

SIR EWAN BROWN – Q&A

Chairman of TiE – appointed by City of Edinburgh Council as Chairman of TiE 3 May 2002 - see minutes of First Meeting of TiE Board **TRS00001869**

Resigned as Chairman around March 2006 on completion of the Parliamentary process for the Tram Bills. Please confirm the actual date of resignation.

I have no record of the date. Edinburgh Council should have this information.

Please provide a CV containing details of roles undertaken before, during and after your tenure of the post Chairman.

Experience and duration of appointment

1. What relevant experience did you bring to the role of Chairman?

I did not apply to be chairman of what was then an Integrated Transport Initiative (the combination of congestion charging, park & ride and a tram network). I was asked to take the role by Edinburgh Council politicians and officers (including Andrew Burns and Andrew Holmes) and encouraged by the then Transport Minister, Wendy Alexander. It would be for them to say why they wanted me to be involved and why chairman.

2. What experience did you have of involvement in management or execution of major transport infrastructure projects when you assumed the role of Chairman?

None. When I agreed to take on the role, the principal tasks were to establish a board that would have a majority of non-Council members (creating a company at arms' length from CEC); to establish an appropriate executive team; to develop a plan for congestion charging and park & ride; to get the necessary tram legislation through the Holyrood Parliament; and to establish annual budgets and operate within them.

3. How long did you expect to remain in post? Doc **USB00000379** comprising a draft Report by Tom Aitchison dated 23 February 2006 records that it was always your intention to demit office once the Parliamentary process was concluded. Is that your recollection? Why did you not wish to remain in post as Chairman beyond that stage?

My expectation was three years. (In the event, it took longer than expected to complete the tram legislation process and I agreed to stay until that process - and the EARL Bill - were completed). Since I had no previous experience of major construction contracts or road user charging, I did not feel equipped to lead the board beyond that point.

4. Was this a full time or part time post? If part time on average how much time did you devote to this role on say a weekly or monthly basis?

Part-time. On average, I would say it was one day per week.

5. What effect, if any, do you consider changes of senior personnel at Chair and Chief Executive level had on the progress of the Project and why? How important is it to have continuity of senior personnel for a body, and project, of this nature?

See answer to 3. above. I had communicated my intention at the outset. Change of both chairman and chief executive was needed as the tram project moved from planning to execution.

6. What support did you receive from the Chief Executive of TIE and other senior personnel at TIE during your tenure as Chairman? How would you describe your relationship with them on a day to day basis?

Very strong support. Excellent relationship with chief executive, Michael Howell, throughout.

7. Did you receive any remuneration as Chairman of TIE?

No.

Integrated Transport Initiative

[My recollection of events in TIE's first two years is generally better than the last two. This is because, with a small management team in TIE's early development, I had to be more hands on. By 2004, there was a well-defined management structure and the responsibility of the executive team was to deliver projects under the direction of the chief executive. My job was more to run the board.

Also, I find it very difficult to distinguish almost 15 years of hindsight from what was a fast-moving and often complex situation at the time. Even with the benefit of seeing minutes of board meetings, I cannot always recall the circumstances ... much of which was carrying out the delivery instructions from CEC under annual business plans and approved budgets].

8. What elements were included in the Integrated Transport Initiative (ITI)? Was TIE to deliver it all? What was the impact within TIE of various aspects of the ITI being completed or cancelled?

[Doc CEC01793597] At the outset, congestion charging was seen as being as important, if not more important, than trams. This was, in part, because the substantial income that was expected from congestion charging would be used to fund one of the three proposed tram lines.

The Preliminary Business Case (PBC) set out a programme for the

development and implementation over time of £1.5 billion of transport improvements using public and private sources of funding, including road user charging. It included "*Achievement of the recommended programme requires the early backing of the SE, principally through agreement to provide £375 million of funding for three tram lines*".

My understanding at the time was that TIE would be the delivery vehicle for the whole programme. There was no consideration in 2002 of any aspect of the ITI being completed or cancelled.

9. Were these aspects part of a package or were they severable? Doc **CEC01793597** – Report entitled Integrated Transport Initiative for Edinburgh and South East Scotland dated 30 September 2002 suggests at page 53, paragraph 8.2, that the tram proposal was part of a package that also included funding through Road User Charging. Do you agree with that? As part of the overall package what was the significance of road charging?

