

Edinburgh Tram Inquiry Office Use Only
Witness Name: ANDREW ARTHUR
WILLIAM HARPER
Dated:

THE EDINBURGH TRAM INQUIRY

Witness Statement of Andrew Arthur William Harper

Statement Taken by Gordon Mitchell on 11 December 2015.

My full name is Andrew Arthur William Harper. My contact details are known to the Inquiry. I was employed as the Tram Project Director between ~~11~~ ²² May 2006 and 22 December 2006.  6.7.16

Statement:

INTRODUCTION

1. I have provided a full CV. In summary, I am a Chartered Quantity Surveyor. I spent most of my career in London Transport. I moved from Quantity Surveying into project management and had various jobs in London Underground including being Head of Project Management and Director of Engineering. In early 1999 London Underground was the subject of a Private Public Partnership (PPP) by the then Government of its maintenance and capital expenditure/improvement activities and I was selected as Managing Director to run one of the three INFRACO companies created in 'shadow running' and as the tenders were reviewed and agreed. I then transferred into the new company (January 2002) with the rest of the staff, acting as an advisor to the new Board.

2. I then moved on and joined Washington Group International (WGI) which is an American infrastructure and project management organisation with interests in the UK. I worked with this company for three years mainly in the UK and in Romania doing project bidding/tendering work. I also undertook a lot of work/training on leadership development with the Washington Group.

3. At this time my now wife who had also previously worked for WGI, and had subsequently left and set up her own business doing bids for contractors. She

focussed on the nuclear decommissioning sector and also had bid experience on transport projects. In relation to trams we had both previously been involved in bidding on Nottingham Trams and Mersey Tram. In April 2006 I joined her business and we worked together.

THE EDINBURGH TRAM PROJECT

4. In early May 2006 I got a call from The Nichols Group, a large consultancy working in the Rail and Transit sectors. They were well known internationally and had worked for London Transport in the past. Bill McElroy from the consultancy called me and asked if I was interested in working in Edinburgh. At this time I was based in Essex and I initially said no. It was not what I wanted to do as I had just started the business doing bidding work and I had no business network in Edinburgh.

5. Nichols called me back soon after their first call stating that they were in the process of looking for people and they were struggling. One of the Directors of the Consultancy, Peter Hansford, then phoned me directly and he said that in their opinion I was the best candidate. He asked me to have a chat with Michael Howell the Chief Executive of TIE. I eventually agreed and met Michael in London a few days later on the 11 May 2006. We had a chat. I understood that the project was in a poor place as Ian Kendall (the Project Director) had left and the project was without recognised leadership. They appeared to be coping, but not overly well. He said that the project had lost momentum and was in delay. I briefly outlined my CV and at the end he asked me to come up to Scotland for a further chat and to meet the team and then see if I felt I could add value and were interested in the role of Tram Project Director on an interim basis. I was told that the Tram Project Director would report directly to Michael Howell. During the discussion Michael outlined a number of issues although he may have overplayed them.

6. I went up to Edinburgh for two days on the 15 and 16 May 2006. I met with the Tram project team on the first day. Most of the key players were there including Stewart McGarrity, William Fraser, Trudi Craggs. I formed the opinion that they had lost direction and focus, and were extremely demotivated.

7. Some of the people I spoke with thought that I had the job already. I had no idea if there were any other candidates for the job. The following day I saw Michael Howell, and then I saw Willie Gallagher and Graeme Bissett together. That was a tough session. Willie was aggressive and Graeme was very direct. On reflection I think that this meeting was actually part of an interview process. They were asking me what I had concluded from my previous day. I told them that the Tram project clearly had issues and that it was behind programme and I also advised them that they had a demotivated team.

8. I said I would not have managed the project in the way it had been done in the past. Ian Kendall's model and processes was very controlling. I thought that was just not sustainable. I told them that they had talented people and that they should use and get the most out of them. I said that they should make individuals responsible for their own work-streams etc. For me it was basic project management and leadership principles, nothing extraordinary. Communication both within and without the team was clearly very poor. At that time there were some issues around how the whole thing sat together with blurred or unclear reporting lines and responsibilities. The only person who appeared to understand how the structure and project worked was Graeme Bissett. He is a smart man. Following my session with them I thought that was it and it would be the end of my involvement. I had thought the decision was whether I wanted to be involved and not about whether I was good enough. At the end of the day I saw Michael Howell again and I told him what I had told the others in that he had a team and a project that was going nowhere at that time.

