the Tram Project and the difficulties which arose. Clearly the outcome of the Edinburgh Tram Project was very disappointing and I feel it is incongruous now to set out the strengths in what was done by TIE and the Council, but those strengths did exist. The governance structure had to evolve as the project developed but I believe it worked reasonably well in bringing the various parties together, which was not easy given the problems that emerged with the Contractor.
17. The TIE and Council Teams worked on the Tram Project in addition to other projects over a lengthy period. They were generally very competent, very hardworking, diligent people and there was a good team spirit across the organisations. The relationship was a bit more difficult in the early days, around 2003-04 but once it bedded in I think the relationship between the Council and TIE actually worked well, particularly at senior level. I think the way in which people kept each other informed worked especially well.

18. I felt that overall we had the right people in the team both at TIE and in the Council, to the extent that I was qualified to judge the technical requirements. I thought it was a pretty comprehensive team.
  
19. A key issue in my view, however, concerned the execution of the procurement strategy and process. I am not a procurement, construction or engineering expert but as a financial, commercial person looking from the outside, then and now, the overall strategy made sense. There were some important challenges, however, and there were two or three things that just did not work in practice, though not because the strategy was necessarily wrong. The core of that, I believe, was the design being incomplete when construction commenced. The rationale was to separate the design process from the construction procurement, with Bidders bidding on a design which would be complete and fully to the Council's requirements. It was felt that this would provide the Council with more control over the design and also control construction costs. I still believe it was the right strategy, but the fact that the design process took longer than planned and then overlapped with the construction period seemed to create a lot of difficulty. Considerable work was carried out to try to manage the overlapping period and a series of detailed procedures were agreed with the relevant parties to mitigate the problems. I am, however, sure that this matter was a cause of problems further down the line. Although I cannot recall the specifics, it was certainly a source of considerable discussion at that time and I expect the specific issues will be documented. The same probably applied to the utilities work. That work also took longer than planned and then overlapped with construction but I believe TIE accepted that there were delays and the effect was calculated and cost adjustments compiled and I think put forward to the Consortium, so that seemed to be less of an issue in contractual terms at the time. Finally, the preferred Bidder, with hindsight, may have been selected too early in the process. Perhaps a few more months of negotiating under competitive tension might have ironed out some of the issues that surfaced after the selection of the preferred Bidder.

20. An additional matter is that the pricing schedule, which I believe is Schedule Part 4 to the Construction Contract, seemed to feature in many of the subsequent disputes, so clearly there was some degree of ambiguity there that offered concern to one or other side.

#### **Work at TIE**

21. I cannot recall being involved with the appointment of the design team in terms of "The Apportionment of Infrastructure Design Risk and the Appointment of a Design Team by TIE" dated 13 April 2004 (**CEC01865184**). I was not involved in designing the procurement strategy. My role with important technical contracts would have been limited to challenging from a commercial point of view what was proposed by others, as necessary, rather than to design or draft anything myself.
22. As mentioned above and so far as I can remember, an alternative procurement strategy could have been based on a contract where one party produces the design and then builds in accordance with it. However, the concern was about it being more expensive to have one party responsible for both design and construction, even in a competitive bid process, than if responsibility for the design and construction were separated, with construction-only bids being based on the approved design. There was also an issue of getting the timetable sequence right. There was strength in the argument that, if the design was completed, then the Bidders would tender for the Construction Contract on the basis of a known design. TIE and the Council would then be driving that process and had agreed on the design, which they then put to the construction companies in a procurement process. I do not recall having any involvement in the design of the contract strategy but I don't recall having any concern with the logic of the strategy proposed.
23. Another advantage of the procurement strategy adopted was that it allowed the programme to progress. A lot of the design work was handled well in advance of the procurement of the Construction Contract and therefore one could argue that it worked broadly as a strategy. However, there were

concerns about the performance in delivering the design by SDS though I cannot now recall the specifics. From memory, it was a recurring theme that designs produced by SDS needed to be reworked. I think perhaps the more important point was the overall effect. Even though the design was not completed by the time of construction commencement, possibly as a consequence of the rework requirement, the concern among TIE and the Council was that the situation should not give the preferred Bidder carte blanche to extend the programme, change the design or the cost. Considerable work went into the problem once it became apparent that there was going to be an overlap between design completion and commencement of Construction. It is an open question whether the process put in place to deal with this challenge did actually work in practice. I think a lot of the subsequent disputes related to that area but it would be the people directly involved from the Council and the Tram Project Team who could really comment. So the procurement strategy was probably a good theory, but the overlap between the completion of the design and the start of construction work created a fair bit of difficulty.

24. The Council had to be quite disciplined in the sense that any proposed design changes proposed after it had been produced by SDS could have implications for cost and the programme. I think from the Council Team's point of view that it was reasonable to make proposals of that sort given that they had the wider public realm to be concerned with. However, as soon as the Construction Contract was awarded there was another interface to deal with, namely with the construction Consortium. Changes in the design after the Construction Contract had been awarded may have been well-intentioned but would have required variations to be agreed with the Consortium which could have been achieved but with possible implications for cost and programme. Therefore, all these elements created tensions that had to be accommodated in the process as it developed. The process that was developed rightly included quite heavy involvement from the Council as well as from TIE's Tram Project Team and the Contractor to ensure that everyone relevant was involved in the design process and to avoid as far as possible late changes which could affect cost or programme.

25. I managed the preparation of the Close Report, not in relation to the technical content but in terms of reviewing how the overall content fitted together and how it would be communicated to the wide group of recipients. I had to consider whether it was all so heavily technical that nobody other than an engineer could understand it. It had to be communicated in a way that people such as the officials and Councillors on the TPB, TIE and TEL Boards could get a good understanding of the contract and the risks. Susan Clark, who I think at that time was Deputy Tram Project Director, did the chasing and harrying to ensure that if a certain person had a contribution to make to the document, then Susan would ask for it, which ensured that everything came together in a timely manner. My role was to establish how the package read to me as a non-engineer, but as someone with some understanding of what had to be achieved, and to assess so far as possible whether the Close Report covered the necessary ground for the Tram Project Board and others who would need to read and understand it. My role here did not extend to checking or validating the legal and technical content, which I would not have been competent to do. It is important to note that the documents which finally supported Financial Close decision-making fell into two separate albeit complementary groups – the Close Report from TIE and a parallel report from DLA which addressed the terms of the Construction Contract.
26. I am asked about my email to Willie Gallagher and others on 3 April 2004 (**TIE00150814**) concerning a small claims case by a business, Cow Corner, against TIE, but I am afraid I cannot now recall the context. I do recall the name but I cannot remember any more than that, nor the nature of Colin McLaughlan's involvement. The Tram Project was wide-ranging and complex, and there were little things that popped up relative to the scale of the overall project, though clearly important to the people involved, which one could generally understand and hopefully resolve by applying a bit of common sense. It might have been something to do with construction work in Leith Walk, where possibly Michael Howell or Willie Gallagher requested that I look at the issue and try to find a satisfactory solution, but I cannot remember who did what exactly.

27. I cannot really comment now on how specific individual documents were compiled by the Tram Project Team, but in general, I am confident that it was done very diligently based on my recollection of the documents that I saw from the Team over the period. These were generally such important documents that version control and internal consistency and ensuring that proper explanations were provided where necessary, were all absolutely critical. In preparing for Board or other important meetings, I would have asked staff in TIE to prepare the documents properly if I had felt that the way they were being prepared was slapdash or inadequate and I cannot recall any theme like that. Responsibility for document control depended on the nature of the document, but I believe there was a good level of collective responsibility for the quality of documents felt by the TIE team. A lot of these documents – such as the Business Cases and the Close Report – were really compilations of the work done by a range of different individuals. For example, the preparation of the Business Cases would have involved people beyond the Finance Team. Stewart McGarrity had a team of two or three individual finance people by the time that the project was moving into construction procurement, who worked directly for him, but it would have involved others like Susan Clark, for example, contributing sections, double checking and reading sections of it for sense and accuracy.

28. I do not think the change of personnel at Chief Executive level in 2006 had any impact on the delivery of the Tram Project. Clearly, new relationships had to be built but I do not recall thinking at the time that for example TIE had just lost six months because a new Chief Executive had come along, or that things had been done significantly better or worse in the old days. I think an issue that might be worth some thought, is the number of changes in the Tram Project Director role and I say that not because there was a concern about the individuals but just because those individuals were facing off day-to-day with the other parties to the Tram project, including the design and utility contractors, so when you get a change in that role the issues are more specific, in contrast to the Chief Executive's more overarching role. Whether those changes resulted in lost traction on the way through I do not know. I was not conscious of anything significant but I doubt if it helped. There was

reasonable consistency over time amongst the TIE staff, except when there were step changes because projects that TIE was working on completed or terminated, or in the case of the different stages of the Tram Project, where one would need to bring in new people and, indeed, more people.

29. I never had a problem developing good working relationships day-to-day, based on respect, clarity and understanding the other person's point of view. That is just the way I have always operated. I was asked in interview about my working relationship with Stewart McGarrity. From my point of view I believe that worked well in all respects.

### **Governance Relationship**

30. It was never in any doubt that the Council and Scottish Ministers would have the ultimate say on key decisions. That was reflected clearly in the governance structure and the delegated authority structure. My email to Andrew Fitchie, dated 2 March 2006 (**CEC01879035**) with attached proposed Governance structure paper (**CEC01871118**), and the Governance Matters – Summary – dated 12 March 2006 also drafted by me (**CEC01857993**), are primarily focussed on the roles and authorities beneath the Council, notably TEL, TIE and the Tram Project Board. The objective of these papers was to establish the detailed authorities to be adopted by these bodies, to define a wide array of specific roles and to accommodate legal, tax and Council decision-making considerations. The Council's overall authority is clear in the papers and I believe the specific delegated authority limits with respect to design, programme and cost were documented elsewhere but as an integral part of this overall governance reorganisation. From memory these reflected a specific financial limit (which may have been changes of more than £10m in the overall project cost but that number would need checked), above which Council approval was required; a similar limit to delegated authority from the Council related to programme (which again from memory and would need to be checked but I think may have been any programme extension beyond 3 months); and there was a restriction also applied to design changes, the detail of which I cannot now recall. I believe that the governance role of the Scottish

Government was set out ultimately in the grant award letter between Transport Scotland and the Council and isn't repeated in these papers since these papers were largely focussed on the Council's authority and that of the entities which the Council controlled. I think that was probably the basis for the content of papers. However, the assessment of the appropriate governance model was also a rolling process aimed at arriving at a final agreed set of arrangements involving multiple parties. I expect that the roles and responsibilities, including those of Transport Scotland, were clear when the documents were finalised. In practical terms, I don't recall any significant debate about the way the governance was working once the documents were finalised and in operation. I think it is also fair to say that the agreed levels of delegated authority, and the matters reserved to the Council, were fully respected as the project moved forward.

31. From 2003 to 2007, TIE was the main vehicle through which all of the projects, including the tram, were executed on behalf of the Council. It was an arms-length company, wholly owned by the Council, and the TIE Board formed over that period had an important governance role.
  
32. From 2007 onwards, as the Tram Project moved through construction procurement and into construction, TIE as a legal entity became less significant as the governance arrangements accommodated TEL and senior parties from the Council more directly. A new governance model was implemented around this time to recognise the need for a governance forum (which became the TPB), which formally involved the other stakeholders to the project. TIE and its Board had done their job up until that point, but the governance arrangements needed to evolve to be more broadly-based and to make sure that all the right people were in situ. There were two reasons for this. First, there was the evolution of the Tram Project, which was moving through the design stage toward procurement of the Construction Contract, actual construction and then revenue service. Secondly, the other projects that had been overseen by the TIE Board were either largely complete or were no longer proceeding. EARL was terminated in 2007 and the congestion charging scheme (along with tramline 3) had terminated a couple of years

earlier. The other smaller projects, like the park and ride facilities and the segregated busway in the West of the city, had largely been completed. There was really only one remaining big project, namely the Tram Project.

33. I think it is important to mention that although the primary governance forum moved from the TIE Board to the Tram Project Board structure, the TIE Tram Project Team, which must have included all or almost all employees of TIE, was substantially unaffected by the governance changes, other than in the sense of the reporting structure.

### **Role of TIE**

34. I note an email from Willie Gallagher to me and others dated 27 May 2007 (**CEC01631360**) highlighting the need to explain to the incoming Scottish Government the benefits of the Tram Project. TIE's primary project role was delivery but, especially in the early stages prior to publication and parliamentary scrutiny of the Tram Bills, TIE had a promotional role alongside the Council in stating the benefits of the tram system.
35. My email to Andrew Fitchie dated 7 January 2009 (**CEC01076694**) explains the proposals for the corporate restructuring. This was primarily about bringing Lothian Buses more into the corporate structure. There were legal and tax considerations. Alan Coyle, Principal Finance Manager at the Council, who I worked with quite closely, was an important person in this part of the project from the Council Team. I would say we generally had a constructive relationship. I do not remember him ever asking me to "*cool my jets*" as is stated in an email I was asked to review from Alan to colleagues within the Council. I would have remembered it since he was a good, rational guy and I would have thought carefully about it. I think Alan's email response may have been highlighting his desire for a slower process but I can't speak for him. Certainly the core of the restructuring of the model was quite a serious step, because there were many important legal and financial implications in the proposals.

36. I think the intention was to create a formal corporate group of entities. One consideration was that the profitability in one entity, namely Lothian Buses, would be partially covered for tax purposes by the capital cost of the investment in the tram and also that a consolidated picture would be able to be presented in the TEL accounts. There were, therefore, reporting issues, tax issues and also there might have been an element of seeking to demonstrate a coherent integrated model to the public.
37. At this time, I was trying to push forward proposals that had already been discussed, developed and agreed with others. That typically would have been my approach. I would not be putting forward ideas that had not been supported by people at the right level in the Council, TIE or TEL. It may be that Council officials felt that they were being pulled along by TIE in a way they had not experienced previously but that was not the intention. It is clear from my email to Andrew Fitchie that officials in the Council who also received it would see fully what was going on.
38. I do not recall any matters which implied that CEC and TIE's positions were different. The ultimate objectives of CEC and TIE for the project were the same. By this time, the governance model with the Tram Project Board, TEL, the Council, TIE and Councillors was in my view working well, although I recall that it seemed to take far too long to get the new arrangements formally agreed and in place. The governance model reflected the multi-stakeholder environment but was clearly set out and the meetings and processes which took place within the structure were open, with extensive documentation in support.

### **Role of TEL**

39. TEL was set up in about 2004 or 2005 to create an overarching body bringing together the Tram Project and Lothian Buses in the years up to the point at which trams started running in an integrated way with the bus services. Until then there was in my view probably not enough contact between Lothian Buses and TIE. TEL was effectively an umbrella above both Lothian Buses

and TIE to create a forum where the bus company and the tram body could work together within a disciplined governance structure. Lothian Buses continued as a completely self-standing bus company. There was no change to the roles and responsibilities of Lothian Buses management, nor in how they ran the bus company but over the subsequent period they became increasingly involved in the design and the future operation of the tram and the integration of services with the bus services. TEL created the umbrella to enable that dialogue to take place.

40. The memo and articles for TEL, which are commented on in the email from Alasdair Wood to me dated 22 October 2004 (**CEC01863209**), were part of creating a governance structure for the project going forward, including TEL, and to make sure that TEL was properly constituted for the role it was given. The governance arrangements involved considerable legal work, mainly I think from DLA for TIE and the Council. The articles had to be read in order to compare them to what it was understood the company would be doing. My involvement in evolving the governance arrangements was from the point of view of whether they worked in practical terms, avoiding overlaps and duplication of work but trying to ensure that all the right parties had proper involvement.
41. Lothian Buses had a significant role within TEL. The obvious reason for this was that even with the tram up and running, 90% of passenger journeys in the Edinburgh area would still have been by bus. They were not dominant in any negative sense and the objective of the TEL arrangements was to make sure that Lothian Buses people had every opportunity to be fully involved in the relevant areas of the overall project. So far as relationships were concerned, it was widely recognised that Lothian Buses were running a very successful and efficient business and although I obviously cannot speak for them, I would guess that there would have been concern on their part about the creation of a significant new transport mode. I expect they would want to make sure that the integration worked in a way that was good for the travelling public. Therefore there might have been a degree of wariness on their side about the risk that integration would not work well if they were not fully involved, and I

would fully sympathise with this. I think there was a very positive effect as a result of giving Lothian Buses such a significant role as the project developed in terms of the operational planning for the integrated bus and tram network.