[CEC01793597] See the answer to 8 above. The word "Integrated" was not used lightly. I considered the trams and congestion charging as interdependent. On January 12, 2004, a letter [Paper 1 of the Appendix to my 2014 verbal statement] went from the TIE board to Councillor Burns (as Transport Convenor) stressing the importance of congestion charging to the ITI and to the tram project. The letter stated that without a commitment to congestion charging, there was no guarantee that a tram network could be delivered.

10. Cost of the Tram Project – the Scottish Ministers were to contribute £375m initially. Do you have any knowledge of how this figure was calculated and what steps were taken to test its validity?

Grant Thornton, in association with Babbie Group and Steer Davies Gleave were appointed by TIE to develop the PBC. The figure of £375 million comes from that PBC. Key financial inputs to the PBC model included a public sector contribution of £375 million to the tram project specifically linked to the ITI. The wording in the report was "the preferred package requires £375 million of SE funding over the first 8 years of operation of the road user charging scheme." The PBC highlighted that 2002 prices had been used, that the figures must be seen as preliminary, with considerable further development work required. The Report was addressed to Transport Group, Scottish Executive and my recollection is that the SE were fully aware of the £375 million figure. Despite the ITI being abandoned and the tram network eventually reduced to a single line, the figure continued to be adopted as representing the SE's contribution to the tram project.

11. Doc **CEC01793596** is an e-mail from Stewart McGarrity to Geoff Gilbert dated 1 March 2007 in which he says that he is not aware of how the figure of £375m was calculated and who determined that it was correct. Do you have any thoughts on this? Note that the e-mail was sent after you had left TIE so you would have no involvement in the specific issues raised by Mr McGarrity's observation.

[CEC01793596] See the answer to 10 above.

12. What involvement did you have in the preparation of the Report? Although you signed it who were the key people involved in its preparation?

At such an early stage of TIE's development, my recollection is that much of the input to the Report came from work that CEC had already commissioned, supplemented by the engagement of Grant Thornton, Babbie Group and Steer Davies Gleave as professional and technical advisers to assist in the development of a PBC. My involvement as chairman would be to ensure the Report properly addressed what CEC had asked for.

13. In addition to delivery of the ITI, TIE was involved in other projects specifically the Stirling/Alloa Railway. What effect did that have on its ability to deliver these projects? Did you have any concerns, at any stage, in relation to TIE's project management of the Stirling/Alloa Railway?

I have no clear recollection of when TIE was asked to take on this project. In my verbal evidence I said that "*I thought the company had been handed a poisoned chalice*". This was because it proved a difficult project and came in over budget. Since, by then, TIE had a sizeable management team in place, I do not believe that it adversely affected the ability to progress other projects.

14. How did TIE ensure that it had sufficient resources for each project. Which took priority? For example doc **TRS00008535** – tie Board meeting 24 October 2005 appears to devote a significant amount to non-tram projects. Was this common?

[TRS00008535] The minutes show that the five senior executives in attendance at the meeting - in addition to the chief executive - had clearly defined roles: Projects (Alex Macaulay), EARL (Susan Clark), Procurement (Ian Kendall), Finance (Stuart McGarrity) and Heavy Rail (Paul Prescott). Also, for the tram project, there was a separate Tram Project Board (to be chaired by a non-executive director) and, for heavy rail, an EARL Project Board (chaired by another non-executive director). My recollection is that as projects were assigned to TIE, appropriate governance changes were made.

15. How would you describe the attitude amongst politicians and officials of both City of Edinburgh Council (CEC) and Scottish Executive/Scottish Government to the ITI? For example was there unwavering universal support at the outset and did that change? How did any change in the level of support impact on the work of TIE to deliver?

I think this is best summed up by the following exchanges that took place on June 10, 2005 [Paper 3 of the Appendix to my 2014 verbal statement].

Email from Michael Howell to Andrew Burns reporting on a meeting earlier that day with the Scottish Executive, which included "*The SE feels that there is a loss of clear transport strategy for Edinburgh since the loss of the*

congestion charging referendum"; and *"Ministers feel that CEC is not addressing the fact that Edinburgh tram cannot proceed without a substantial financial commitment from the Council"*; and *"In the environment where costs are rising and the real value of the sum committed by the SE is falling, the SE feels there is a need for hard thinking and hard decisions by CEC, which may include abandonment of one of the tram bills"*; Michael commented that there was a move afoot by the SE to ensure a clear message was delivered at the highest political level to Donald Anderson to make it clear that the tram project now hung in the balance, unless the issue of CEC's contribution to funding was immediately addressed.