9. It was apparent to me that they (TIE) were spending money on a project that they were uncertain if Edinburgh City Council (CEC) actually wanted. They had a large project team in place and if TIE were not going to do the trams, what was the project team going to do. As the largest single project in the portfolio, not doing the Tram would bring into question the whole purpose of the TIE organisation as an arms-length delivery vehicle. The contracts and procurement plans in place were concluded under European procurement rules as dictated to the Public Sector. Changing the procurement approach or contracts for those already procured and

placed at that stage of the process would have been almost impossible and potentially incur significant penalties. The Tram project was being driven by the procurement process devised and accredited to Ian Kendall. It was dependant on deadlines being met and in my opinion it was unnecessarily complex as it relied on multiple contractual novations, which from experience seldom work well. The complexity of the contractual process was a significant part of the problem. The project relied on every part of the plan being brought in on time and it was struggling. There was insufficient flexibility built into the project and project plans. The multiple novation contract procedure was too complicated and would result in successful tenderers not only charging for their costs but also the cost for each subsequent novation to manage the risk and associated novation processes at different stages in the project development and delivery. When I started the project I knew very little about the total scope of Tie's activities. I had been told about EARL but had little grasp of its scale, costs and programme. I was aware the tram was the major scheme.

10. At the conclusion of our meeting Michael Howell then said that he would like me to come and help them. By that time I had seen enough of the project that actually made me want to do it, as there was a real challenge to overcome. Ian Kendall had gone by this time and it was his job that I was being offered.

11. I did not see this as a huge challenge taking into consideration my London Underground experience. I had run an organisation and this was a project within an organisation. It did not scare me. This was an opportunity. At no point at this time did we discuss my remuneration. I was employed by Nichols on a consultancy basis. I had a contract with Nichols and not Transport Initiatives Edinburgh Ltd (TIE). I have no idea to this day what they (TIE) paid Nichols for my services. All I did was send a monthly invoice based on days worked to Nichols.

12. I met Michael Howell on the 11 May 2006. I went up to Edinburgh on the 15 and 16 May 2006 and I started on the 22 May 2006. I was not provided with a job description and was very much left to get on with the job. I used my previous projects experience to establish what I believed was appropriate. I was there to provide leadership for the project team and its activities and was responsible to the project

board and funders for leadership and time, cost, quality and safety parameters on an interim basis for three months until Tie sourced a long term resource to lead the project.

13. If I recall correctly my first three days were at my request spent sitting in a pre-scheduled OGC Gateway Review. London Underground had used a similar process for reviewing projects but it was not as formal as the OGC one. That in fact started on the 23 May 2006. Transport Scotland initiated this review. At that time I did not understand all the relationships between the organisations involved in the project. I knew that Transport Edinburgh Limited (TEL) was the potential operator and TIE was the project delivery arm. The client was City of Edinburgh Council (CEC) and Transport Scotland. It appeared complex and I'm not sure that all of the parties understood or could articulate their roles.

14. Upon commencement I was sure that my role was to be the interim Tram project director for an initial period of three months to allow time for TIE to finalise their future arrangements for the role. After the first week Michael Howell called me in and told me that they were advertising the job in The Times newspaper that weekend and that I could apply for it if I wished. I took up the role on the basis that this was an interim arrangement and being told about the vacancy being advertised reinforced to me that this was in an interim role.

15. One of the things I said was that I was not going to go back over what Ian Kendall had left. I felt this would be counter productive. The whole procurement process in place was set up I was advised by Ian Kendall. I saw this as a constraint within which I had to work. Maybe if I had been engaged as a long term solution I might have considered going back to review this but when I joined it was made clear to me that my role was about driving the project forward, making progress and changing and improving its reputation.

16. It was a shock to me when shortly after I had joined that I learned that Michael Howell was leaving TIE and found out that Willie Gallagher was going to be the Chief Executive. Despite my apprehension from my initial interview the reality was that Willie Gallagher and I got on well. We knew our respective roles. He ran TIE and

led most of the outward looking activities on the project. This was a sensible and effective way of working and sat well with our respective skill sets.

17. At that point I realised that the project needed direction and focus and to be driven forward within the existing structures and strategy. I did not see this as something we should challenge. My feeling was that if you changed the project you open yourself to penalties and a massive delay. I had the job as Project Director, which was a project management role and the aim was to drive the programme as quickly and as effectively as possible. As a project we were always balancing progress against risk and cost.