42. I note an email from me to Tracy O'Connor that was concerned with funding dated 23 July 2007 (**CEC01560334**). There is a reference to the establishment of what I described as the "TEL Group" by transferring ownership of Lothian Buses. The original reason was to create that overarching forum to bring Lothian Buses, TIE and TEL together. There were also legal and tax considerations. I am sure that the Transport Act 1985 was significant in this context since that Act as I recall it codified Lothian Buses' requirement to be relatively autonomous from the Council, and whatever restructuring was done to integrate tram and bus operations had to fully respect those legal requirements. The main driver for creating the TEL structure was the desire to ensure that there was good coordination among the relevant parties so that the process was efficient and the outcome was a good integrated transport system. The tax consideration was also important and the changes being proposed had to comply fully with the legal requirements.

#### **Role of Tram Project Board**

43. The draft remit of the Tram Project Board (TPB) dated 24 October 2005 (**TRS00000178**) was prepared at quite an early stage in 2005. It was an attempt to bring together a project board representing stakeholders beyond the TIE Board, rather than for example inviting third party stakeholders to attend the TIE Board meetings. The logic was to have a group of people with a single purpose to take the project forward.
44. The proposal at that time was to have core members of the Board with alternate deputies when necessary, as set out in the draft paper. I participated in discussions of the Board but was not involved in the formal decision making process. I was asked about the proposal that I deputise for Michael Howell within these arrangements. I think it was the intention that one of us would

attend every meeting rather than that I would speak for Michael. If I did attend in that capacity, I would try to faithfully report to the TPB Michael's views, which I expect we would have discussed beforehand.

45. I believe that there was a need at that time for both TIE and the Tram Project Board. It was a challenge to get multiple stakeholders round the table within a structure that accommodated the legitimate interests of all relevant parties, but it made more sense to have a group of people brought together with a common remit as the TPB rather than simply to invite guests to attend the TIE Board. Subsequently, as explained above, the primary focus of governance for the Tram Project became the TPB, once TIE's other projects had concluded or been terminated and the Tram Project moved into procurement and construction.
46. I cannot specifically remember my email to Steven Bell dated 3 November 2008 (**CEC01159600**) but I think it concerned the request for information by Transport Scotland beyond what was already going to the Tram Project Board. I do not think anybody had any problem providing information if there was a legitimate interest. The difficulty was to make sure everybody relevant had access to the same body of information and the challenge was streamlining the process. Therefore if Transport Scotland wanted something specific that was not already included in the Tram Project Board papers, that information could be added. This ensured that there was one common body of information rather than some information going one way and not going the other.
47. I am asked if I thought that the Tram Project Board was ill-informed. I did not at the time and looking back do not believe there is any substance to that concern. If anything the TPB might have suffered from too much information being presented. However in a very substantial and complex project the reporting had to be comprehensive. My recollection is that the debate was thorough and reflected really good contributions prompting debate, rather than endorsement, from people like the Councillors and officials who were not necessarily experts in particular areas. They never felt shy, as far as I could

tell, about asking informed and challenging questions. I thought it was an effective forum which oversaw the progress of the project through construction procurement and also provided proper challenge to the project team in the period when disputes with the contractor became prevalent.

### **Governance Changes**

48. The background to the email exchanges amongst me, David McKay and others dated 4 to 6 June 2009 (**TIE00030522**) was an attempt to streamline the governance structure and also to ensure that the model was being developed looking ahead to the tram opening for revenue service. TIE was the legal entity which employed the TIE Tram Project Team. As explained above, with all of its other projects having either been completed or terminated by this stage, TIE's only function was delivery of the Tram Project. So, rather than have multiple reporting lines, the attempt was made to concentrate the governance of the project through the TEL / TPB model with TIE as a legal entity executing its own legal responsibilities but not acting as a parallel governance body for the Tram Project. The paper referred to in the email explains the rationale for optimising the governance structure for that stage (and I'd be confident that other documents prepared at the time would provide further illumination). The issues also included looking ahead to revenue service, which at that time was expected to be no more than a couple of years away.
  
49. In order to make sure that the TIE Board's legal responsibilities were still appropriately addressed without duplicating Tram Project governance arrangements, the Tram Project Board effectively provided the governance over the project. TIE reported through Steven Bell as the Tram Project Director to the Tram Project Board. Therefore, there was no change to the position of the people in TIE in operational terms, only the reporting lines above the Tram Project Director. The advantages of this were that duplication, reporting to TIE as a legal entity and reporting the same to the TPB and the Council, was avoided. I don't believe that there were any disadvantages to this approach.

50. When Transport Scotland removed themselves from the detailed governance process, my understanding was that they would continue to engage directly with CEC. As far as I can recall, Transport Scotland took the view that they wanted to engage solely with the Council and would not otherwise be involved in the project governance. This is referred to in the document produced by me dated 24 July 2007 (**CEC01628103**).
51. I recall being slightly surprised that Transport Scotland did not want to be closer to the governance of the project, given the scale of funding they were providing. On the other hand, the comprehensiveness of the information provided to them through the Council should have given them all the information that they needed to monitor progress. As far as I know, Transport Scotland had the same information as the Council and Transport Scotland would, I expect, make their own decisions based on the information they received from the Council. The reporting to the TPB, TEL and the Council was comprehensive and I believe that the same reports were provided to Transport Scotland. Once the funding position had been clarified, I think Transport Scotland's opinion may have been that it was up to the Council and TIE to deliver the project with their involvement focussed on the provision of the grant funding. However, I was not party to any discussions with Transport Scotland that I can recall on these matters and it would be for that organisation to explain the position it took.
52. Referring to an earlier stage of the project, the Panel Review of Major Projects dated 24 November 2006 (**TRS00010611**) took place between Transport Scotland and TIE. I cannot remember the details of that meeting, although I remember being involved in a couple of these meetings around that time. The Panel met quarterly, as mentioned in the minutes. The minutes appear to be comprehensive. I think the Panel may have been outwith the formal project governance structure and may have been at the request of Transport Scotland as a communication mechanism, though I am speculating. The matters discussed, based on the minute, look similar to those discussed within the project governance arrangements. There were no barriers to the provision of information. The meetings were detailed and comprehensive, as the

minutes demonstrate, and were productive in the sense that they kept the dialogue going between TS and the Tram Project team.

53. So far as I recall, those Panel discussions were the main forum for regular discussions amongst TIE, the Council and Transport Scotland prior to 2007. Transport Scotland was very closely involved and I think there was also regular contact outside of those meetings. At that time I believe Transport Scotland were also represented at TIE Board meetings and then Tram Project Board meetings. From 2007, TIE would submit comprehensive reports to the TPB and the Council, on a regular four-weekly basis if I recall correctly, and Transport Scotland I believe received exactly the same reports from the Council in order that they and the Council were able to engage and address any concerns. If Transport Scotland had any concerns, they would come back to TIE through the Council. This did occur on occasion, but as far as I know, TIE were not involved in the meetings between the Council and Transport Scotland, at least not regularly. They were regarded as a forum for Transport Scotland and the Council. Beyond 2007, I believe those Panel reviews probably ceased once the operation of the new arrangements was underway.
54. As I noted previously, I was concerned about the lack of involvement of Lothian Buses in the early days of my involvement with TIE. Lothian Buses was not really involved in the Tram Project so far as I could tell at or around 2003. Subsequently, with the creation of TEL and the involvement of Lothian Buses' management in the wider integrated project, I believe the right balance was achieved.
55. As far as the Tram Project is concerned, from around 2007 the primary governance structure was the one involving TPB and TEL, the rationale for which is explained above. TEL created the TPB as the primary regular governance body. The TIE Project Director and Executive Chairman, who had the delegated authority to deal with the day-to-day construction and related activities, reported to the TPB. The top-down hierarchy was the Council, TEL, the TPB, and the TIE Tram Project Team.

56. As part of the reformed governance structure, TEL was formally given the responsibility by the Council to deliver the whole integrated scheme, including the relationship with Lothian Buses and delivery of the tram system. In governance terms, the TPB was the oversight body but TIE was the tram delivery vehicle. So it was TIE, or the TIE Team under the Project Director, which was responsible for delivery against the contract, effectively reporting to and accountable to the TPB.
57. The TPB was formally a sub-committee of the Tel Board accountable to the TEL Board, which in turn had been formally appointed by the Council and which was accountable to the Council. Therefore, the Council was the ultimate authority, with the Scottish Government through Transport Scotland obviously a key part of that funding relationship. The Council delegated to TEL the responsibility to deliver the integrated system.
58. I am always very keen in governance models to see that responsibilities and accountabilities are absolutely crystal clear. It was important that it was known who was responsible for what. This was an environment where there were several very important stakeholders, who all had a significant say and this is probably what drove the timetable to produce and finalise the documents which codified the new governance arrangements. The ethos was to get something agreed, which was as clear as it could be, with proper levels of delegated authority for decisions on changes and other aspects of the project at the heart of it. Audit Scotland performed what I regarded as a very thorough review in (I think) 2007, of the governance system that was put in place. I recall they reported positively and I was encouraged to know that TIE and the Council were on the right track in respect of this.
59. Once the new governance arrangements were established and in operation I do not think that the existence of the different bodies gave rise to any confusion, duplication of effort, competition or a situation where there was no clear allocation of responsibility. That is not to say that it was straightforward, because it was a very complex project. However, having established that structure, and what I hoped was a clear set of responsibilities and

accountabilities in a complex environment, my recollection is that the procedures actually worked quite well. I heard no complaints from the Council that it was not working for them nor from Transport Scotland. It seemed to fit the bill for all the main players. I had a good working relationship with officials from TEL and CEC. They were open and frank. Nobody hung back when there was something on their mind. It was generally a very open and constructive relationship.

60. There were four-weekly TPB meetings. The TPB expected clear reporting on a regular basis from the Tram Project Team, with minutes taken and proper papers prepared for the TPB and TEL Board. My recollection is that was largely achieved.
  
61. I was author of the document entitled "Tram Project Governance" dated 19 June 2006 (**TIE00064616**), although it may have gone through several iterations before and after that time. The background was the need to evolve the governance structure in a way that made sense looking forward and this document addressed considerable detail, including the roles of a number of TPB sub-committees. As the document sets out, there were two sub-committees initially, which created an additional level of governance with the time and the ability to undertake much more detailed scrutiny and co-ordination of matters than the TPB or the TEL Board could reasonably manage. I recall that additional sub-committees with specific remits were set up as the project proceeded, which would have been approved by the TPB at the time. In principle, the use of sub-committees was quite important because one could get people with the right expertise focused on individual areas, like design and procurement, as opposed to the more general range of skills on the Boards. The additional sub-committees I expect would be referred to in subsequent iterations of this document or otherwise, set up for the same reasons.
  
62. It was necessary to revise the governance structure for the reasons set out in my comments on pages 1 and 2 of a draft Governance Paper prepared in September 2007 (**CEC01561850**) and my email to Donald McGougan and

Andrew Holmes dated 21 September 2007 (**CEC01561849**) and as explained previously in this Statement. Funding responsibilities were also an important aspect of the backdrop to the evolution of the governance model. The new Scottish Government in 2007 capped its funding for the project at £500m. Prior to the new Administration coming in, it was quite difficult to know what the funding package looked like. There was a rolling discussion with the Scottish Executive, through Transport Scotland, as to whether the grant of £375m that it was offering was to be indexed or not. I have never really understood why there was reluctance on the part of the Scottish Executive to say that its contribution would be indexed. There was such a big difference that it had a huge impact on the scope of the project. The working assumption was that it would be, but there was no written documentation on that until 2007. The other issue was obtaining confirmation of the level of contribution that was to be received from the Council. In 2007, it was made clear by John Swinney, the Cabinet Secretary, that the Government would contribute up to £500m in cash terms. Therefore the Council would have to make a contribution if more was needed and the Council would have to come up with ways to generate the £45m Council contribution that was under discussion. There might have been an element of the Council and the Executive each not wishing to pin themselves down to a particular number in the hope that the other would contribute a bit more. That aside, I could not figure out why we could not just get to an agreement on a hard set of numbers. In any event, confirmation in 2007 of the Scottish Government's contribution in my view brought welcome clarity. There was no suggestion at that time that the Tram Project might need more than £500m from the Executive and I believe that this judgement, at that time and based on the scope of the tram system then anticipated, was right. £500m was thought to be a big enough contribution to work with, and the Council then became the party that had to work with that budget. The risk factor of going beyond £545m subsequently proved to be a serious issue. However, at the time, it was felt that £545m would accommodate what was then being designed.

63. I am asked about an email from Alan Coyle to Colin MacKenzie dated 25 September 2008 (**CEC01075886**) where Alan states that he does not think the

governance structure is being followed. The documents he refers to appear to be the governance arrangements referred to above. I do not know what Alan Coyle is specifically concerned about but I am confident that if something important had been raised, it would have been addressed. It works both ways – if TIE was not doing its job properly, it should have been held to account.

64. The Legal Affairs Committee (LAC) referred to in Alan Coyle's email was the joint TIE and Council group brought together to discuss legal issues as they arose and in my view it worked well. The reference here is to a meeting in September 2008, several months after Financial Close, but the LAC was established, as I recall, some months prior to Financial close. The LAC met frequently, perhaps weekly in periods of intensive activity, and included the Council's legal team, the legal advisors DLA, the Council Finance people, such as Alan Coyle, and senior people from TIE and others from the Council Tram Project Team. This worked well as a forum for airing any issues and ensured a common view around the Council's legal, finance, development and technical teams. Discussions would take place, amongst other topics, around how the governance was working and who was required to make decisions, including the opportunity for the Council's legal team to ensure that the Council's legal responsibilities and decision-making powers were respected. As negotiations progressed, there was regular governance reporting through the monthly TPB meetings and other ad hoc discussions.

#### **Relationship between CEC and TIE**

65. I am asked about the working relationships between CEC and TIE. There was very close contact between the TIE team and a number of individuals from the Council throughout my time working with TIE. In the Finance department, in the earlier period, there were Donald McGougan and John Burns and latterly Rebecca Andrew and Alan Coyle. Donald McGougan was the Finance Director. There were Gill Lindsay (Solicitor to the Council) and her legal colleagues Colin MacKenzie and Nick Smith. The senior team included initially Andrew Holmes and then David Anderson, as Directors of City Development. Keith Rimmer was, I think, Transport Director, followed by Marshall Poulton. I

also remember Duncan Fraser from City Development. I thought they were all very competent and diligent people.

66. The Council Team would try to deal with day-to-day issues informally, as well as formally through the governance approach. This helped all parties to work together quite well. There was a lot of cohesion at official levels on both sides. This was also apparent at Senior Director level at the Council and within the senior team of TIE. From around 2007 Council people worked within the TIE office which also seemed to help the working relationship.
67. I have been asked to comment on some of the content in my response to Stuart Lockhart's email dated 23 November 2004 (**TIE00562602**) which was in response to questions apparently raised by CEC at a CEC/TIE liaison meeting which I did not attend. Most of my responses are factual and practical, but some were clearly inappropriate and I wish to apologise for that. The background was that this was during a relatively early period of my involvement, when TIE and Council people were still trying figure out how to work together. I think there was a degree of wariness and possibly some mistrust on both sides about responsibilities. As a result, little things suddenly became big things in a way that was, with hindsight, a bit daft. It settled down from around 2004/05 onwards. The working relationships from then in my view were generally excellent. That does not mean we did not have good debates about different matters. I cannot now remember the detail of the new Business Plan format mentioned at point 12 in the email.
68. I was referred to an email from Andrew Fitchie to Ian Kendall and me dated 8 December 2005 (**CEC01875137**). Ian Kendall was the first of the Tram Project Directors. Ian was not there for that long, maybe less than two years. I cannot remember what "CERT" refers to in the email, but I seem to recall that it was a previous transport project in Edinburgh that went badly some time before this exchange of emails. The general thought was that it could have been handled better, although whether by the Council, Lothian Buses or third parties I could not say. I recall that this was commonly regarded as an

example of how projects could go wrong. I am not sure what Andrew Fitchie meant by “decision paralysis” on the part of CEC.