On the same day, Andrew Burns wrote to the then Minister, Nicol Stephen, that it was completely unacceptable that the Council's flagship project might be stalled and asking for confirmation of the Scottish Executive's intentions.

In the event, TIE was told by CEC to continue to deliver the tram project.

16. What about the attitude of the Press and public? What was done to counter any negative attitudes?

There was considerable media and public interest ahead of the Congestion Charging referendum. My recollection is that in the weeks that preceded the referendum, TIE was legally constrained in what it could say or publish. Following the no vote, interest around TIE's activities fell away other than a continuing flow of objectors to the tram project - see answer to 22 below.

17. With the rejection of road charging in the referendum in February 2005 in your view was the ITI still viable? What changes were made to take account of this loss of revenue?

The issue was not whether the ITI was still viable. The issue was that there was no longer an ITI. My recollection is that following the exchanges in the answer to 15. above, it was a political decision to press ahead with the tram project.

18. Doc **TRS00008507** – TIE Board meeting 28 February 2005 at page 14 third bullet point refers to TIE's job to deliver lines 1 and 2. Was there a view as to how this would be achieved, in particular how it would be funded?

[TRS00008507] I note that the board meeting took place four working days after the announcement of the no vote. My reading of the minute is that it records the assumption of the board on that day rather than reflecting any specific instruction or guidance TIE had received.

19. What impact, if any, did the outcome of the Referendum (which was concerned with road user charging) have on the Tram Project? What impact if any did that have on deliverability?

Within TIE, my recollection is that it had an adverse effect on morale. The ITI, as we had understood it, was dead. Since the tram bills were still going

through Holyrood, there was no specific impact on deliverability.

20. What discussion took place after the Referendum and what consideration, if any, was given to abandoning the whole Initiative? Doc **TRS00018615** – TIE Board meeting 25th May 2005 refers at page 12 to continuing with lines 1 and 2. Was this the subject of discussion or an assumption?

25th May 2005
should be 21st
March 2005

[TRS00018615] It was for CEC and the SE to decide whether to abandon the whole Initiative. TIE's job was to deliver, to the best of its ability, the projects assigned to it from time to time.

21. Do you think the loss of revenue and the implications for the ITI as a whole were adequately considered?

See answer to 17.above. There was no longer an ITI. It is clear from the answer to 15 above that the Council wanted to proceed with the tram project in the full knowledge that there would be no congestion charging income.

22. Doc **TRS00018620** - TIE Board meeting 19 April 2005 records Michael Howell's reference to the need for an "audible pro-tram lobby" (see end of his report dated 14 April 2005 (p 14)). Was this achieved and if not why not in your view? Do you agree with the importance of this and what effect if any did lack of such a pro tram lobby have?

[TRS00018620] My recollection is that the TIE board agreed with this at the time. The city centre disruption in delivering the tram project was clear to everyone and the communications task was to invite those opposed to the tram as well as those who had not given it much consideration, to see the benefits to Edinburgh and its surrounds of the finished product. I have no clear recollection of how effective TIE and its PR consultants were in shifting negative opinions.

23. Significance of "developer contributions"? What was the basis on which these were calculated and were they fully realised?

My recollection is that this was primarily a matter for CEC.

24. Doc **CEC01875336** comprises the Interim Outline Business Case dated 30 May 2005. What input did you have in the preparation of this document?

[CEC01875336] The papers for the TIE board meeting on 19 April 2005 state that the Interim Outline Business Case had been presented to CEC and SE on 31 March, that "*it represented a major and commendable effort by the joint TIE/PWC team*" and that "*it demonstrates the viability of the project, subject to the issue of fares policy*". My input would have *been* to ensure board members had the opportunity to properly consider it.

25. Was any consideration given at any stage during your tenure as Chairman of TIE to instructing an experienced firm of Project Managers (eg a firm of civil engineers) to project manage the tram project (including the interaction

between the different contracts and works)? What were your views on that option (if it was considered) and what would your views be on it now (whether or not it had been considered)?

I have no recollection of whether this was considered by any of TIE's stakeholders. As far as TIE was concerned, the role of the company was clearly set out in section 9 of the 30 September ITI Report - that was, to

- develop, finance and procure certain major transport schemes identified in the Council's Local Transport Strategy (LTS)
- develop the business case for congestion charging for submission to the Council and the Scottish Executive and, on approval of that business case, to procure the implementation and operation of the scheme
- manage the finances arising from congestion charging and invest these, along with other sources of public and private funding, to deliver additional transport infrastructure improvement.

15 years on, I am not able to express a view on whether the appointment of an external firm of Project Managers would have made a difference.

Governance issues

26. What views do you have of the Governance structure in place for the tram project? Was it clear who was responsible for each aspect of the project?

I believe that the governance structures that were adopted for the tram project during my period as chairman were appropriate.

27. Doc **TRS00008528** – comprises the papers for the TIE Board meeting on 22 August 2005. Pages 50 onwards deal with the proposals for the establishment of the Tram Project Board. It is noted at paragraph 5.1 that the intention was that the TPB should take over most of the authority vested in TIE Ltd. Why was this proposal put forward? What difficulties, if any, was it intended to address? Was this proposal accepted and implemented?

[TRS00008528] My recollection is that because of CEC's wish to create TEL and to ensure that all the relevant stakeholders were properly represented (which was not the case with the TIE board), a Tram Project Board, focused solely on delivery of the trams, was desirable.

28. You were not recorded as being a member of the TPB – see page 50 para 2. Why was that? How, if at all, would you be able to input into the work of the TPB? With hindsight was it a good idea that you were not a member of the TPB?

My recollection is that because it was known that I would be stepping down within months when the tram legislation was passed, continuity and good governance was best served by having another TIE non-executive director take my place.

29. Willie Gallagher was appointed as a non-executive director of TIE on 23 February 2006. What was your understanding of why Mr Gallagher joined the Board? Were you, or the Board, consulted on that appointment? What were your views then on that appointment and what would your views be now?

My recollection is that he was appointed to the TIE board with a view to succeeding me as chairman. I did not feel then (and do not feel now) that Mr Gallagher had the necessary skills or experience to be chairman. Because of my concerns about governance, I retained papers which form part of the Appendix to the statement I gave to the Inquiry's solicitor in 2014. I do not recall being consulted about Mr Gallagher at any point.

30. When you resigned as Chairman Willie Gallagher was appointed as Chairman and later also as Chief Executive of TIE. What are your views on the need to have different people holding the posts of Chairman and Chief Executive? Did the fact that Mr Gallagher held both posts cause you any concerns? Did the manner in which Mr Gallagher was appointed to the TIE Board and later as Chair and Chief Executive cause you any concerns?

Good governance requires the positions of chairman and chief executive to be held by different people - otherwise there can be no proper checks and balances. It was specifically because of my concerns that I retained papers which form part of the Appendix to the statement I gave to the Inquiry's solicitor in 2014.

31. Doc **CEC01891602** is a report by Tom Aitchison to CEC dated 24 August 2006 in which he reports at paragraph 3 that he "...agreed that exceptionally and for an interim period only, he [Mr Gallagher] should assume the dual role of Executive Chairman". This report post dates your departure as Chairman but do you have any views, on the basis of wider experience and also given your knowledge of the Project and relations within and between CEC and TIE, on the merits of this proposal and the risks, if any, associated with it? What would these risks, if any, be?

[CEC01891602] Given that the skills and experience required, respectively, of a chairman and chief executive are so different, I could not believe that the Council would have proposed this or that the SE would have sanctioned it.

32. Mr Gallagher continued in his dual roles until his resignation in November 2008. Were any representations made to TIE about the need to appoint a new Chairman before then given the qualification that Mr Gallagher's appointment should be for an interim period? Would the fact that the arrangement continued for longer than might be described as an "interim period" alter your views on the desirability of this arrangement?

See the answer to 31 above.

Interaction between TIE and City of Edinburgh Council

[My recollection of events in TIE's first two years is generally better than the last two. This is because, with a small management team in TIE's early development, I had to be more hands on. By 2004, there was a well-defined management structure and the responsibility of the executive team was to deliver projects under the direction of the chief executive. My job was more to run the board.

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33. What did you consider the role of CEC to be in the ITI?