69. I cannot remember seeing the note of the relationship between TIE and CEC prepared by Barry Cross dated 4 December 2005 (**TIE00707566**) which I have been asked to comment upon. I would not agree with most of the concerns set out there, certainly not as being fundamental to the relationship, but I think this was a series of bullet points rather than a developed paper. My only comment would be that in those earlier days, CEC had a degree of wariness about how well TIE was doing and I think that was entirely healthy. In other words, they were keeping an eye on how TIE was performing, not just in terms of formal project governance but in TIE's overall operations. At that time TIE was working with a wide portfolio of projects of great importance to the Council. I do not recall the relationship between TIE and the Council as a major impediment, and it was not as if people were not communicating properly. This was the early period when people were still getting to know each other to some extent, although TIE had been up and running for three years.
70. Barry Cross was in a senior role in either Transport or City Development within the Council originally. In my dealings with him, I thought he was a competent person and he played a key role in both the tram and EARL projects after joining TIE, which might have been around 2005. In his Tram Project role, he was probably part of Ian Kendall's tram delivery team.
71. On 6 March 2007, I received an email from Stewart McGarrity (**CEC01830998**) expressing a view in relation to CEC's control over TIE. The email mentions an attached draft report. I do not know what was in the underlying report, so it is hard to comment on the specifics. However, it appears to be quite a respectful response. There is reference in the email to TIE's governance structure, and I think the suggestion was that there was a need for more control. I do not know what follow up discussions took place. Whether it was the Council or other parties, if the concerns were important,

they should have been embedded in the formal governance structure, and if they were not, it would have been necessary to avoid dual reporting.

72. The purpose of the email from Duncan Fraser to me dated 8 March 2007 (**CEC01723651**) was to try to get TIE and the Council to work together on how they could maximise the developer contributions. This was part of the way in which the Council was seeking to generate their £45m contribution. I suppose, frankly, I found it quite a frustrating process. It was difficult to get a proper, project-driven approach to generating the £45m contribution, although I knew that it was complicated and fully acknowledged that there were and are very clear planning rules to which the Council has to adhere as well as the wider issues of importance to the Council referred to in the email chain beyond the Tram Project's funding.
73. My email to David MacKay and other senior TIE and TEL management dated 24 July 2007 concerning programme overview (**CEC01628102**) was sent during an intensive period up to the selection of the preferred Bidder. I would not say that this email highlighted any major or new issues. It was simply to emphasise that it was absolutely essential during that period for all the right people to work closely together on the client side of Council, TIE and others involved in the project including advisors and to ensure that they had sufficient time available to do what was required. The email also notes that these issues had been discussed with Council team members the previous day.
74. On 19 September 2007, I sent an email to Willie Gallagher and others, (**CEC01643076**) referring to the publication of CEC proposals for review of the project. In the email I described the approach proposed as "*cack handed*". I do not believe that this is indicative of general relationship problems but in this particular situation, so far as I can recall, the problem was that the review was suggested (in fact published publicly judging by the email chain) by the Council, out of the blue, at a sensitive time when there was a lot of work going on to deliver the procurement. From the Council's point of view, I think they would say that is exactly the time that it needs to have the review and that there would have been no point having it, say, six months beforehand. The

point was that the publication of the proposed review was not discussed with the TIE Tram Project Team and created some uncertainty. I think there was also a feeling that the Council team were sufficiently close to the project that additional external work would not bring anything new but would incur unnecessary cost. The review seemed to be over and above what the Council themselves had been doing. There can be value in third party assurance and this could have been planned for but it seemed to duplicate what was already well-discussed amongst TIE and the Council people. The timing was also an issue as there might also have been a need to publish the resulting report at a time when there was a very intensive commercial negotiation underway with a high-powered party. It was difficult to predict the outcome of the report, and whether it would help or hinder the Council and TIE if it were to be in the public domain, from the point of view of giving negotiating fire power to the other side. I think these were the dynamics that were in play at the time which caused my concern.

75. On 5 December 2007, I had an exchange of emails with Willie Gallagher (**CEC01508479**). There was a frustration on the part of TIE about the level of engagement by the Council on the important area of the authority which TIE had to contract, through the "Operating Agreement" between TIE and the Council. More generally, there was an increasing volume of legal documentation, which the Council would need to review thoroughly and be comfortable with. DLA were heavily involved with this work as well. TIE was not comfortable that the Council's Legal Team were keeping pace with developments.
76. There was in my view sufficient communication between the CEC Legal Team and TIE and the advisors, but the difficulty was getting the actual engagement of Council legal people involved in the project. I don't recall that this was seen as anything to do with competence, it was a question of resource and possibly focus. For example, after some time I think Nick Smith was working full time on the Tram Project, which was exactly what was needed. You needed someone who was very capable and also available all the time and who would be the font of all knowledge from the Council's point of view. My recollection

is that this was not the case in the earlier period. At that time, two or three different people would be involved. As a result, it was difficult to achieve focus in that earlier period.

77. I was asked to comment on a reference by Willie Gallagher to TIE as “my company” in this chain of e-mails and whether this implied a desire for personal control on Willie Gallagher’s part. I saw no evidence of a desire on his part for personal control of TIE. I can only assume that he was taking personal responsibility, as Executive Chairman, for events, whatever they may have been at the time.
78. The emails between Willie Gallagher, Andrew Fitchie and me dated 11 December 2007 (**CEC01500899**) highlighted a need to be able to formally demonstrate to the bidder that the Council and TIE had legal capability to fulfil their responsibilities under the contract, which was absolutely appropriate. There were delays in getting some of the relevant paperwork in place, such as the Operating Agreement, as part of the suite of documents that the bidder needed to see in order to work out how the responsibilities were constituted on the client side. It could maybe have been handled a bit more efficiently at an earlier stage, but the documentation was all concluded in the end.
79. I have been asked to comment on the email chain leading to an email dated 5 February 2008 from Susan Clark (**TIE00351264**), in which Alan Coyle of CEC expresses concern regarding the quality of information in relation to the project risk register provided by TIE. I was not directly involved in those exchanges nor in the preparation of the risk register referred to in the emails. However, I was aware that it was an important part of the suite of documents, which officials in TIE and advisors were reviewing and discussing generally with Council officials at the time. TIE had a well-developed risk management approach at the time, around 2008, involving Mark Bourke and also Mark Hamill as Risk Managers. Susan Clark and the Risk Managers were professional people and their roles were as dedicated professionals on the risk management case. I thought risk management, including how the risks in the risk register were translated into the quantified risk assessment in the

budgets, was handled effectively. The emails highlight some specific concerns but I would need to understand the underlying point and to see the response from the risk manager to be able to comment properly. I would be surprised if the people involved, that is Susan Clark and the Risk Managers, did not respond to this correspondence in a professional manner.

80. I have been asked to comment on Colin MacKenzie's comment regarding a suggested lack of transparency and co-operation by TIE with Council Officers in his email to Gill Lindsay dated 19 February 2008 (**CEC01400919**) which I did not see at the time. I worked with Colin reasonably regularly and I had a very high regard for him. I cannot recall him raising those sorts of issues with me. If he had, I would have taken them very seriously. I do not know what was behind the comment and I cannot recall any scenario where information was withheld. At that time, I recall being concerned at the volume of information that TIE and DLA were submitting to the Council, since this was, if I've got the timing right, during the difficult construction procurement period involving substantial volumes of legal and other important documents. It relates also to my earlier comment about having sufficient time from the Council's legal team to address the volume of legal documentation, though again I'm not certain of the chronology. It is a normal challenge in formal and governance reporting to try to find the right balance between swamping recipients on the one hand and not providing sufficient detail on the other. Providing more rather than less information to the Council officials was, I believe, the right approach but the volume may have been difficult to assimilate. I am also absolutely confident that there was no attempt to withhold any information from the Council, the issue was to achieve a manageable process. I'm afraid I cannot offer any further comment on the specific point made by Colin MacKenzie.

81. From time to time, points were raised by CEC regarding the quality of information or for clarification of information provided, which I believe was normal and more information was requested and provided. Generally, however, the information provided at that time in my view was of a high quality and was comprehensive. A great deal of work went into the reporting, both in

terms of making sure that the detail was correct and making it accessible and understandable for the recipient's needs. The submitted reports were typically not "two page documents" but were very detailed and contained a number of component parts. Perhaps because of the range of information provided, people naturally wanted to know more about specific points.

82. The need to report to the Council, and the fact that those reports would become public, was part of a further general challenge, which happens in any major public procurement. On the one hand, there is a need to ensure that there is a balance of the right people on the public sector side having full access to the information that they need. On the other hand, there is a need to maintain confidentiality so that the public sector's negotiating position is not compromised by doing so. My email to Willie Gallagher and others dated 3 March 2008 (**CEC01463488**) reflects how TIE sought to achieve the right balance in terms of what people needed to know in order to make decisions, considered against the potential for the bidders to have an opportunity to undermine the negotiating team if the information were to become public. The Council Team were generally very sensitive to the issue of releasing information that could be of commercial advantage to the Bidder. They were absolutely clear on approaching it almost document by document, and case by case, and were not being cavalier in any way. The officials were, quite rightly, highlighting that they had elected representatives to keep informed, but that also created tension. Looking back, I think the balance overall was probably about right. I cannot think of anything that went into the public domain that helped the bidder in any material way. I would certainly resist any views that people on the Council side did not get full access to the information they quite rightly wanted. Communication of information within the Council and to elected representatives was of course a matter for Council officials.
  
83. The email from Mike Connelly to Willie Gallagher dated 23 September 2008 (**CEC01164955**) was sent on by Willie to me and others later. I did not agree with the views expressed by Mike, albeit that he seems to be reporting comments by another party, to the effect that the relationship between CEC and TIE was not good. I would not remotely have used that sort of description

about the relationship or how the Council performed. Nothing is perfect but nor was it really poor. I do not know if anything was done to try and resolve these perceived issues.

84. As a more general comment, I have been asked to address in this section of the Statement a number of specific comments in emails, some of which I had no previous knowledge of. While I understand that, taken in isolation, views expressed on specific matters can imply more general concerns and when compiled in an omnibus manner, a general impression can be given. I would simply repeat my overall view that the relationship between Council officials and those from TIE and TEL were generally respectful and constructive while accommodating frank exchanges when it was felt necessary. I would be concerned if an impression formed from a few emails amongst the many thousands exchanged during the project created a contrary view.

#### **Relationship between TIE and Transport Scotland/Scottish Ministers**

85. The relationship between TIE and Transport Scotland was also open and constructive as far as I was concerned. From 2007, as has been explained earlier in this Statement, Transport Scotland were operating at arm's-length from TIE, in communication mostly with the Council rather than directly with TIE. As with relationships between TIE and the Council, there were specific issues that generated frustration and robust exchanges, but as a general point the relationship in my view worked well.
86. I have only a sketchy recollection of my email to Damian Sharp of Transport Scotland dated 17 January 2006 (**TRS00002093**), which intimates that I was frustrated about the delay in the Council and Scottish Ministers granting approval to issue the notice for publication in the Official Journal of the European Union. I do not know at what stage exactly it was approved, but the principle and the terms of the notice had been approved because there certainly had been a lot of debate about it. According to the email, I suggested that we should move forward prior to agreement from CEC and the Scottish Ministers, as otherwise there would be a cost implication and programme

uncertainty. It was an attempt to move things along in order to keep to the programme and minimise cost. Clearly, however, there is a degree of risk if things are not formally agreed, and that seemed to be the position taken by Transport Scotland. The risk was that either or both of the Council and Scottish Executive would pull out. Obviously the programme could not be certain without Council and Scottish Executive approval, but I felt that the issue was whether we could move on based on the position reached, albeit accepting that this was clearly different from having absolute certainty of support from the two main funders at that early stage.

87. I cannot remember making the comment in my email to Stewart McGarrity and others dated 22 August 2006 (**CEC01790680**) in relation to a lack of agreement with Transport Scotland and there being no financial penalty if the project was abandoned. I can understand why the language in the emails would raise concerns but I cannot remember exactly the context nor what the phrase "*financial penalty*" would relate to. I can only assume that other documents will be available to explain this properly. I think that I was making a general point and I do not recall any TIE decision being influenced by financial penalty issues.
88. The concern was that, if the Council, for good reason, decided to terminate the project, they would have a penalty from Transport Scotland somehow coming their way. There was no absolute threat of a penalty but it seems there was equally no guarantee to the contrary. This was in my view a legitimate concern and, if it had not been agreed formally, it must still have been regarded as a risk to the Council. TIE had a responsibility to the Council to look after its interests in that respect. Transport Scotland and the Executive was in this context a third party funder. Therefore, the Council had to be aware that it still required to be resolved. I have no recollection on the likely sums of money involved at that time. I would be surprised if anything was said to the effect that, in the event of X, then the penalty is Y. I think I would have remembered if somebody had put that sort of proposal together.

89. I do not think there was any particular consequence of there not being an agreement as of 22 August 2006, the date of this email exchange. When putting Business Cases together for scrutiny within the governance structure, it had to be made clear that the funding was not yet formally agreed. I felt this was wrong, and almost embarrassing. However, if that was the way that the Council and Transport Scotland wanted to proceed, then the duty was to make that clear, not to pretend that somehow it was agreed and formalised. Around 2006, the funding position amongst the Council and the Scottish Executive remained unclear. There was ultimately a grant award letter, which was a formal contract between the Scottish Executive (by then the Scottish Government) and the Council, and would have explained any penalties or the ramifications of termination. I believe earlier drafts of that letter were under discussion but I cannot remember anything that specifically threatened the Council with penalties. I do not recall any further debate about penalties in the event of project termination.
90. In the period from 2007, if Transport Scotland did not get information from CEC, they would, on occasion, go direct to TIE on an ad hoc basis. I think as a result of this there was a bit of frustration. If Transport Scotland had wanted to be more directly involved, I do not think anyone would have had any problem but the feeling was that there should have been adherence to the formal process or alteration of it. I am sure there is email traffic expressing frustration. That said, I do not recall any situation where the way in which Transport Scotland were operating had any adverse influence on the project. At the time, in the period after 2007, I did not think that this was either a positive or a negative from the point of view of the project. If what was agreed was adhered to, then there would not be any governance or approval issues and although there were some examples of the process not being followed, I don't recall anything major. My opinion at the time was that what was in place, in terms of communication between the Council and Transport Scotland, was working although I had no role in that dialogue. In fact, it was easier for the Tram Project Team because the governance model required communication in a hierarchy reaching up to the Council, who then had the responsibility to communicate with Transport Scotland. If Transport Scotland

had any serious concerns, they could have come back in through the Council to ask questions at any time. In that respect, the whole thing was quite logical.

91. It has been suggested to me that the Tram Panel Review 4th review meeting document dated 8 May 2006 (**TRS00004679**) alludes to a failure on the part of TIE to provide Transport Scotland with information and a report on progress. These reports were extensive but my recollection is that they were submitted timeously. I am guessing that, if there was a hiccup, it could be at least partly because Ian Kendall departed from TIE. I am pretty sure that in every case the Project Director had to sign off before the reports went anywhere. If Ian Kendall was away, that might have been the reason that it was missed, but I would not say that this was a common problem.
  
92. My email to Matthew Crosse dated 24 July 2007 (**CEC01628133**) was in response to comments made by Bill Reeve in respect of issues with the tram reports. As I recall it, Bill Reeve was the senior official in Transport Scotland as far as the Tram Project was concerned. Willie Gallagher must have communicated these comments to me, either verbally or by email. I can recall that Willie Gallagher met regularly with Bill Reeve. Miriam Thorne worked for Stewart McGarrity within the TIE Finance Team and her response to Bill's comments makes sense to me. The report was comprehensive, as far as TIE could tell, was being delivered on time, and the content had been discussed with various people at regular intervals. I do not recall there being a running issue. If there were any specific issues, raised by senior people like Bill Reeve then people would have responded to try to deal with them as best they could. I personally don't recall what if anything was done about Bill Reeve's concerns once I had brought them to the attention of Matthew Crosse as he was the Project Director at that time.
  
93. In the email trail amongst me, Miriam Thorne and others dated 24 July 2007 (**TIE00061490**) I think my comment to Miriam related to the fact that the reporting was actually to a very high standard and needed a lot of intensive work by people like Miriam, who was very heavily involved at the time. I

suppose what I was trying to do was just avoid her feeling that she was being put upon, especially when it was a third party conversation that was being reported. I was not dismissive of the concern raised by Bill Reeve, a response to which had been actioned, I was just trying to help Miriam not feel badly about it and get on dealing with the issue.