The ITI was developed by CEC as part of its LTS. The key objectives of CEC, as they appear in the 30 September 2002 ITI Report, were around safety, the environment, economic prosperity, health & fitness and social inclusion. My understanding was that CEC would determine what specific transport initiatives it wanted as part of the ITI and, rather than deliver these themselves, had set up an arms' length, but wholly owned, company as the delivery vehicle. There was therefore no difference of understanding at the outset.

34. In your view did CEC have that same understanding? On what is that view based?

See the answer to 33 above.

35. It is understood that CEC was the promoter of the project. If so what does that involve? What was TIE expecting from CEC in that role? Was CEC, both elected members and officials, adequately engaged in, and supportive of, the Project?

As promoter, CEC told TIE what it was expected to deliver and within what timescales and budgets. My recollection is that both the elected members and the Council officers who attended board meetings were fully engaged and generally supportive. Also, that the meetings (usually held monthly) provided the opportunity for an open dialogue and good communications.

36. If it was not adequately engaged and supportive why, and in your view what further steps should have been taken? How active were officials from CEC at TIE meetings that they attended? How frequently did they attend and how frequently did they fail to attend?

See the answer to 35 above. I had no issues with board attendances. I said in my 2014 verbal evidence that In general, TIE had a good working relationship with the Council. I felt that among the officials, Keith Rimmer, although often aggressive and critical, had the best interests of the project and TIE at heart. My regular contact and communication was with Andrew Burns and Andrew Holmes. I found Tom Aitchison very distant and difficult to engage with. TIE had the benefit of the experience of Alex Macaulay in a senior role. Alex had been a Council employee for many years and knew his way around - which proved very useful.

37. In your view was there an appropriate degree of co-operation between the various interested Departments within the CEC? If not how did that impact on delivery of the project? What did you do to try to secure greater collaboration (if required) within the CEC?

I was very conscious of "silos" within the Council departments. There were occasions when it was very difficult to get approvals around budgets and there were months when no-one was producing money to pay salaries. Michael Howell, as chief executive, bore the main brunt of having to bang heads together. Having said that, we never felt that TIE lost the confidence of the Council.

Interaction between TIE and Scottish Ministers

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38. What did you consider the role of Transport Scotland and Scottish Ministers to be in the ITI? Where did Transport Scotland/Scottish Ministers fit in to that arrangement alongside CEC and TIE?

At a meeting with Wendy Alexander in early 2002, before I was formally appointed, she told me "to put together a board with a majority of independent directors and get on with it" and that I would have her strong support. Unfortunately, she was replaced as Transport Minister on the same day as TIE's first board meeting. My recollection is that I met with Ministers once (or at most twice) a year, I do not know how frequently, or in what form, CEC met with Ministers.

39. How useful did you find the contribution of Transport Scotland/Scottish Ministers to the tram project (including to the management and governance of the project) while you were Chairman of TIE?

There were no major issues - but it was unhelpful for continuity that the in the short period of my chairmanship, there were four different Transport Ministers.

40. Were Transport Scotland/Scottish Ministers just paying grant and, if so, what steps were taken by them to secure progress of delivery? If not why and in your view what further steps should have been taken?

In the early days, I have no recollection of "Transport Scotland" being involved. My contact, when I needed it, was principally with civil servants (Damian Sharp).

41. How active were officials from TS and Scottish Executive at TIE meetings that they attended? How frequently did they attend and how frequently did they fail to attend?

[TRS00008522] My recollection (supported by the board papers which were enclosed with the questions) is that board meetings were generally well attended. I do not recall who, in addition to those entitled to attend, received board minutes.

42. Doc **TRS00008522** – includes minutes of TIE Board meeting on 25 May 2005 where reference is made to the absence of Scottish Executive representatives at meetings of the TIE Board (see page 5 of the document and page 1 of the Minutes). Was this an issue at that time? Given the financial commitment to the Project from Scottish Ministers was the absence of SE representatives a concern or were you satisfied that reporting to them after the meeting would be sufficient? Do you recall any explanation for the non-attendance?

There was occasional frustration that where funding decisions were needed (in some cases to meet monthly salaries), we had to pursue things outside board meetings. In general, I did not regard this as a major problem.

Interaction between TEL and TIE and Lothian Buses and TIE

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43. Doc **CEC01884897** TEL Implementation Plan 20 December 2004. What were the functions of TEL and TIE? In your view was there sufficient clarity regarding the respective roles and was there sufficient co-operation and collaboration?