94. My email to Matthew Crosse dated 13 August 2007 (**CEC01628986**) makes reference to the timing and content of reports to Transport Scotland. The fundamental concern was to make sure that the money was coming in at the right time and adequate funding was available. In addition, other questions would be asked to ensure TIE was reporting accurately in relation to expenditure of funds. I do not think there was any great concern on either side. It was more of a practical exercise to ensure that the money was in the right place at the right time.
95. As with most commercial negotiations, there were points of frustration. These included dealing with some of the details in the grant letters or in relation to total funding. I believed at the time that Transport Scotland should be regarded as a third party entity in relation to the Council in the context of project funding, which in turn required proper negotiations which did not always run smoothly. As a result, you would observe some tension around specific issues. I think it would be fair to say that it was difficult and time-consuming to arrive at a mutually acceptable (to the Council and Transport Scotland) agreement on funding contributions. I would not translate that into an overall poor relationship. From 2007, under the revised governance arrangements whereby Transport Scotland interfaced mostly with the Council and were not directly involved in the more detailed governance of the project (as had been the case prior to 2007), TIE's responsibility was to fully inform the TPB, TEL and Council officials, with much less direct interaction with Transport Scotland. The general relationship so far as I can recall over the time I worked with TIE worked quite well.

## **The Working Environment and Impact of Public Views**

96. I would say that the working environment within TIE was positive. It was very open, professional and with a lack of politics. Internally, some of the negative views expressed about TIE were debilitating. However, my recollection is that the staff just got on with it. They worked hard and were determined to do the job properly. I think looking back that management were generally aware of and sympathetic to the effect of external comment on TIE people.
97. I do not know what issues were being referred to in Willie Gallagher's email to me and others dated 1 March 2007 (CEC01813895). It is not clear from the email what exactly has caused Willie Gallagher concern about how prepared TIE was to face the challenges ahead. However, it was one of his strengths that he never felt constrained from bringing up issues in a very frank way, whether they were internal to TIE or related to other parties. He typically did this in a very straightforward manner, and this is an example of that.
98. I do not believe that it was typical of a general level of unrest because comment like this, in the email, was very rare. I don't recall this email and nor can I recall any others of a similar nature. It seems to have been driven by a specific issue, and issues came up from time to time where the Executive Chairman was not happy and he made people well aware of that in direct but measured manner. I cannot recall what action, if any, ensued from the email.

## **Partnerships UK**

99. I was asked to comment on Partnerships UK. PUK was a creation of HM Treasury and in 2003 I think the Treasury held a 50% share in the company. They had expertise from within Government but also people from the private sector in the organisation. I cannot remember the composition. They had experience around the United Kingdom in respect of general infrastructure projects. As consultants with relevant expertise, it was thought I believe by the TIE Board, that this could be brought to bear productively for the Council and TIE on the project. I think they supported TIE and the Council for around three to four years until maybe around 2006. They were in place when I

joined TIE, so I was not involved in the decision to involve them. I thought their involvement would bring some private industry expertise into the public sector. I am pretty sure that they were generally regarded as people who had relevant knowledge and expertise in major projects including transport and trams and therefore TIE should listen to their views. I believe the general consultancy role evolved into one where PUK's senior people became directly involved in the governance arrangements around 2006. I cannot recall for sure now, but the feeling may have been that the project would be better served by that sort of specific role rather than the more general consultancy guidance. I recall that the proposed roles within the governance arrangements were put into action but I cannot recall for how long, no doubt the minutes will disclose attendance.

### **Preparation of Reports**

100. The Preliminary Financial Cases for the Bills for lines 1 and 2 drafted in September 2004 (**TRS00000046** and **TRS00000048**) and the subsequent updates (**TRS00000049** and **TRS00000054**) were prepared by Grant Thornton, who were the financial advisor at the time. I cannot remember the details but I am pretty sure that I would have had a reviewing and commenting role. In relation to the Preliminary Financial Cases, Grant Thornton undertook the necessary co-ordination of work and the preparation and to a degree the drafting of the Preliminary Financial Case. There is a possibility that other sections were submitted by other people. The Preliminary Financial Cases were the precursor to the more thoroughly developed Business Cases that followed, in which I was involved.
  
101. Stewart McGarrity, as Finance Director, took the overall role of co-ordinating the preparation of the September 2005 Progress Report (**TRS00000209**), the report for 1 to 30 November 2005 (**TIE00090122**) and the November 2005 supplementary report (**TRS00002044**). Grant Thornton on the financial side, along with other advisors, were involved in the provision of information for these Reports. I cannot remember who else was involved in preparation of these Reports, within TIE or elsewhere. Nor can I remember the frequency

with which Progress Reports were prepared. However, the purpose of the reports was to keep the stakeholders fully informed as to how the Tram Bills were progressing, because that was clearly an important milestone in the project. I would have been reviewing and commenting and analysing any particular issues along with Stewart and others.

102. I note an email trail including an email from Lex Harrison dated 15 February 2005 (**TIE00562894**). Mr Harrison was a consultant to the Council but I cannot remember his operating title. He reflects in his email that the Business Plan for financial year 2006, whilst quite detailed, falls short of expectations. I think it was specifically the programme attached to the email that fell short in his view, not the Business Plan, but I cannot recall whether his concerns were substantive or what was done about them.
103. During the early period of the project, the Panel Review with Transport Scotland and the Liaison Group between the Council and TIE people were forums to keep Transport Scotland and the Council up-to-date with TIE's activities across several projects, not just the tram. These reports, including one dated 30 September 2005 (**TRS00008532**), which I have been asked to comment upon, were effectively the papers for those meetings. The authorship is clear at the top of the reports. There might have been sections that I was responsible for, but I cannot remember the detail, though specific papers will have my name / initials attached and in general I would have been involved in the financial and governance areas.
104. Stewart McGarrity's email to me dated 5 December 2006 (**TIE00090098**) outlines questions raised by Councillor Jackson and proposed responses. In my view, so far as I can recall, the email was a realistic statement of the position at the time and it seems a balanced response.

### **Design Issues**

105. I note an email from Andrew Fitchie to me dated 17 August 2007 (**CEC01712261**). I cannot recall having any substantive role in discussions

relating to the accompanying claim by System Design Services (SDS) from Parsons Brinckerhoff (PB) dated 31 May 2007 (**CEC01712262**). I cannot therefore comment on Andrew Fitchie's conclusion that the claim was weak.

106. I refer to the Tram Project Board (TPB) report entitled "SDS Commercial Issues Resolution" dated 14 August 2007 (**CEC01632267**). There was something of a recurring theme about the worrying quality of PB's performance. If the quality had been disastrous, I am sure it would have been highlighted and action would have been taken by TIE through the Project Director or Board. However, it was more of a question of keeping in close contact with the designers and trying to ensure that performance improved. There was an element of just keeping the programme moving along, rather than stopping the whole process and starting again. I honestly could not say if that was a correct judgment as I am not qualified to comment on the quality of the work they were providing.
107. Although there were concerns within TIE regarding SDS, I think there was an assumption that the Bidders would perform their own due diligence. This would seem to have been logical enough in relation to signing up the contract and the price. If there were any serious concerns about the design or the cost of remediation, it would have been identified at that stage and reflected in proposed scope of works and cost at a time when there remained competitive tension in the process. It would thereafter have been priced into the contract and accommodated in that way. Others will speak with much more authority than me on this, but I would suggest that the approach reflected the fact that the vast majority of the design would have been prepared directly under the Council's control with an assumption that the design would be of sufficient quality to minimise amendment by the Bidders.
108. The overlap of the design process and the construction period, as a result of the Construction Contract not being delayed to allow SDS to catch up, was problematic. The planned position was that there should have been a completed design, properly documented, and then handed over. The concern was just to keep the programme moving along on the basis that more delay

meant more cost. There are a number of people much better qualified than me to comment on this. However, the general flavour was that the process installed to manage the design work that was outstanding should deal effectively with the involvement of the Bidder, or the Contractor by that stage, the designers and the Council's own interests in the final design. I recall a significant amount of work being done by TIE and Council people on this matter and I expect the final conclusion was that the risk could be contained and there was net benefit in proceeding with the procurement to maintain the overall programme and avoid further delays and cost exposures.

109. I was asked to comment on the email from Willie Gallagher to me dated 29 August 2007 (**CEC01682315**) relating to a proposal to hold a workshop to ensure clarity on the MUDFA contract in the context of past failure under the SDS contract. The SDS contract did not deliver smoothly and there was possibly a desire to revisit the MUDFA contract to ascertain what could be done to avoid any additional issues on management of the MUDFA contract, which was the other substantive contract that was underway at that time. In other words, if there were problems with the design, what could be learned from that process in terms of how much of it was caused by the designer and what could be improved in terms of contract management by TIE. I cannot recall whether the workshop took place or not. I note the email chain concluding with an email from me to Willie Gallagher dated 30 August 2007 (**CEC01682353**) in respect of concerns with progress and design. My email was a commercial overview comment. Geoff Gilbert, who I think may have been the Deputy Project Director within TIE, was the person whose comments mattered as he worked on this area and had the expertise. My role was attempting to coordinate the input from different people. This ensured that those who had to make decisions had access to as much of the relevant input as possible.

### **Preparation of the Operating Agreement**

110. I cannot remember who originally drafted the Operating Agreement between CEC and TIE. I do not think I would have drafted it originally but I certainly

tried to promote its development and conclusion. From 2005 onwards, the main person seeking to work with TIE and the Council to conclude the arrangements was actually me, with the benefit of legal input from DLA representatives. Andrew Fitchie from DLA was very active in this process, as the Operating Agreements became part of the suite of documents for procurement. The Bidder also clearly needed to know what the legal authorities were on the client side of the house. I took the lead in trying to assess what was agreed or disagreed, and then working with people in the TIE and Council teams at the time. Andrew Fitchie was very active in ensuring that the final drafting was acceptable from TIE's and the Council's point of view. In this role, DLA were acting for both TIE and the Council, in anticipation of the documents becoming part of the Construction Contract suite. I suppose in a way mine was an honest broker type of role, rather than acting in a partisan way, especially given the common interests of TIE and the Council. Despite this, and for reasons I cannot recall, it took far too long to resolve issues, though I believe I appreciated at that time that the provision of authority within the Council required due process by Council officials.

111. My email to Nick Smith dated 3 December 2007 (**CEC01384328**) details my comments in relation to a draft of the Operating Agreement between CEC and TIE. The logic of it was sensible enough. It was necessary to support the governance model, by codifying it in a document setting out the responsibilities and limitations of powers on the part of TIE. The agreement made it quite clear what TIE was being asked to deliver. It also highlighted what powers the Council retained.
  
112. I note an email from Sharon Fitzgerald to me and others dated 20 March 2007 (**DLA00002122**) questioning whether contracts should be in the name of TIE or CEC. This was mostly a legal issue but in any significant contractual relationship, the issue of parent company involvement is always a feature. The presumption was that TIE would be the contracting partner for the successful Bidder. However, it was probably always understood that the Council, as in effect the parent company, would need to guarantee TIE's delivery in some way. This must have been sensible from the Bidder's point

of view because TIE's responsibility was to deliver and otherwise, it was just a company with no assets of its own. It was not a substantive group and it was clear that the Council would need to stand behind TIE's delivery responsibilities.

113. I offer comments on the terms of the draft Operating Agreement in my email to Andrew Fitchie and others dated 12 December 2007 (**CEC01505437**). It is a fair description that I was taking the lead in the preparation of this document. I would add, however, that whatever I was doing was always subject to the Board's and Council officials' approval. I would seek to press forward in getting agreement and resolving issues and try to arrive at something that I thought would be sensible, for the approving parties to finally agree or not.
114. I cannot remember who else worked on this document, but I was certainly not working on it alone. I had discussions with Willie Gallagher and David MacKay. They had direct responsibility as the Chairs of TIE and TEL respectively. Other people, such as Stewart McGarrity, would also have been useful contributors. The Council were led by its legal team, which by then was probably Nick Smith. I do not know Nick's job title but I think he was one of the senior lawyers.

### **Costs**

115. I cannot recall emailing TIE colleagues to confirm £4m funding from Scottish Ministers on 6 October 2004 (**TIE00025879**). I assume that this would have been the funding for TIE's early operations to cover payroll and third party consultants according to the pre-approved plan and programme, and if the money was not coming in, this would have been an issue. There was the usual process of making sure that those who were providing the money knew what was expected of them, to enable TIE to meet its liabilities properly.
116. I cannot remember the specific context of my email to Stewart McGarrity dated 6 April 2005 (**TIE00090349**) and the reference to a £2.4m increase due to land costs. It appears that I was concerned about public disclosure, the

issue being to try to protect commercially confidential information. The disclosure could have led to greater demands from the private sector as sellers to the Council or to the public sector.

117. I believe I prepared the summary of the funding position dated 6 May 2005 **(TIE00090106)**. There is reference to a Tram Project Steering Group, which may have been a liaison body in the early stages of the project but I cannot now recall. The primary purpose of the paper seems to be to address an emerging shortfall in funding. I cannot comment on the relative viability of line 1 and line 2. Line 1 was the link to Granton and line 2 was the link to the Airport at the time. However, there were Business Cases for both lines with cost-benefit calculations at that stage. There was only £375m un-indexed funding available from the Scottish Executive. I cannot remember the background to those exchanges. It might have been to ascertain what could be built if there was only £375m available.
118. I cannot comment with any certainty on the numbers referred to in the email entitled "Cost Estimates" sent by Stewart McGarrity to me and others dated 21 September 2005 **(TIE00027023)** and I cannot recall what specific role I had with these papers at the time. This type of information was pretty rigorously supported and controlled by Stewart McGarrity. TIE ensured that any bad news emerging would be properly substantiated and disclosed. My recollection is that the process was robust. The process for the presentation of information, whether it was good news or bad, was pretty clear.
119. My email to Ian Kendall and others dated 1 March 2005 **(TIE00026404)** relates to the TIE Business Plan FY06. A significant number of people within TIE were working on the congestion charging scheme, which was terminated following the referendum when the public voted against it. One of the consequences was that Tramline 3 was no longer viable because it needed funding from the congestion charging scheme. This did not have an effect on the Tram Project continuing for Tramlines 1 and 2. Tramline 3 was a parallel project so the focus then fell on Tramlines 1 and 2. However, a number of people lost their jobs whilst others were redeployed. There would have been

a requirement to re-shape TIE, and to revise the funding and forward planning accordingly. I cannot recall the minutes from Willie Gallagher to Tom Aitchison (CEC) and Malcolm Reed (TS) regarding project funding dated 30 November 2006 (**CEC01820790**). However, I may have drafted this for the respective chairmen. I note my email to Matthew Crosse dated 2 March 2007 (**CEC01827025**). Without seeing the attachment, I think my general point on this was that there was an uncertainty concerning the sources of the funding from the Council side. The whole of the funding package, to a degree, was still in a state of flux and the issue for the Tram Project was to get the commitment for the Council's contribution of £45m. I do not have any doubt that the Council was fully aware of what was required to generate the funding and any associated risks. They were the experts in dealing with developers who were anticipated to deliver a significant part of the Council's funding contribution. The key issue for the project would be whether it could be assured that the £45m would be forthcoming from the various sources, in a way that was also acceptable to the Scottish Executive.

2 March 2007  
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March 2007

120. I don't recall the figure of £45m being contentious in the sense of the absolute quantum. As I have noted below, the composition was subject to examination and it was clear from the documents in circulation at the time that the contribution was not a direct payment in cash of £45m. It was made up of a series of different components, including sale of assets, cash, and developer contributions. It all felt entirely sensible to me at the time.
121. The email from Rebecca Andrew to me dated 16 August 2007 (**CEC01566789**) concerned the conditions of the Government grant, which would be the £375m, indexed or otherwise. It looks as if Rebecca had identified an important question in respect of the sale of Council land that could not be counted as an asset contribution and cash at the same time.
122. Part of the CEC contribution of £45m consisted of land that would be relevant for line 1b (**CEC01357124** page 26). There were different scenarios available to the project, depending on whether or not line 1b was included. I think, in a way, line 1b was regarded as an additional piece, to be delivered if there was

enough funding available. I think that it was built into the Construction Contract effectively as an optional extra, rather than a commitment to deliver. There is reference to £3.3m, but I cannot recall how this is reflected in the various scenarios. It may be that, without line 1b, something else would have replaced that land in the funding schedule. I'm afraid I cannot remember or confirm how the scenarios looked.

123. It appears from an email chain entitled "Construction Contract breakdown for line 1b" dated 7 May 2008 (**TIE00126791**) that design costs that were allocated to line 1b, out of line 1a, were omitted. Therefore, there would appear to have been a common part of the design for both lines, which should appear in one or the other but not both. I have been referred to an email dated 12 December 2007 (**TIE00088497**) and a letter dated 12 December 2007 (**CEC01482234**) but I am not able to provide any information in respect of either of these documents as I cannot recall discussion about the allocation of the costs in question.