[CEC01884897] I find it difficult to comment on the origins of, and reasons for, TEL. My recollection is that it was, in part, a political decision arising from sustained pressure from Lothian Bus and its chief executive, who was implacably opposed to the tram project throughout. The document states that the reason for creating Transport Edinburgh Limited (TEL) was to achieve integration between bus and tram operations. Tie (with Transdev's support), was "to be responsible for the detailed design of the tram system (lines 1 and 2) all aspects of which will be undertaken with the full involvement of Lothian Buses". I appreciated that it would require excellent co-operation and collaboration between CEC, TEL and TIE to make this work - but I cannot recollect, during my time as chairman, whether this was adding value to the delivery of the tram project. The minute of the TIE board meeting on 24 March 2006 would suggest that all was not well at that time.

44. How did Lothian Buses fit into the picture? What was its view of the Tram Project? Did Lothian Buses co-operate or hinder progress?

See answer in 43 above.

45. Doc **CEC01744542** – note of TIE Board meeting 24 March 2006 records at paragraph 2 that the relationship between TIE and TEL at a “day to day” level needed to be addressed and a meeting to arranged to discuss. What was the problem, how was it impacting on delivery and were the issues resolved?

[CEC01744542] See answer in 43. above. Since I resigned very shortly after this, I have no knowledge of how it was resolved.

Legal Advice

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46. TIE took legal advice from Dundas & Wilson and from DLA Piper. What were your views of the service provided from each?
Why were different firms instructed? Who took the decision to appoint them?

There was an early need for expert legal advice in the areas of Parliamentary approval, local planning & related issues and contracts - each of which required different skills and knowledge. My recollection is that Bircham Dyson Bell were the Parliamentary experts, Dundas & Wilson had local planning experience and DLA had been involved in major transport contracts elsewhere in the UK. I have no recollection of how the decision to appoint was taken. Re the quality of service provided by each firm, see the answer to 48 below.

47. Doc **TRS00008469** – minutes of meeting on 9 August 2002 records at page 7 that 4 Firms were invited to tender for the provision of legal services, namely Bircham Dyson Bell, Shepherd & Wedderburn, DLA and McGrigor Donald.

[TRS00008469] See the answer to 46 above. There is no question asked here. The minute makes it clear that the appointments were for tram lines 1 and 2 and were only up to the Parliamentary approval stage.

48. Doc **CEC00114235** is an announcement dated 25 November 2002 that Bircham Dyson Bell, DLA and Dundas & Wilson had been appointed as legal advisers for different aspects of the project. What involvement if any did you have in that decision? What involvement if any did you, and TIE more generally, have in the decision as to who within these Firms would undertake this work? Why did Andrew Fitchie have lead responsibility for the work allocated to DLA?

[CEC00114235] My recollection is that the TIE management team felt the company had been well enough served up to that point by the three legal firms. I do not recall being involved other than putting managements' recommendation (which I believe were supported by CEC which was picking up the bills) to the TIE board. The decision to give Andrew Fitchie lead responsibility for the work undertaken by DLA would have been taken by DLA.

49. What experience did you personally have of obtaining legal advice and how did that assist in assessing the quality of advice given to TIE?

As a merchant banker, I had been involved for over 30 years in instructing lawyers and in recommending to clients who they should appoint. In this case, I had no previous experience of working with either Bircham Dyson or DLA (who were relatively new to Scotland).

50. What was your overall assessment of the quality of advice in terms of timing, accuracy and practical value for delivery of the Project?

Patchy. In my 2014 verbal evidence, I said that I had reservations about how effective DLA were; and this applied to Andrew Fitchie in particular.

Contract structure

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51. In relation to the procurement strategy for the tram project, what was your understanding of the main elements and objectives of the procurement strategy? How important was it to obtain a fixed price for the Infraco contract? How complete did you expect the Detailed Design to be when the Infraco price was negotiated and agreed? How complete did you expect the design and utility diversion works would be when the Infraco works commenced?

My recollection is that the TIE board at the time fully appreciated the importance of getting this right and oversaw the extensive work that was done by the management team and the company's professional and technical advisers in the period 2004/5 to produce the document in the answers to 54 below.

52. What input did you have in decisions regarding the contract structure and in particular the decision to separate the design, utility diversion/MUDFA and infrastructure contracts?

See the answers to 54 and 55 below.