124. Again, I am afraid I cannot recall specifically the email exchange between me and Suzanne Waugh dated 8 July 2007 (**TIE00001500**) regarding publication of tram capital costs and affordability. I assume that it was part of the ongoing challenge, referred to above, of the conflicting objectives of proper disclosure, whilst still preserving the public sector's negotiating position. I think that it illustrates that these issues were being taken seriously. Quite how this was resolved I cannot remember.

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125. It appears that it was necessary to have the Draft Final Business Case agreed by 21 December 2006 to adhere to a timetable which had been agreed with the Council and the Scottish Executive. The word "draft" is quite important. If it was progressing, it still needed to be approved formally by people further down the line. There was no commitment being entered into. I'm afraid I cannot recall now what the substance of the document was or the specific rationale behind the timetable. I do not think the Construction Contract bids had been submitted by this stage. Part of the background here appears to be that Business Case information could be about to be published and there was

apparently also press speculation about the cost estimates and it was undesirable that any of the information should provide any advantage to the Bidders. Clearly Bidders would need full information to price definitively, but provision of information that simply encouraged higher than warranted bids, such as headroom in funding availability, would risk not optimising the bids from the public sector perspective. There would have been no restriction on information amongst the client side however, which I expect would have included clarity on the status of cost estimates.

126. The email entitled "Tram - disclosure of capex costs" (i.e. capital expenditure) dated 9 November 2006 (**TIE00002850**) refers to the challenges referred to above in relation to public disclosure of capital cost estimates creating the risk that Construction Contract bids are influenced adversely from the public sector's point of view.
127. I cannot comment on the costs detailed within my email to Stewart McGarrity dated 7 March 2007 (**CEC01814352**) without seeing the underlying analysis. With regard to the total cost for lines 1a and 1b remaining at £592m whether the lines were built together or separately, the answer may lie in the comment by Stewart in respect of changing risk profiles. It would not be as simple as the arithmetic arising if you do things in a sequence as the risk allocation might be affected. I think this area was pretty rigorously controlled and I would assume that there is an analysis trail that would show the underlying difference. The suggestion that the figures were moved around to match the total of £592m did not feature in any of the discussions that I recall having.
128. I do not know what is meant by the reference to "squirreling away money" in the email from Matthew Crosse to me dated 15 March 2007 (**CEC01814512**). My concern was that the cost estimates were being kept updated, and to ensure that there was enough financially qualified input into that process.
129. My email to Willie Gallagher and others dated 12 May 2008 (**DLA00006355**) refers to the Consortium tabling a very late claim for increased cost, partly attributed to pressure from their supply chain. Financial close had not been

reached by this time. I was not involved in the negotiations so I can only comment on the flavour of what I was hearing from others in TIE. It was a bit of a shock when the late claim for money was tabled. TIE went into negotiation on this matter seeking to cushion the blow, part of which would be risk being transferred. The comments in my email confirm that there had been negotiations and that TIE had secured some compensating factors, perhaps not cash but additional improvements elsewhere in the contract. It looks like there would be payment of more money by TIE to the Consortium but only if milestones were met and that put a variability into the price. If the contractor was on time, more money would be paid, but if they were not on time, it was financially de-risked. The general objective on TIE's part in this context was to achieve some degree of cash cover and risk transfer to the Consortium if the late increases in cost put forward by the Consortium were to be accepted.

130. I cannot recall the email from Damian Sharp to me and others dated 11 November 2005 (**TRS00002043**) regarding tram finance, or the attached documents entitled "Funding paper" and "Annexe A further questions" (undated) (**TRS00002046**).
  
131. I think what is referred to in the document entitled "Where does the CEC £45m come from" (undated) (**CEC01818375**) is accurate in terms of where the £45m was to be sourced from, the CEC contribution of £2.5m, plus the provision of Council land valued at £6.5m. I cannot remember the date, but this would probably have been at an early stage. The reality was that the sources of the £45m were not fully formed at the time. There was continuing lack of clarity about the funding from both sides, including the Scottish Executive, until John Swinney's statement in the middle of 2007. I believe the general thinking was that, if the Executive's contribution was capped, CEC would be liable for the balance. Therefore, the balance of risk to capital cost at that stage would have fallen on the Council. This was why the Council were striving to get this part confirmed. The table identifies about £13m of capital contributions or capital receipts, which would be cash. These were

anticipated receipts from the sale of assets around the tramline. The other elements including developer contributions were largely still to be negotiated.

132. I am asked about the substance behind the Council's contribution of £45m. I believe the figure of £45m was more than a notional figure that was formed in the context of the project budget envelope, along with the Scottish Government's contribution of £500m. I do not think that the estimates used to reach the figure of £45m were plucked out of thin air by any means. It was a firm commitment. The exact components within the £45m were still somewhat fluid, but the Council were ultimately comfortable with the condition. The figures looked credible at the time. If this had not been the case, I am sure that TIE would have been making comment. There may be questions raised elsewhere in the files but from the project's point of view, it was really the commitment to the £45m that was important. It was entirely up to the Council how they financed this. I do not think anybody was in any doubt that if there needed to be £545m, then the £45m would have to be found. I would agree that the email from Stewart McGarrity to myself dated 1 November 2006 (**CEC01819483**) and the earlier email within the chain from Raymond McMaster to Stewart McGarrity dated 31 October 2006 appear to recognise the risk of the CEC cash contribution having to increase if developer contributions were reduced. The Council would be able to speak to the accuracy or viability of the figures for third party contributions. It may be a combination of people from the Finance Team and the City Development Team who were close to the planning and developer side of things.

133. The reference in my email to Bill Reeve and others dated 18 August 2006 (**TRS00002698**) to the £45m commitment being binding means that the Council were committed to delivering, in one form or another, £45m value. The composition of that value was discussed openly with the Scottish Government. I would be very surprised if the Scottish Government were unaware in putting forward a grant that the Council were not signing a cheque for £45m. Rather, that the Council's contribution would come from various sources.

134. The email from Miriam Thorne to me and others dated 12 February 2007 **(TIE00065913)** suggests some concern about the valuation of developer contributions, which was at that stage largely still subject to judgement. The objective was to ensure that there was as much clarity on the assumptions as possible, although it was really the Council who were in command of this.
135. The issues around this were certainly very clear at Council official level. A number of the relevant documents were Council papers, which TIE was supporting, demonstrating that the officials were fully on top of the detailed composition. I would be pretty confident that the minutes and reports relating to groups such as the Tram Project Board, which included the representative Councillors, would show that they had sight of the same type of information. I would not comment on how familiar the Council members would be. I am confident that the composition and contribution was exposed in reports to the Council, which the full Council had to approve. The detailed components of the £45m aggregate might have moved slightly on the way through, although this was not a secret in any way. I am sure this would have been presented openly all the way up for approval at the actual Council meetings.
136. I do not recall having any involvement in the report submitted to Transport Scotland with a Construction Contract project estimate, dated 25 May 2007 **(CEC01674292)**. However, it is consistent with TIE's view, so far as I recall at the time.
137. There was a very thorough, on-going process which was controlled by Stewart McGarrity and involved input on components of the cost from relevant other senior members of the Tram Project Team, with the objective of keeping the costs updated over a lengthy period. The updated information along with highlighted risks and issues was regularly discussed as I recall within the project team and in the formal governance meetings. During the period between selection of the preferred bidder and Financial Close I recall that the updating process was very regular because of the way in which the negotiations after selection of the preferred bidder developed. I believe that the confidence that these estimates would be achieved was a product of what

people felt was a thorough review based on information considered to be reliable.

138. The financial content noted in my email to Steven Bell and others dated 28 February 2008 (**CEC01450044**) was based on information which flowed from the processes described in the previous paragraph. I was asked if this was based on wishful thinking or hope and I do not believe that is the case at all. Clearly, these comments might be questioned in the context of what happened over the next five years, but the information was based on the rigorous processes in place at the time. The involvement of a number of properly qualified people ensured that the comments were based on the judgements of the team. The email was sent to a number of recipients and if I had been making inappropriate statements, these people would have quickly challenged me. I think that the reference within the email to £10m would have come directly from the people who were involved in the negotiations. In that sense, I am reporting on the general view within TIE. This would also be the case regarding the remaining comments about aggregate cost and risk allowances, so there was a substantive process behind these comments. It certainly was not just finger in the air or wishful thinking.

### **Wiesbaden**

139. I had no part in the negotiations in Wiesbaden in December 2007, in the sense that I did not participate in any of the negotiating meetings over the period, from before preferred bidder status through Financial Close and in the period following Financial Close. As a result, any comments that I make now, on the negotiations or Wiesbaden, are only an interpretation of what other people in TIE and the Council were saying. However, I was part of the background team, offering comments from a financial or commercial perspective within the TIE team. I think that it is quite normal for negotiating teams to have other people whose remit is to second guess strategy, tactics and positions that are being taken. I will not qualify every comment I make on the negotiation process to this effect, but I would ask that it be borne in mind and I accept that my lack of any first-hand experience on these matters

means that those comments I do make are open to challenge. That said, I will try to report fairly so far as I can recall the perceptions formed at the time.

140. I tried to help by recording progress and liaising with people in the Council, to try to ensure that they were fully informed and that the governance structure worked effectively. The governance documents would be provided to the people that were active in the negotiations, including the Executive Chairman, Tram Project Director and other senior members of the TIE project team, along with senior TEL and Council officials and the legal advisors DLA. If there was any disparity of views among recipients, they were addressed on the way through as a basis for arriving at agreed positions relative to the Consortium.
141. I cannot specifically remember TIE's objectives for the Wiesbaden meeting. I think the general point was simply to try to get to an agreed final position on all of the key matters, though I cannot recall the specifics. That was TIE's objective throughout this period, to attempt to reach final agreed positions with the Consortium. I think that there were two or three of these summit type meetings. Only after the last one did they eventually get a final agreement.
142. I was asked why so few people attended for TIE. I can only assume that as it was a summit type of meeting only senior people attended. This could be an explanation as to why it was only Willie Gallagher and Matthew Crosse who attended. I cannot remember preparatory meetings or other preparation that took place within TIE for these meetings.
143. I cannot recall whether Willie Gallagher and Matthew Crosse had any legal support in Germany. I also cannot recall why Andrew Fitchie did not attend. It may have been as a result of it being a commercial meeting only, the thought being that the lawyers could document it later once an agreement was reached. I am, however, only guessing.
144. I cannot recall the discussions concerning the outcome of the Wiesbaden meeting detailed within an email from Andrew Fitchie to me and others dated

31 March 2008 (**CEC01466394**). I am on the copy list for this email, so I would almost certainly have had sight of it. I cannot remember any advice from Andrew Fitchie on the outcome of the Wiesbaden discussion. Andrew Fitchie was generally very good at keeping a number of people in the loop, even if they were not involved in specific parts of the dialogue that was on-going. I recall that he regarded it as important to the overall programme and cost that these things were reported, as well as more specific legal matters. This email is probably an example of that desire to make sure the communication was as broad as it should be.

145. I cannot recall any discussion involving Willie Gallagher and senior Bilfinger Berger staff concerning a reduction in their price to enable TIE to secure Council approval for the project. However, it would seem to be a legitimate negotiating position for Willie Gallagher to have taken. If that did happen, I would read it as using the Council as the real final decision maker, which would seem like a reasonable approach and while I do not know whether that was part of the agreed strategy within TIE, I would be surprised if it was not.
146. I cannot recall any proposal that Bilfinger should agree to inclusion of a lower price in the contract on the basis that the price could be increased by relying on the provisions of Schedule Part 4 (undated) (**BFB00005512**). It would have created a clear risk of cost escalation and would have needed to be reported to CEC. I cannot recall any mention at all about an approach like that.
147. I was copied on Andrew Fitchie's advice in relation to the design though not Jim McEwan's subsequent comment, as set out in the emails from Jim McEwan to Steven Bell dated 31 March 2008 (**CEC01465908**) and from Geoff Gilbert to Andrew Fitchie, me and others dated 31 March 2008 (**CEC01465933**). I do not recall being involved in any discussions on this matter nor expressing any view as it was a largely a technical area being addressed by TIE's team. The issue seems to be about the design to be novated under the Construction Contract but I would not be qualified to comment on the correct approach or the risks. As I mentioned earlier, there

was extensive work done to establish arrangements for concluding the design after Financial Close. These were intended to protect TIE and the Council from any creep in the costs arising from the design not being complete at close.

148. I am afraid I do not know how the matter described in these emails was resolved.
149. I cannot remember specifically the conclusions reached at Wiesbaden. I am, however, reasonably certain that there was a document prepared and signed off by both sides. This document attempted to capture what had been agreed. It was not a document that I was involved in preparing. TIE thought that those terms were final at that stage, and that matters could proceed toward getting the contract signed.
150. I am asked about Schedule Part 4 to the Construction Contract, which is known as the pricing schedule. I was not involved in the preparation of the Contract, which was led by DLA. It does appear that the pricing schedule was the source of some dispute at later stages in the project. I was not involved in drafting or commenting on it so far as I can recall, though I can recall seeing this schedule as part of the contract suite. I am pretty sure that it was negotiated directly between TIE and Bilfinger with legal support on both sides. My assumption would have been that their combined construction and legal experience would make sure that it was a robust set of terms, no different from any other part of the drafted contract at the time. From what I can recall, it looked like a sensible list of items that had to be addressed following close. It demonstrated how issues would be resolved post contract signing which I believe is a common way of dealing with uncertain areas that cannot be finally resolved until after close.

#### **Fixed Price**

151. My recollection from the Minutes of Legal Affairs Group Meeting dated 7 January 2008 (CEC01475121) was that TIE were seeking to secure a fixed

price, other than in areas where it was understood that further revision was or may be required. An example of this was that there were a number of lump sum estimates for certain works, though I cannot recall the specific details. I understood that this approach was not uncommon in construction contracts and people needed to take a view on the level of risk these create. Typically it is controlled such that, unless TIE and/or the Council imposed design changes from that point, it would be reasonable to assume that the price was fixed. However, there was also a risk provision in the aggregate, as a safety valve that was not in the procurement price. That was the cushion against cost problems. Overall, I think this is what I mean by a fixed price. In addition, the aggregate cost was partly related to contracts and work that had already been concluded in some cases.

152. In terms of the Construction Contract, it was intended that the price for work where the design had been the subject of due diligence and accepted by the Contractor would be fixed subject to the comments in the previous paragraph. For a commercial person, as opposed to an expert in construction law, that would have been the logical way to interpret the position. My email to Richard Jeffrey dated 8 May 2009 (**TIE00032722**) confirmed that the negotiated price for the project was in sterling.
153. I do not know specifically how Colin McLaughlan was involved or why I sent my email dated 12 October 2007 (**TIE00144422**) to him. The team were working quite closely together. It would be logical that people would be copied in even if they were not directly involved in all of the debate.
154. I cannot recall what was done after my email to Willie Gallagher and others dated 12 October 2007 (**CEC01624078**) referring to the meaning of fixed price and whether a lay audience knew what was meant by this terminology. I was simply trying to provide a check regarding how the whole issue of fixed price fitted together from a commercial point of view.
155. I was asked if I believed that TIE was trying to mislead CEC and Scottish Ministers regarding the cost of the project. I saw no evidence whatsoever to

support that contention. In addition to specific disclosures about elements comprising the overall cost, including the risk provision, there were also assessments of how the overall cost estimates made sense including the aggregate risk provision. I saw nothing and heard nothing in my time at TIE that implied that anything other than full disclosure was being made to the Council and the Scottish Government.

### **Contract**

156. As a general point, I felt from an early stage in the procurement process that it was very important that there was coherent compilation of documents to allow the governance levels within the project to understand what was being done, what decisions were being taken and the influence of those decisions on future operations. In relation to the Close Report, I thought that it was important to highlight key issues that required to be addressed before the contract was signed, which is what I set out in my email to Steven Bell on 15 January 2008 (**CEC01429681**).
  
157. I cannot remember who was responsible for devising the negotiating strategy and contract structure or specifically separating design, utility diversion and Construction Contract work. That would have been around 2004 or 2005 and I would expect there was communication with the Council and Transport Scotland through the governance structure at the time. The Project Director, Ian Kendall, and his team, and the Chief Executive at that time, Michael Howell, had involvement. Ian Kendall had been involved in other tramlines, possibly Croydon, and knew his way around these procurement processes. There is no doubt that others, including lawyers, would have been involved at the time. DLA were quite heavily involved as well, because they had experience from involvement in a number of schemes. They would identify alternative ways of procuring, or would know whether that sort of strategy had worked elsewhere. A paper prepared by DLA on this topic is referred to below. I cannot remember specifically but I would have expected that Partnerships UK would have taken a good look at the strategy as well.

158. I had no responsibility for preparing or commenting on any part of the main contract documentation, that was handled by the negotiating team and the legal advisers DLA. TIE's legal authority to conclude contracts in place of CEC was specifically documented as part of the final suite of documents and including the Operating Agreement, which was a document I had involvement with, as set out above. It was one of several documents that were part of the final suite. DLA advised on the authority structure, not least because the bidders had to be satisfied with that as well.
159. I think that the procurement approach was logical. I thought that at the time, and still believe that to be the case. I do not recall any major differences of opinion within TIE or with advisors or with the Council and Transport Scotland. I cannot remember the detail of the discussions but if there had been a significant dispute about the procurement strategy, then people would have commented. It would be very surprising if the procurement strategy for such a substantial project had been embarked upon without the full support of the major stakeholders, especially the Council and Transport Scotland and I cannot recall resistance to the approach finally adopted.
160. In relation to the design process, it is stated in the Annex to the Report on Terms of Financial Close and specifically (undated) **(CEC01231378)** titled "SDS - Delivery and Consent Risk Management" that it was not anticipated when the SDS contract was concluded in 2005 that the design and construction phases would overlap. That was the general understanding so far as I recall amongst TIE and Council people and the legal advisers. The sequence was intended to be that the design and the utilities work would be completed before the Contractor started work. It did not work out in practice, in that both the design and the utilities work overlapped with construction. That is why there was a lot of effort put into designing an additional process to complete the design that would protect the public sector from the difficulties that the overlap could otherwise create.
161. I cannot remember any particular debate about the effect of delay in completion of the design when that work was being contracted. It might be

useful to look back at the programme, what people thought they were working on, and how much cushion there was to accommodate, within reason, any delay in the design being completed before construction started.

162. I do not recall having any involvement with the procurement strategy paper prepared by DLA Piper (**CEC01790014**). I probably had sight of it, and may even have commented on it from a commercial point of view. I certainly had no substantive involvement although, as a non-specialist, the logic seemed to make sense.
163. The advantage of the strategy in relation to utility diversion works was to remove the risk of delay to the construction programme by having utility works completed before construction work commenced. That clearly had a logic behind it. The other piece of the utility strategy was to execute combined utilities work, section by section. Therefore, the usual problem of electricity digging a hole and filling it up, and then gas then doing likewise, would be avoided so far as possible. This certainly made sense. On the design side, the idea was to be able to give the Bidders a completed design, which represented what the Council expected to be built, then have the Bidders bid against that, so there was as much certainty as possible on the cost. From a commercial point of view, that made sense. It looked logical to me at the time and, looking back, it still does.
164. The governance over the procurement process was handled by a dedicated sub-committee of the TPB, which was called the Design and Procurement Committee, or similar. The sub-Committee comprised senior people from TEL and TIE and the process was handled with rigorous confidentiality. I was not involved in that process but so far as I could tell, the process had the right people round the table from the public sector client's perspective. The lawyers made sure that an appropriate procurement process was underway and that the law and procurement regulations were adhered to. I recall it was in October 2007, that preferred bidder status was reached. There was then a period of further negotiation. This included a number of matters that needed to be negotiated and agreed including the negotiations at Wiesbaden. I think I

am right in saying that draft contracts were part of the bid process, as the usual way of getting a mark-up from the bidders. The negotiation process subsequent to preferred bidder selection was very difficult. The client side was led by senior TIE people, including the Executive Chairman and the Tram Project Director. It was elongated and the lawyers from DLA were heavily involved in the negotiations and in the way that the approvals were handled. The Close Report may be relevant here. As noted above, this document attempted to capture all of the important technical and commercial information as it evolved over that period in the run up to Financial Close in May 2008. The DLA report on the contract was another key document. There were what seemed to me to be a large number of different and important matters that needed to be resolved. To my mind it was quite intensive. So far as I can recall, all the right people in TIE, TEL and the Council were kept informed throughout this period, even if it was taking quite a lot of effort. This was handled through successive iterations of the draft Close Report and the DLA report and other specific communications, which will I expect will be on the files of TIE and the Council.

165. I was asked about the JRC contract, which I recall was the passenger and traffic modelling contract entered into at the beginning of the project perhaps around 2002-03. There was a subsequent proposal that the contract be novated to TEL from TIE as the delivery vehicle. The proposal to novate from TIE to TEL appears to be based on the future responsibility of TEL for overall integrated system operations. The information in relation to the proposed novation would have been available to all of the people who were involved – TEL, TIE or the Council. Based on the emails shown to me it would appear this was not a particularly important matter and it looks as if the proposed novation did not proceed.
166. The table contained in the email from Colin MacKenzie to Duncan Fraser and others dated 18 March 2008 (**CEC01399118**) is a draft of a risk matrix. This was developed by DLA and shared with all relevant parties, including the Council. I am pretty sure it would be a draft of the full scale risk matrix that was prepared by DLA for their report in support of Financial Close.

167. I do not remember seeing the email at the time but it appears that Colin is questioning the value of the Risk Allocation Matrix. Certainly, it was a comprehensive attempt to identify all of the risks in the contract and, thereafter, to identify whether those risks were staying with the Council or being handled by TIE, which is the same thing in the public sector sense, or whether the contractor was absorbing the risk. Therefore, it was an important matrix. The fact that it was lengthy reflects the complexity of the contract. I am confident that it was extensively shared with the Council's Legal Team including conversations which were usually conducted directly between DLA and the Legal Team and others on the Council side. The Council officials could then decide on whether the risk allocation, as it evolved from the contract negotiation process, was acceptable or not.
168. With reference to my email to Steven Bell and others dated 11 May 2008 (**CEC01349353**) the CEC Legal Team was closely involved in the process of finalising the Construction Contract. The people involved with the CEC Legal Team included Gill Lindsay, who was a Council Solicitor, Nick Smith and Colin MacKenzie. There may have been others in the team behind the scenes. Those three certainly contributed a lot to the process. The Legal Affairs Committee examined any issues they saw within the drafts and there was direct communication between the Council's Legal Team and DLA. I felt at the time that it was important that the Council's own legal team had full access to the documents and to DLA so that they could judge the extent of reviewing and questioning they felt it necessary to undertake in addition to DLA's role. I did not think it would be right simply to be saying to the Council's lawyers that TIE would deal with any issues. I did not feel that this would be an adequate response. If they wanted an answer and if they wanted to be fully involved in reviewing and questioning these critical documents, they were entitled to do so. For some matters I acted as a post-box to receive questions from the Council's legal team and to then seek answers from the relevant people in TIE. I think that would be why I was asking for information in the email referred to above from the TIE Team, which would then be communicated to the Council's lawyers.

169. There is no implied criticism of TIE or DLA Piper in my e-mail dated 11 May 2008. It was a critical stage of the process and the contract terms were still changing. It was not as if there was a finalised contract that you could simply hand over to the CEC Team. It was a very difficult process. The email was seeking to ensure that the terms communicated to Council officials including the legal team, the TPB and TEL were an accurate representation of the outcome from detailed, complicated and important final negotiations, specifically on the changes to the capital cost. I felt that it was absolutely right that the CEC Team did whatever they thought they needed to do to look after the Council's interests. If there was any obvious duplication between CEC Legal and DLA, this may have been flagged up. However, this would have been entirely up to CEC Legal. I think that there were occasions, and it may be evidenced by some emails, where I did have a feeling that items were being duplicated and CEC could have relied on DLA but I am not saying that they did not have a right to this information. The emphasis in the email sent to the TIE team on CEC's legal process would I believe have been intended to ensure the matters in the email were given thorough attention.
170. I do not think that I, or anyone else in TIE, relied on the Council's Team to identify any legal issues. Certainly, it was not the case that, if there was an issue, the Council Team would deal with it and DLA need do nothing. I think the onus was always on DLA to do a thorough job.
171. My email to senior CEC personnel dated 12 May 2008 (**CEC01338846**) related to the Close Report. The Close Report was prepared mainly by TIE people and attempted to capture the key technical and commercial aspects relevant to the Financial Close of the contract. DLA prepared a parallel report which was just as important, and provided DLA's opinion on the strength of the contract including the final form of the contractual risk matrix referred to above which reflected their analysis of where the risks fell and, therefore, what risks ultimately fell on the Council. These documents were intended to be consistent with each other and complementary. In other words, there was the TIE view, which was the technical and commercial view. There was also the legal view in its own right from DLA, where they provided a standalone opinion

on the contract. I am pretty sure that it was DLA who suggested that approach, which I wholeheartedly agreed with because it made DLA's reporting line very clear. DLA's view was being expressed directly to TIE and to the Council, especially to the Council's own legal experts. The Close Report required extensive effort, capturing a large volume of information and then attempting to put it into a form that the senior people in TIE, TEL and officials in the Council could understand, or at least question. Ultimately, it was for the Council to make up their own minds about the strength, or otherwise, of what was put in front of them in the form of the Close Report and the DLA Report and supporting documents.

172. Although I submitted the email, it was an iterative process. There were probably drafts of the Close Report well into double figures before a final form was reached. They were consistently circulated, in a track-change format, round the entire group of relevant people within the Council, TIE and TEL. I hoped that gave everybody the chance to raise questions as the process evolved, in good time before Financial Close finally took place.
173. The minute of a meeting dated 13 May 2008 (**CEC01319006**) looks very much like my draft. I felt that it was appropriate that all of the senior people in TIE were brought together so that agreement could be sought that everyone was satisfied with the position. The document is just a short minute to make the Council aware that TIE had gone through a disciplined process. The minute confirmed that the documents referred to in that minute had been approved by TIE.
174. I do not recall any specific issues discussed nor any disparity of view. At that stage, my belief would be that there were no big issues that still required to be resolved. I think everybody was satisfied that what needed to be done had been done by that stage.
175. I cannot remember any discussion regarding the fixed price nature of the contract at that final stage. My instinct would be that these discussions were dealt with before that final stage.

176. I was aware that there was concern regarding delay in mobilisation on the ground, which grew in the period after Financial Close, by the Contractor as expressed by the TIE team responsible for contract management. I am afraid I cannot recall the detail. The Contractor would have known exactly what was or was not being done and there may be communications on the matter from the Contractor.
177. I was not involved in the meeting between Steven Bell and Scott McFadzen on 10 June 2008 (DLA00001673). I have no knowledge of the exchange of letters between the Contractor and Willie Gallagher on 13 and 14 October 2008 (DLA00001671) and (DLA00001672).

### **Risks**

178. I refer to the document entitled "Primary Risk Register – Appendix B" dated 4 September 2006 (TRS00002791). In particular, in relation to the governance risk, I think that the risk register was showing the gross risk. In other words, the consequences of not having appropriate governance procedures in place. If that was the case, clearly that would be serious. However, there was extensive action taken aimed at achieving an effective governance structure. That was how the risk was responded to. Those mitigations would have reduced the gross red risk to green post-mitigation.
179. In response to a question on project risk assessment and risk management procedures, in my view, that area was professionally executed by TIE throughout the process. There were risk managers, Mark Bourke and Mark Hamill, experienced in construction contracts, involved in undertaking the work. This was not just in a general sense, but I recall that the risk quantification was re-assessed for each important stage in the development of the cost estimates. This included every capital cost budget to ensure it contained a proper risk allowance, which was summarised and supported by quantified risk assessment methodology. In short, they identified each risk and identified the potential financial implications. All of that added up to the

risk allowance that was a part of the budget assessments as they developed throughout the project. I did not routinely interrogate the detail of individual risks as that was more of a technical construction risk expert's role with oversight by the TIE finance team.

180. In response to a question about the application of Optimism Bias to the project costs, my recollection is that Optimism Bias was a concept introduced in public procurement around 2003 or 2004, and was part of the thinking in the early stages when the Tram Project was being considered. As a generality, it was driven by the Treasury arising from the background concern that public sector projects were prone to incur cost overrun. The experience seemed to be that when projects went wrong, typically the early cost estimate had been found to be very optimistic. Mott McDonald, who compiled the report proposing the use of Optimism Bias, suggested that the level of Optimism Bias was dependent on the stage of development. Basically if a project has a cost, it should have an Optimism Bias provision added to it. At the early stage, that might be 80% or 100%. Once the project has developed, this might reduce to 10/20 % or be replaced with a more specific risk provision. Optimism Bias was an addition to the estimated cost to reflect a risk the value of which could not be known at that stage.

181. I do not believe I was involved in determining what allowance was to be made for Optimism Bias. From memory, it was almost a formula, dependant on the stage of development of the project. The application of Optimism Bias was not specific to the Tram Project.

#### **Legal Support for TIE and CEC Legal**

182. I was asked about the appointment of DLA as legal advisers to TIE and the Council. I do not recall having involvement in the decision to appoint DLA . I think they were in place when I joined. Nor do I know how Andrew Fitchie was selected to lead on this project. I am pretty sure that I was not around, or at least was not involved. I could not comment on whether he was appointed

by either DLA Piper or TIE, though I assume as a DLA Partner it would have been DLA.

183. I was also asked about the service provided by Andrew Fitchie and I believe that he, supported by an extensive team, delivered thorough legal support throughout the time I was involved. I always found him to be hard working and responsive to questions when they were raised on specific legal and commercial matters. Generally, as far as I could tell, he was entirely competent in this field.
184. I was asked whether Andrew Fitchie was undertaking this work entirely on his own, which was not the case. There was a full team from DLA in support throughout the time I was involved. Andrew Fitchie and Sharon Fitzgerald worked very closely together. I do not know how they carved up the legal work between them.
185. I cannot comment either on how Andrew Fitchie and Sharon Fitzgerald communicated with each other. I am pretty sure I can recall meetings that both attended together, and there were other times when it was done independently. I do not recall being aware of any lack of communication between them.
186. I cannot remember the background to the email from Andrew Fitchie to me dated 3 July 2006 (**CEC01885942**) in any detail. However, he seems to be responding to some concern that had apparently been expressed about DLA's role. I cannot recall being aware of any serious concerns. That is not to say that DLA's performance was perfect. That would not be possible in such a demanding project.
187. Likewise, in response to claims of a log jam and timetable slippage on the procurement, no one would claim perfection. There were times where I am sure people felt that they were not responding sufficiently quickly, which happens in large-scale contractual processes. I do not think that there was

any fundamental issue nor any continuing effect on the process of developing the contract.

188. Around the time of Financial Close, either just before or just after, there was a feeling within TIE that TIE and the Council's position could be strengthened by having more internal legal support, instead of being solely reliant on external legal advisers. At that time, there was also a concern to assess whether TIE was obtaining value for money from the external legal services. Dundas & Wilson were also acting for TIE and possibly the Council, also in my view in a proper, professional manner. TIE and the Council had two competent firms and a process to assess value for money was instigated because that is the right and normal thing to do from time to time in professional advisory relationships.
189. I note an email from Andrew Fitchie to me dated 4 September 2007 **(CEC01710070)** in connection with the terms of a draft ETN grant funding award letter. Andrew Fitchie was the lead partner in DLA and although I do not recall the engagement letter structure I would have expected it to be an engagement letter with both the Council and TIE. In other words, DLA was not just acting for TIE with the Council having to take their own advice. I think it was clear what Andrew Fitchie's and DLA's role was. TIE and the Council were on the same side, TIE being a wholly-owned subsidiary of the Council, so DLA worked for both the Council and TIE. Transport Scotland was a separate third party as far as the funding relationship was concerned, and I think DLA was providing advice to TIE and the Council, relative to Transport Scotland. This is the way one would expect it to work. Transport Scotland was clearly free to take their own legal advice.
190. I do not recall the discussion about any duty of care owed by DLA to CEC. However, I cannot see any problem at all with DLA owing a duty of care to the Council and to TIE. The Council was TIE's parent company. The contracts would involve both entities.

191. With reference to an email from Jim McEwan to Susan Reilly dated 9 April 2008 (**CEC01466853**), regarding contact details for James Stanley, James was not someone that I knew and I do not recall meeting him more than once. A couple of the people from TIE did know him and had probably met him in this connection. I think he might have been a Legal Director in Scottish Power or a pretty senior internal counsel. Willie Gallagher and, possibly, Jim McEwan would have known him from Scottish Power. It was suggested that he might provide a review of the legal service and thereafter to have a longer term role with TIE if that was thought appropriate. I cannot remember who took the decision to consider appointing James Stanley or at least to approach him. There were several senior people involved in assessing the situation. The feeling within TIE and the Council as I recall it, was that the contractor had created a difficult period through to Financial Close and the idea was to look ahead to contract management, the thought being that having more internal legal firepower within TIE might have made sense both in terms of the availability of the additional resource and possibly also in terms of cost. It was not an initiative by Willie Gallagher on his own, although I cannot remember if it got to the point of a formal proposal to the Board. I cannot remember the process, but I think the conclusion was that either James Stanley was not the right person for the role or he did not want the role. In any event, I do not think it ever got to an appointment process being initiated. I think it was discussed but I do not know why it did not go any further. I do not think that James Stanley was appointed at the time or subsequently, and it was never a role which, to my knowledge, ever came into being.