53. It is understood that the structure was devised by Ian Kendall. Did you have any concerns about the deliverability of this structure? If so what did you do to make these concerns known? To what extent did Mr Kendall work with others in the development of this structure? If he did work with others who was that?

I believe this is a question that should be properly addressed to TIE's chief executive, Michael Howell.

54. Reference is made on pages 9 to 11 of doc CEC01875336 to the benefits of the preferred procurement strategy. What views did you have of the

preferred strategy? Did you have any concerns? If so what were your concerns, how did you articulate them and to whom?

[CEC01875336] The preferred procurement strategy was set out in a comprehensive 148 page "Draft Interim Outline Business Case" document dated 30 May 2005. The document was prepared by the TIE management team with the assistance of PWC for discussion with CEC and the SE. The references to a preferred procurement strategy on pages 9 to 11 are supported by detailed sections on Procurement at pages 37 to 47. My recollection is that the TIE board took comfort from the extensive research and other work that had been done on procurement. The document stated that TIE had learned the lessons from past tram procurement exercises and recent investigations by the National Audit Office, Audit Scotland and HM Treasury and had taken into account issues specific to Edinburgh (eg running through a historic city centre with World Heritage Status) and that the key elements of the strategy had been developed over a year by a Procurement Working Group comprising TIE, Grant Thornton (as financial adviser), DLA (as legal adviser) and TIE's technical advisers. I do not recall having any specific concerns at the time.

55. Did you consider there to be any difficulties with the separation of different elements (design, utility diversion, infrastructure, tram vehicle supply) and how did you think these could be addressed? In your view were they addressed successfully, in whole or in part? If not what more could, and should, have been done?

See the answer to 54 above. It is not the function of a non-executive board to constantly second guess management's work or recommendations, particularly when experienced, highly paid professional and technical advisers are engaged as part of the team.

Delivery issues

[My recollection of events in TIE's first two years is generally better than the last two. This is because, with a small management team in TIE's early development, I had to be more hands on. By 2004, there was a well-defined management structure and the responsibility of the executive team was to deliver projects under the direction of the chief executive. My job was more to run the board.

Also, I find it very difficult to distinguish almost 15 years of hindsight from what was a fast-moving and often complex situation at the time. Even with the benefit of seeing minutes of board meetings, I cannot always recall the circumstances ... much of which was carrying out the delivery instructions from CEC under annual business plans and approved budgets].

56. Doc **TRS00018644** TIE Board meeting 25 October 2004. Reference made on page 18 of this document to "cautionary tales for Edinburgh" based on discussion with counterparts in Dublin. Which of the experiences in Dublin

were considered to be applicable to Edinburgh and what was done to address them eg unexpected political decisions, public reaction and significance of communications?

[TRS00018644] I did not visit Dublin and therefore, along with other board members of TIE, was receiving a report from those who did. I recall being particularly concerned about CEC's ability to achieve full integration between the services provided by Lothian Bus and the (then) three line tram network - see the answer to 43 above. Another issue was the importance of establishing good communications with the Edinburgh business community and other key stakeholders.

57. At this stage consideration is still being given to construction of line 3. Would it have been more appropriate to build one line at a time and learn from the experience with each one ie not "biting off more than you can chew"?

TIE was the delivery company for what CEC wanted to achieve. At that stage, it would have been for CEC (and/or the SE) to instruct TIE to change course.

58. The Design contract was entered into in September 2005. There was delay in delivery of the design. Were you aware of this at the time? Was any indication given to TIE by Parsons Brinckerhoff at the outset that delivery would be delayed? What was done to try to resolve the matter? What were the reasons for the delay? What was the impact on the Project as a whole?

I said in my 2014 verbal evidence that I recalled visits to TIE by those bidding for contracts and that I remembered meeting the Parsons Brinckerhoff bidding team in 2005. I do not recall hearing any advice on the form of contract or the issues around delays, which I would have expected the management of TIE (supported by their advisers) to be addressing and reporting to the Tram Project Board (which had held its first meeting in August 2005) in the first instance.

59. Doc **TRS00008528** – TIE Board meeting dated 22 August 2005 reports on the award of the SDS contract. What involvement did you have in that process? Were you involved in the interview process - see page 105? It was anticipated that the risk transfer under the contract would be substantial – see page 97. Do you have any comments on how that worked in practice?