192. The email from Colin McLaughlan to me and others dated 5 June 2008 (**TIE00154841**) concerns negotiation with DLA in respect of their costs. The whole contract completion process extended over a much longer period than was originally anticipated. Whatever agreement with respect to DLA's mandate and costs was reached at the beginning probably needed to be re-visited, due to the additional work required. I was not involved in the original arrangement, but clearly, if things do not work out as planned, there is scope for advisors to ask for changes in terms. That seems to have been the case here and my comments look as if they were based on knowledge of the

extended work that had been done and were aimed at arriving at a balanced outcome.

193. I note an email from Alasdair Sim to me and others dated 9 December 2008 **(CEC01111139)**. I think the assessment of legal advice to TIE was a normal exercise, in the sense that from time to time you test the value for money that you are getting from any supplier, including professional advisors. I think a questionnaire was circulated around people who were using the services of both D&W and DLA to identify any concerns or, indeed, plaudits that might be appropriate. I do not think it was driven by any specific concerns about quality. It was just a normal value-for-money check. There were quite substantial sums paid to these firms.
194. I forget Alasdair Sim's his job title but he was a member of the TIE team. Alasdair understood this area and undertook a series of discussions about service quality and received some feedback. This was then relayed to the two firms.
195. I am sure if Andrew Fitchie for DLA or an individual from D&W were giving a statement, they would not say it was a perfect job. No doubt there were a few times where a prompt would be required. There were no fundamental concerns on my part nor do I recall any from other members of the team about either the service quality or costs.
196. I am asked to comment on an email from Richard Jeffrey to me and others dated 4 December 2009 **(TIE00034122)**. Stuart Jordan appears to be a member of the DLA Team, based on his email address. I cannot remember what the underlying problem was. Andrew Fitchie may have been reconsidering his involvement in terms of the extent of time that he was devoting to the project, and perhaps identifying a requirement to de-gear slightly and bring in other individuals from DLA, but that is just conjecture on my part.

197. I was asked whether I could recall a situation where TIE felt that they were inadequately served or were exposed. I do not believe I can do so, certainly not in relation to any significant issues. The email states that Stuart was either removed or would be removed from the job. I am assuming that meant from the team. I can only assume that whoever had the concern identified that as a solution, and that this is what happened.
198. I am asked to comment on the content of an email from Willie Gallagher to Andrew Fitchie, part of a chain of emails, dated 6 February 2008 (**CEC01501176**), which suggests that Andrew Fitchie was not aware of a particular section of the contract, namely the pricing schedule (schedule Part 4), until around the date of the email. I suppose I can only say that if DLA were not fully involved up to that point my feeling, although I have no specific evidence, would be that they would have applied themselves to the matter and made sure they were comfortable with it. Even if they were coming at it later in the process than they would have liked, it was an integral part of the contract and it clearly addressed price and, therefore, would have been a very important part of the contract. I do not know who prepared that schedule nor why DLA were not involved until this stage. I think the key thing would be what happened after that because I would be surprised if DLA were not as diligent on that area as they were, as far as I could tell, on every other area.

#### **Drafting of Close Report – February/April 2008**

199. With reference to the third paragraph of the annex to the Report on Terms of Financial Close (undated) (**CEC01231378**), entitled “SDS – Delivery and Consent Risk Management”, the purpose of separating and then novating the design was to ensure that by transferring responsibility for development of design to the Contractor the cost would not be inflated by the Contractor’s own view of the design that it was otherwise obliged to accept. During the Construction Contract procurement, bidders would have the chance through due diligence to put a price on the design that the Council wanted, and since the design was not complete when Financial Close was reached, extensive procedures were worked on and then installed to control that continuing

design process. I was not really involved in this, nor should I have been, because it related to technical design and construction matters. However, as I have noted above, my recollection is that it was a difficult area after Financial Close.

200. I note an email chain culminating in an email from Damian Sharp to me dated 7 February 2008 (**CEC01448392**). I cannot remember the specific reasons for the references to claims and the extension of scope. My comments were aimed at not disclosing material within the public domain that could be used against TIE and the Council in any future dispute. It is of note that the proposal included a separate paper to be provided to CEC. The issues were being addressed but there was concern about what could be contained in a publicly available document and used against TIE and the Council. I may have been a bit over-sensitive about disclosing a possible claim. Damian questioned why this should be a worry as the issues were historical. On the face of it, this was a reasonable response. The underlying issue was a concern that the Council would in future themselves promote design changes with the best of intentions, but that those potential design changes could affect the cost. Damian's suggestion was aimed at ensuring that all parties were aware of the risk and that, if the Council did make the public aware of the information, there would almost certainly be a cost and possibly an implication for the programme.

201. I would require sight of the other documents in order to respond fully to the email from Gill Lindsay to me dated 9 March 2008 (**DLA00006379**). However, I think it is right to say that there were several times, between the time of appointing the preferred Bidder and up to Financial Close, when TIE felt it had actually reached agreement with the preferred Bidder, only to be faced with subsequent changes to what TIE had thought was already agreed. That was a theme over that period.

202. I cannot specifically remember the source of the document entitled "Report on Construction Contract Suite" dated 12 May 2008 (**CEC01338852**). It looks as if it was a compilation of sections from technical staff or others in the team

who would have the expertise to draft it. I believe it was part of the set of documents that were submitted by DLA in support of their Report to the Council in parallel with the Close Report, if so I would be confident that it was circulated extensively round the relevant individuals within Council and TIE as well as being subject to DLA's own review. I think the important point was that DLA were fully involved in the circulation. I am sure that was the case because it was a contractual analysis document rather than a commercial analysis, so it was very important that they reviewed and approved it. There were two complementary groups of documents which supported Financial Close, the Close Report and some related documents, which was a TIE responsibility, and the DLA report, which included the risk matrix and from memory this document. I recall that there was full exchange of the whole set of documents amongst TIE, the Council and DLA to ensure all relevant views were taken aboard as the documents were being prepared. Regardless of where it started, DLA ultimately had to be sure of the accuracy before they would put their name to it. I would say that those on the circulation list also had a responsibility to check the document for accuracy and make comment when required but that would not have been as important as DLA's report and opinion. I was asked about references to Schedule Part 4 and (if it is the case) I am afraid I cannot comment on why there is no reference to Schedule Part 4 in the DLA document. As I have referred to above, it may have been regarded as a normal mechanism to deal with specific matters following Financial Close and not thought at the time to be contentious, but other parties may have a more informed view.

203. My input in respect of the drafting of the Close Report dated 12 May 2008 (**CEC01338853**) was more of a compilation role. My role was to organise, prepare and make sure people were actively involved. I compiled the various sections that were drafted by others. A number of the TIE Team were also involved in the drafting, including Steven Bell, Dennis Murray, Jim McEwan and Stewart McGarrity, along with a number of other individuals from the Technical Team. However, DLA, through Andrew Fitchie, would have reviewed and commented on all key documents and I expect that the email trail will confirm that approach.

204. I believe that in relation to this report the role of CEC officials was largely to review, question and challenge what was being put to them in draft form at various stages. I do not think individuals from the Council were involved in drafting. They were mainly the intended audience. The documents were being copied to them so that they could make any challenges during the course of the drafting process.
205. I cannot remember the specific detail of discussions between TIE and CEC officials in preparation of the document. The issues, for example, were debated through the Legal Affairs Committee and drafts of the documents were available over an extended period. I am sure however that extensive discussions and email exchanges were taking place between individuals from the Council and TIE. The TPB minutes over that period would detail that at least some of the drafts were made available to the wider senior governance group at those meetings.
206. I do not know whether CEC officials separately advised the Council Members but I would be surprised if that was not done. Their internal reporting was a matter for them but, ultimately, there were formal reports by Council officials to the full Council. There were also reports from officials, at a slightly more junior level, to their Directors. My instinct would be that there was pretty full reporting within the Council as well.
207. I note my email to Andrew Holmes and others dated 25 March 2008 (CEC01393819). Attached to this email were the draft Close Report (CEC01393820), the DLA Risk Matrix (CEC01393821), DLA letter to CEC (CEC01393822) and the DLA Report on Infracore [Construction Contract] Suite (CEC01393823). I assume it was decided that I would send all the documents in one email to streamline the process rather than sending a number of emails to persons within the Council. I would hope that it was quite explicit in the documents as to who was responsible for which documents.

25 March 2008  
should be  
10 March 2008

208. As far as the DLA documents were concerned, I would have read iterations of them. Other individuals in the TIE Team would have read them. However, the content and opinions expressed were ultimately DLA's responsibility. There may well have been comments back to DLA to make sure that the two sets of documents complemented each other and there was no contradiction. I do not recall any difficulties in that area.
209. I cannot remember the specific context of my email to Andrew Fitchie dated 11 March 2008 (**CEC01541242**). There were important matters under negotiation and the negotiations were evolving at the time. My comments about events moving on would probably have related to the way that negotiations were evolving and the different positions that were emerging. The term "events" was I believe aimed at keeping matters up-to-date for people. It was not a matter of just highlighting generally that another negotiation had taken place and the terms had again changed. The documents needed to explain the nature of the changes on various aspects of the project which meant that these documents needed to be not just clear but also co-ordinated. Andrew Fitchie would comment on TIE documents and I would comment on DLA documents to the extent I was able to, mostly in terms of consistency with the TIE documents. If DLA did not like these comments, they were under no compulsion to reflect them in their documents. The vast majority of comments were cosmetic, in the sense of not being about any disagreement but to make things a bit clearer or more consistent.
210. I cannot recall whether CEC knew that I had an input into drafting a letter dated 12 March 2008 detailing advice from DLA to CEC in respect of the Draft Contract Suite, or, indeed, any other letter or document from DLA to CEC. I think that they would have rightly expected TIE and DLA to be discussing and working closely together on these documents for all the reasons I have just mentioned. Whether they knew that I had input on any specific letter, I do not know.

## **Developments up to Financial Close**

211. The timing of my email to Andrew Fitchie dated 13 March 2008 (**DLA00006394**) was to allow him to respond and ensure that I was able to then send it on to Gill Lindsay before midnight. I cannot remember the detail, but there were obviously deadlines that were a concern at the time as I was highlighting to Andrew that he was to respond that evening. Even if the email was sent on to Gill at one in the morning, it may still have been referred to as today not tomorrow. I cannot remember if I did pick up any timing discrepancy or not.
212. The procurement risk paper referred to in paragraph 1 of the email demanded a higher level of confidentiality control because it related to the public procurement of a multi-million pound contract. I cannot remember the protocols, but I do not think that those sorts of documents were sent to the Council, not due to any lack of trust but to ensure that confidentiality was fully protected.
213. The Tram Project Team and DLA were working closely together. The key thing was to make life as easy as possible for the recipients. At that time, these recipients were already receiving quite complex documents in a moving scenario.
214. I note my email to a number of recipients dated 28 April 2008 (**CEC01312358**) in relation to updating the suite of internal reports to CEC. I cannot be certain of my comment in the email with reference to the nature of comments from BBS [the Consortium] and SDS lawyers but I am confident that my comment about "BBS / SDS" and their lawyers would have been based on information from either DLA or the negotiating team. If I had it wrong, somebody would have picked it up and advised accordingly. I cannot recall comments being corrected.
215. My use of the phrase "so far" in relation to the comments of the Consortium and SDS lawyers reflected the serious lack of confidence amongst TIE and

DLA that the preferred bidder would adhere to what had been agreed. There had been too much evidence that the apparent agreed positions were not being adhered to. This was certainly the view in TIE. I think the caveat was appropriate. It meant that the Council knew that, although there appeared to be a firm agreement, it was not yet certain.

216. I note an email from Willie Gallagher to a number of recipients dated 30 April 2008 (**CEC01274958**) in respect of the Contractor's claim for an extra £12m. I cannot remember how, if it was verbally or by email, but I certainly heard about it. From memory, this came as a surprise to the negotiating team since they thought the financial terms had been agreed. I was asked why I was not copied on this email. I assume that was because I was not directly involved in the negotiation and it looks to me as if circulation was to the parties who were involved in the negotiation.
217. Whether the contract should be concluded in May 2008 was the subject of discussion. The options were there, including re-procurement of the entire project, and also termination. Consideration was given at TPB level to recommending that the Construction Contract should not be concluded in May 2008. It was certainly highlighted to all the key parties, including the Council, and I recall that there was a report available which was subject to some iteration as the final terms of the contract were agreed, which set out those final terms and the options available to the Council. The discussions involved senior people from the Tram Project Team, TEL and from the Council.
218. I cannot remember the specific context of my email to Willie Gallagher and others dated 18 April 2008 (**TIE00159052**) but I would assume that I was asked by Council colleagues to comment on the draft Council report to ensure that it matched what was known to TIE. Again, there was a complex situation with a number of people having varying degrees of knowledge or different areas of expertise. It was quite important that documents were shared so that all the relevant knowledge was brought to bear. This was especially important for documents for the Council's attention.

219. It was a routine occurrence for me to be asked for and to provide input to the Council. The idea was to provide a degree of consistency amongst various documents and various peoples' different knowledge of events. The Council, because it was their document, were entirely at liberty to reject my inputs.
220. I cannot recall any specific pressures on TIE or CEC to obtain authority to conclude the contract at that meeting on 1 May 2008. By then, it had become a very elongated Close process. It would therefore be done as quickly as it could be done, as long as the terms were reasonable.
221. I did not attend the meeting with Joachim Enenkel and Axel Metzger on 5 May 2008. I do not recall hearing reports of that meeting, though it seems likely that there were discussions amongst the team and the Council people.
222. My email to Willie Gallagher and others dated 5 May 2008 (CEC01294494) explored the detail behind the claim for £12m from BBS. It was intended for senior people in the Council and the TIE team, to try to capture the latest iteration in one place, following negotiations that had already taken place. It was obviously for a significant change. Discussions had taken place in quite a fast-moving environment. I hope that somewhere in the submissions made, the options available to TIE and the Council would be visible. That is why they were referred to as gold, silver and bronze in my background paper dated 5 May 2008 (TIE00359941). This reflected what were the best and worst outcomes. The paper was one of maybe two or three that were prepared on a rolling basis to make sure that all of the senior people around the Council, TEL and TIE were fully up-to-date with the way negotiations were evolving, and to summarise it in a way that would enable people to make decisions. It was not for me to say what the right decision could be, but to highlight the options and their strengths and weaknesses.
223. I cannot be certain but I do not think I had any input into the content of the letter from Willie Gallagher to Joachim Enenkel dated 6 May 2008 (CEC01284033). I may well have been asked about some of the matters referred to there. I think the letter was a further part of the negotiation

process. I cannot really comment on what would have been the next step if the Consortium failed to comply with the stated conditions. As a very general comment, however, if the contract terms were changed in a way that was different to those that had been put forward in the Official Journal of the European Union (OJEU), then there could be an issue. The other bidders could claim that the Consortium concluded the contract on a basis that they had not been given the opportunity to bid on. There would be an element of judgement whether changes in the contract represent sufficient grounds for a claim under OJEU.

224. I was aware of the issues with the contract referred to in a letter from Willie Gallagher to Joachim Enenkel dated 6 May 2008 (**CEC01284033**) and the annex of an email from Steven Bell to Joachim Enenkel dated 8 May 2008 (**CEC01275190**). However, I do not think that I had any involvement with the tactics or terms of negotiation. As a result, I cannot really comment on the outcomes or the decision to pay an incentivisation bonus. It was part of a negotiation package containing different elements. This would be a matter for the negotiating team. The approach taken probably made sense in the context of a difficult negotiation. These negotiations were attempting to achieve a conclusion that cushioned the blow to the public sector, but you would need to speak to the people involved.
225. I cannot recall hearing mention of the phrase 'The Kingdom Agreement'.
226. I note an email from Gill Lindsay to Donald McGougan and others dated 9 May 2008 (**CEC01231125**). I cannot recall having a discussion with Gill Lindsay about it being unfair to press DLA on whether the deal could withstand a challenge on procurement grounds. I would not have made a comment such as that unless I was trying to report faithfully what DLA were saying in a way that made sense to me. The issue may have been to do with their being no guarantee that a challenge could not be mounted, but I cannot be sure. Whether Gill listened to my comments or not was entirely up to her. There may have been other exchanges where DLA could put their view forward to Gill or TIE. It is possible that the final changes were regarded as

within a tolerable range, and therefore previous advice from DLA on the threat, or otherwise, of a claim would prevail.

### **Delays Post-Contract Close**

227. I cannot recall who would have drafted the TPB report that Willie Gallagher refers to in his email to me and others dated 3 June 2008 (TIE00679871). I think that would have been the Tram Project Director and team, but I cannot recall who this was at that time. Where he mentions that all is not well, I think he may be referring to the MUDFA contract. I would take that as evidence that he was unhappy with the reporting and that he thought it was weak in some respect. I cannot remember exactly what the point was, so I cannot comment on the specifics. I think he is asking if we [TIE] are getting things right. I do not know what action was taken to rectify this. There is a comment about ensuring I am not on future distribution lists which looks partly tongue in cheek and maybe partly because there was occasional confusion in circulations due to there being two "GBs", myself and Graeme Barclay who was the MUDFA Director at the time.
228. I cannot recall fully what the problem was with Contractor engagement. I think it was to do with the Contractor getting on with the job and mobilisation but I was not involved in this discussion. People like Stewart McGarrity and Dennis Murray should be able to provide more information. I cannot recall what action was taken to prompt the Contractor to commence execution. I have no recollection of the strategy proposed in this email.
229. I note a chain of emails including one from me to Stewart McGarrity entitled "BSC [the Contractor] The Way Forward" dated 20 October 2008 (TIE00680836). From a commercial point of view I was trying to challenge and help the way that positions were being developed within TIE. Although I could fairly be termed a non-expert, I was trying to help the cause. My email describes a set of complicated, inter-related issues. By this time, there were quite serious ongoing disputes. Stewart's note and my comments, along with others, would describe how things were being handled and addressed, and

then identify the problems. All I believe I was trying to do was highlight that a concerted effort was required to deal with quite serious issues.

### **Dispute Resolution Process**

230. It has been suggested that my email to David McKay and Richard Jeffrey entitled "Integration of Public Transport" dated 6 June 2009 (TIE00032775) demonstrates that I was not entirely confident with the position of TIE. I will not attempt to comment on the technical details but I had clearly read some of the documents around the case to the extent that I was qualified or had the ability to understand them. The concern I was expressing was just to challenge whether TIE was actually on firm ground relative to the Consortium. If you like, it was an internal challenge before it got into the formal dispute process. The email sets out what I saw as some of the possible weaknesses, or at least the less robust parts of the TIE case, albeit from a non-technical perspective. I cannot remember what happened beyond that. Richard was always amenable to advice. He did not always agree by any means, and fought his own corner, but he was always open to views and advice, and to debate on TIE's position, and then he made up his own mind and acted accordingly.
231. I was not involved in any of the negotiations referred to in a document dated 9 and 10 February 2010 (TIE00089656). Pitchfork was the name given to a report prepared in early 2010 which attempted to capture the scope and much of the detail of the disputes which had by then arisen with the contractor. I think the reference to "Pitchfork" in this email is simply to refer to the negotiations which are documented as having flowed from decisions taken on the back of the Pitchfork Report.

### **Payment of Bonuses**

232. I note an email from myself to Richard Jeffrey dated 1 September 2009 (TIE00032779). It appears to be a process to agree revised remuneration and bonus arrangements for some of the TIE Team. I note at the end that I have no conflict of interest in the matter because my arrangements at that time

were documented in a separate consultancy agreement which, so far as I recall, did not carry any entitlement to bonuses. I cannot recall what action was taken on the proposals after my comments.

233. As a general point, in my view, bonuses should only be paid when they are properly aligned to success. The bonus structure had to be properly aligned with robust outcomes. If these were successful, then one would argue there was a good case for it. In this case, that meant success enjoyed by the stakeholders, which is the Council and, indirectly, the Scottish Government. By this time, of course, there was a very difficult financial backdrop, which would have been part of the consideration.

234. I was asked about any relationship issues arising from comparing remuneration arrangements between CEC staff with TIE. It is natural that payments may vary in relation to a specialist group within a bigger organisation and dependent on skill sets. I am pretty sure there would have been an element of concern amongst Council staff about specialist people in TIE being paid at different rates but I would not say it surfaced with any regularity.

### **Bilfinger Performance and Financial Position**

235. My email conversation with Richard Jeffrey dated 12 May 2009 (**TIE00032924**) notes an interest in the financial performance of Bilfinger. It is correct to say that TIE and the Council had taken a close interest in Bilfinger's publicly reported financial performance and results around May 2009, in order to be aware of any information that could be relevant to the disputes around the Tram Project. The point was to try to identify anything that was being said that either directly or indirectly might have influence on the conduct of the project in Edinburgh. I recall references in the Bilfinger reporting to them taking a stricter line with the risk management in their civils business. I cannot remember the details but they had had a series of difficulties in Norway, Doha, Cologne and Canada.

236. This was an international civils contractor saying that they were going to make their risk management processes stricter. They were seeking to sell their Australian civils business and if I recall correctly they were also looking to restrict the scale of what they were doing in civils. An obvious possibility could have been that a more aggressive line would be taken in the execution of their current projects, including the Tram Project, with uncertain implications. The negotiations were ongoing with the Bilfinger people in Scotland. In addition to the backdrop to Bilfinger's civils business, if Bilfinger had made any specific comments about the Edinburgh Tram Project in their reports, then it was important that TIE and the Council knew about it. I cannot remember if there was, in fact, any specific comment about the Edinburgh Tram Project and I don't recall anything specific that was financially significant.
237. The implication of losses by Bilfinger, in terms of their handling of the Construction Contract, was discussed in the email chain between me and Richard Jeffrey and others dated 7 May 2009 (TIE00032719). The email copied from February 2009, around the start of the Princes Street debate, was intended to put the numbers under negotiation at that time arising from the Princes Street situation into context. I was trying to compare the sort of numbers that were being tabled by Bilfinger as their claim relating to Princes Street, with the size of their own corporate numbers. The size of the claims being discussed was very significant at that time.
238. My recollection is that TIE did not believe that pressures experienced by Bilfinger in for example Norway would necessarily strengthen the TIE position. The point was to be aware of Bilfinger's corporate direction for civils and to assess their claim in the context of Bilfinger reported results. I am pretty sure that the size of the claim for an increase in price was an enormous surprise to everybody in TIE and the Council. It was not as if there was a feeling that £50m is too much but £40m might be a sensible number. It was just completely outwith peoples' thinking. The main point was that nobody in TIE and the Council felt that there was any basis for a claim on anything like that scale. If there had been a feeling that there was substance to support a claim, I expect a bit of flexibility could have been applied for genuine claims but my

recollection is that the numbers claimed by Bilfinger were so significant that TIE and the Council did not regard them as credible at all.

### **Lessons Learned as assessed Post-Contract Close**

239. I drafted the document entitled "Lessons Learned" (undated) **(CEC01344688)** and circulated it to the TIE, TEL and Lothian Buses senior management. It was an attempt to do a top-down review at the end of the procurement period but before the construction phase. I think it was carried out just after Financial Close. The feeling was that it was a good time to document what lessons had been learned, good and bad. It involved all the relevant people from TIE, TEL and Lothian Buses, and provided an opportunity to establish what went right and what went wrong. This is always useful to do, but part of the reason was that it could assist with the planning of any extensions of the tramline in the future.
240. I asked for recipients' views on the top five lessons and the top five things that had gone badly. Having received the feedback, I distilled this into the report and returned the report to all the people who had provided comment. I received one or two comments after this, but I think everybody was quite satisfied with the product on the whole. I think a summary was presented to the next Tram Project Board meeting and it may have been circulated to other parties but I cannot recall specifically whom, though the emails will be on the file.
241. I was asked whether the preparation of this report was premature. I do not think it was. The purpose was to capture the thoughts of people immediately following Financial Close. I thought it was a good thing to do at the time. It would be true to say that not many of the lessons by that stage would influence the conduct of the project underway, it was really for future use. Clearly it would also have been logical to do a follow up paper at a later stage as to how events unfolded after that point.

242. One point raised related to the structure of the project team in the early period of the project. In simple terms, the Project Team, which was TIE, needed to have the capacity and the autonomy to do the job but still be accountable in a very clear and regular way. In this case, it was accountable to the Council. In 2003/04, relationships were just settling in, and there was a bit of manoeuvring as to who needed to be doing what in terms of reporting. Beyond this time, it was not an issue.
243. On page 1 of the report, reference is made to delivery of 80% by comparison to the originally designed lines 1 and 2 and a much higher level of patronage. The 80% comparison would probably be the totality of the original line 1 loop and extension to the airport, as against excluding the Granton to Roseburn leg. I have not calculated it, but it is probably around 80% of the distance. If it was 80% of the distance, it was probably a higher percentage of the patronage. If I am right about that calculation, the patronage on the Granton leg would be expected to be quite low in the early years, until it was up and running. It was designed to promote economic activity in the Granton area, going down the old railway line and past Crewe Toll. A lot of that section does not have many chimney pots around it, so it would have been a lower percentage of the patronage than the average of the rest. I cannot recall precisely, but that probably was the logic.
244. On page 7 of the report, there is mention of problems with reliance on third party consultants in respect of the early period. I cannot remember exactly but it would have been when the very early Business Cases were being prepared. My feeling was that they were largely being prepared by consultants. There is nothing wrong with that so long as there is proper challenge from the client side, especially if the consultants appear to be adopting a formulaic approach, by adopting models for example that were generic rather than specific to Edinburgh. These people were experts but there may not have been enough independent client representatives to examine it carefully from either the Council or TIE. It was not a big problem at the time as it was so early in the project. The lesson was to invest in the client team at an earlier stage. There could then be a degree of second guessing

on what the consultants were putting forward. I do not think it had any impact on the outcome, but it was a concern at least of mine in the early days.

245. The suggestion that there was a shoulder shrugging reliance on the concept of Optimism Bias has to be put into context. That, again, was in the early period and had no relation to Project Management, but could affect the Business Case. The concern was just a perception that whatever the number would be, it would be, and that there was a big enough Optimism Bias provision to deal with any problems. This was the kind of response I was receiving 12 -13 years ago when interrogating some of the consultants' estimates. I just did not feel that was good enough. There was a cushion of Optimism Bias in the estimates, but as time rolled on, there required to be much more rigour put into the estimates to ensure the provision was adequate. I still did not feel it was a proper response from some of the consultants even at that early stage.
246. The comment on page 8 of the report that there was insufficient depth of relationship with major shareholders was not a concern regarding the Council or the Scottish Executive but Forth Ports and Edinburgh Airport. Where you have people such as those organisations with influence and a proper interest in the project, engagement at an early stage is probably wise. If there had been earlier engagement with these key players, this may have led to a better working relationship. Clearly there were financial implications involved as well, in the shape of the possible planning gain negotiations and also the negotiation on the sharing or otherwise of capital costs.
247. At page 9 of the report, reference is made to the Parliamentary process and a statement that TIE was reliant on external consultants. I do not think that this was a major issue by the time of Tram Bills as the people I worked with in TIE had a good appreciation of the issues, simply that a more in-depth earlier level of resource may have benefitted the project. TIE was a pretty lean organisation in the earlier period. It did rely on quite a variety of advisors and consultants. The lesson was that there was a need for more resource on the client side, accepting that there was a cost. An example would be the

resource devoted to negotiating planning gain which could have supported the parliamentary process costs or more likely the future Business Case.

248. I cannot remember the context of the reference on page 12 to lessons learned in procurement strategy and execution. I would say that the strategy still passes the test. The right strategy was in place but a couple of important elements proved to be difficult in practice, being the overlap of design work and utilities work with the construction period. The implications and risks of failure to avoid an overlap were probably under-estimated, in terms of cost and programme delay. I cannot remember what level of cushion there was in the timetable. If it was minimal, that was probably wrong. If it looked sensible at the time, but then the design and / or utility diversion work extended for a long period for reasons outwith TIE's or the Council's control, then that was different. In that case, it would probably be fair to conclude that a reasonable estimate of how to implement the strategy had been put on the table.
249. The bullet points on page 13 referring to a desire by TIE to control the Consortium's legal representation relate to the problem that each of the three members of the Consortium had their own legal advisor. DLA were facing three firms of lawyers. The feedback I recall was that from time to time there appeared to be a number of contrary positions being taken by different members of the Consortium on the advice of their own lawyers. This meant that the project's lawyers, DLA, were having difficulty dealing with sometimes conflicting views from three firms of lawyers on the Consortium side. The client side, the Council or TIE, should have insisted that one firm of lawyers represented the Consortium. If the Consortium members wanted individual advice they could have that behind the scenes and arrive at a combined position that the project lawyers, DLA, would deal with. The issue was not to try to control the advice, but the process.
250. I left the Tram Project when my role basically ceased to exist which I judged to be the case in mid-2010. The project became a large-scale dispute rather than an on-going project. There were many legally and technically qualified people advising the Council and TIE. I contributed to some of the initial

thinking in dealing with disputed matters in the earlier stages, but once the project reached the stage of a full scale dispute that was a job for the technical and legal professions.

This witness statement consisting of this and the preceding 86 pages and the 1 page Annex is true to the best of my knowledge and belief.

Witness signature...  .....

Date of signing..... 26/6/17 .....

## Annex

### GRAEME BISSETT – abbreviated CV June 2017

#### *Current appointments*

- Chairman, Macfarlane Group PLC, UK's largest packaging distribution company, full listing on LSE, joined Board in 2004, Chairman from 2012.
- NXD and Chair of Audit Committee, Smart Metering Systems pic, one of the leading businesses involved in UK smart meter roll-out programme, listed on AiM, from June 2016.
- NXD, Cruden Holdings Limited, one of Scotland's largest housebuilding groups, from May 2016.
- Chairman, Curo Compensation Ltd, market-leading compensation software, since start-up 2010.
- NXD and Chair of Audit Committee, Scottish Futures Trust, Scottish Government-owned infrastructure management business with project roll of c£10bn, from start-up 2009.
- NXD, Anderson Strathern LLP, one of Scotland's top legal firms, from October 2015
- NXD and Chair of Audit Committee, Aberforth Split Level Investment Trust PLC, from May 2017.
- Member of Court and member of Finance Committee, University of Glasgow, from January 2014.
- NXD and member of Audit Committee, Joint Management Board of Scotland Office, UK Government's Scotland Department, since March 2015.
- Member of Finance Committee, Pitlochry Festival Theatre, from December 2015.
- Trustee and member of Finance Committee, Citizens Advice Scotland, from April 2017.

#### *Main previous appointments*

- Arthur Andersen, Partner, Head of Scottish Assurance & Corporate Finance Divisions (1990-98).
- Kwik-Fit Holdings pic, Group Director of Finance (1998-2001). Sold to Ford Motor Co. in 1999.
- Damovo Group SA, CFO (2001-03), Global Enterprise Telecomms services.
- Belhaven Group plc, NXD (2004-05), vertically-integrated drinks group, sold to Greene King 2005.
- Vebnet plc, Strategic Advisor (2006-08), flexible benefits software, sold to Standard Life in 2008.
- Dunfermline Building Society, NXD, (2007-09), joined as part of Board strengthening exercise, progress scuppered by 2008-9 financial crisis.
- Wealth at Work Holdings Limited, Chairman (2009-11), workplace wealth management, sold in a secondary buyout in 2011.
- Town House Collection Holdings Limited, Advisor / NXD 2010-15, upscale hotel group sold to Starwood in 2015.
- Black Circles Holdings Limited, Chairman (2003-15), online car tyre retail, sold to Michelin in 2015.
- Senior Independent Director, InterBulk Group pic, AiM listed global chemical logistics company, NXD since 2006, sold to Den Hartogh Group 2016
- Advisory appointments over the years in transport infrastructure (Edinburgh, including Tram Project), automotive retail and hospitality amongst others.
- Chairman, Children 1<sup>st</sup>, children and young people's welfare charity, joined 2007, term ended 2016.
- Member of Council, Institute of Chartered Accountants of Scotland (Chairman Regulation & Compliance Board, then Chairman Council Oversight Board)
- Member, Court of Heriot-Watt University 1999-2010, Chair of Finance Committee and Member of Remuneration Committee 2004-2010.