[TRS00008528] My recollection is that what was of interest to the TIE board at that meeting was that the tendering process for the c£25 million System Design Services contract had been conducted properly. I do not recall the board having any material concerns with the statements by management or by the professional and technical advisers around transfer of risk.

60. A report to the Council on 26 January 2006 [Doc **CEC02083547**] recommended in light of budgetary constraints that the tram project be built in phases with the first phase (phase 1a) running from Edinburgh Airport to Leith Waterfront. What were your views on that recommendation? Did it cause you any concerns that the capital cost estimates for the project had

increased while the proposed extent of the tram network had decreased?

CEC02083547] It was a pragmatic decision, helped by the offer from the SE to index its £375 million support conditional on the Council contributing £45 million. Allowing for inflation, the total funding available was £535 million. The capital cost estimate of line 1 from the airport to Leith Waterfront (including incremental optimism bias) at that point was £358.5 million.

Your Departure

61. Doc **USB00000376** is a copy of a letter from John Richards in his capacity as Director of TIE to Tom Aitchison dated 28 February 2006 addressing the need for the appointment of a Chair to succeed you. Mr Richards is complementary of your contribution. He notes the experience that would be required by the person appointed to succeed you. Would you agree with that assessment of the required experience of your successor?

Yes. On January 30 2006, I had written to Tom Aitchison, then chief executive of CEC, confirming that I would step down as chair of TIE as soon as Royal Assent to the tram bills was obtained. [I do not have a copy of this letter, which should be in CEC files] My recollection is that I indicated in that letter what governance arrangements, including an experienced chair, were needed to achieve successful delivery of the tram project.

Tom Aitchison's reply to me on January 31 [Paper 8 of the Appendix to my 2014 verbal statement] included "*I note your intention to stand down It will certainly be the Council's intention to continue with a strong TIE board, with private sector representation*".

My view was, and is, that TIE needed a chief executive who had experience of successfully delivering major infrastructure projects (eg a recently retired senior executive from a company such as Balfour Beatty or someone of that calibre) and an experienced chairman who understood risk.

62. Do you consider that Mr Gallagher had that experience (in respect of the roles of Chairman and Chief Executive of TIE)? Did you have any concerns in that regard and if so did you express these concerns to anyone? If so who? Do you consider that you had that experience during your tenure as Chairman or was the experience required changing as the Project progressed?

I did not feel then (and do not feel now) that Mr Gallagher had the necessary experience to be either chairman or chief executive. Because of my concerns about governance, I retained papers which form part of the Appendix to the statement I gave to the Inquiry's solicitor in 2014. I did not feel that it was my place to comment or criticise after vacating the chair.

63. Mr Richards refers to the need to secure "appropriate external confidence in the Board of tie". Was this a particular problem at that time? If so why do

you think that was the case and what do you think needed to be done to achieve it?

I did not see it as a particular problem.

64. What were your views on TIE as an organisation and the tram project more generally at the time when you stepped down as Chairman?

I was still struggling to get my mind round the division of roles and responsibilities between TIE and TEL and how they would properly co-ordinate their activities.

Conclusion

In conclusion:

65. Are there any other matters you wish to add or which you consider are relevant to the Tram Inquiry's Terms of Reference?

I was quoted in the Herald of 23 November 2013 as saying that I wished I had stayed longer as chairman of TIE - "*I think I could have recruited a very able chief executive.*" I could not believe that the roles of chairman and chief executive had been combined subsequent to my departure.

Final Thoughts

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

I feel that I have addressed this in the answers above.

67. Did you have any concerns at any stage in relation to any of the bodies involved in the tram project eg TIE, TEL, the Tram Project Board, CEC and Transport Scotland/Scottish Executive or the senior personnel or Board members of any of these bodies?

I feel that I have addressed this in the answers above.

68. Did you have any concerns at any stage in relation to the reporting of any concerns, difficulties or problems either within or between these bodies and organisations?

I feel that I have addressed this in the answers above.

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

I feel that I have addressed this in the answers above.

70. Do you have any views on what were the main reasons for the failure to deliver the Tram Project in the time, within the budget and to the extent proposed?

I feel that I have addressed this in the answers above.

71. Do you have any comments, even with the benefit of hindsight, on how these failures might have been avoided?

I feel that I have addressed this in the answers above.

I confirm that the facts to which I attest in the answers contained within this document, consisting of this and the preceding 18 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature ... 

Date of signing 12/6/17