18. In a perfect world it was probably an effective and sophisticated strategy for procurement, but we live in the real world. It was always based on everything working to the plan but people do things differently and forget the plan. For me it was not an ideal situation. I can understand that Ian Kendall wanted to pass all the risk to the private sector. But in my experience the client always carries a large slice of the risk on any project. My experience at London Underground reinforced that view. We were always trying to effectively manage risk. You cannot always pass risk on. My ideal solution to procurement would be, that in every contract the client's solicitors clearly clarify each risk that they want to pass on to a third party, rather than often use standard catch all clauses that try and pass risk, as in reality they are most often less than effective. Clients always change their minds, it's a fact and risk transfers with these changes. I have no previous knowledge of a project being novated in the manner that the tram project was envisaged and procured upon. In my opinion I struggle to identify any significant real strengths to this approach but acknowledge that in theory it may have offered some certainty.

19. As Project Director I had inherited a process that was already there and I had to make it work. There was a plan but it did not reflect the timeframe, it was woefully out of date. When I joined I don't think it was clear that we were aiming to seek approval for the project in December but that time frame soon emerged and became part of the focus used to drive the project forward.

20. When I started on the project there was little effective leadership, a variety of TIE staff were dabbling at it but no one was dedicated to driving it forward.

21. TIE was a project delivery vehicle. It had project managers and they employed teams of in-house suppliers, and contractors to deliver on behalf of TIE to the client. In this case there were two clients (CEC and Transport Scotland). This made it more complicated. CEC did not always fully understand what their role was. Transport Scotland had a better idea of their role but unfortunately they also employed consultant contractors such as KPMG and Cyrill Sweett who appeared to want to second guess what was going on in TIE and the project. As a check and balance that's okay but Cyrill Sweett were sometimes less than helpful.

22. When I arrived my understanding of the reporting mechanism to CEC and Transport Scotland was unclear. It became much clearer when Willie Gallagher put in place the Tram Project Board. I was much happier when the structure and the governance arrangements were put in place. My reporting line was to the Tram Project Board. The project team were not the final decision makers. As a project we still had to get agreement from TEL, the long term operator and from Transport Scotland and CEC who were providing the funding. The establishment or re-establishment of the Project Board made this process more workable and helped to open communication channels. The approval route was Transport Scotland before CEC. That seemed strange to me, it appeared Transport Scotland were always in charge. The person that you had to get it all past was Bill Reeve at Transport Scotland. If you did not have Transport Scotland onside you were not going anywhere.

23. When I arrived I soon recognised that there was a lack of commercial and procurement expertise on the project and on this basis I brought Geoff Gilbert to Edinburgh. I had worked with him previously and he was experienced and had a good reputation. I do have some considerable personal procurement experience from my time with London Underground, but on the project there was definitely a gap in this regard. I believe that gap existed because in the past Ian Kendall did all the work himself, apart from utilising legal support from DLA Piper (although I was a bit unsure about what DLA Piper actually did). In addition to being unhappy with the

procurement strategy and status, and from sitting in on the OGC Gateway review when I first arrived I was not happy about the overall estimate either and was unclear about how it had been built up and its reliability. I knew there would be a question about the estimates as they had gone up from £562m. So when I started in May 2006 I soon established that this part of the project needed reinforcing. I added this to Geoff Gilbert's remit when he joined the project. Initially I wasn't satisfied with the estimate and how it had been put together, but as the project progressed I am confident that we as a team reviewed and built the approved estimate from the bottom upwards and so we felt comfortable with it. Geoff Gilbert was very thorough in that regard and that reinforced the later confidence I had in the estimates we presented. In that period of time Geoff Gilbert was my right hand man and the key project team member on procurement and cost.

24. In relation to the Tram Project Board, I was there as an attendee. Regarding the project report to the Tram Project Board, generally speaking the individual project team leaders would compile it and I would review and agree it. I would then present the reports to the Board. It can be noted from the Board minutes that I would get the bulk of the actions arising. It was however CEC's project as client, and the project team was the client's delivery arm. In relation to CEC, Andrew Holmes was the man that I mostly dealt with. I got on very well with him and he understood what our respective roles were. Beyond Andrew I am less sure. He was never aggressive but would think things through and he would see and find ways forward. I would contact him if I wanted to get things done. If there were problems with standards or consents or if you needed to push the boundaries of what we needed to do, I would contact Andrew and we would have that discussion. He would generally come back with the solution that he could convince others of.

25. In Transport Scotland I dealt in the main with Bill Reeve. I would not criticise Transport Scotland or CEC. I was less impressed with KPMG. Particularly the issue about the business case as that came right at the end. They were, in my mind, point scoring. Cyrill Sweett were more obsessed about being the client's person than progressing the project on their behalf. I said that we have to get these estimates agreed and sorted and if you have any issues why don't we just sit down and deal with them. They were really reluctant, and would feed concerns or queries back to

Transport Scotland direct who in their turn would pass to me. I was clear that I wanted us to work together so we could address things directly and more efficiently. We could have worked together more effectively.

26. There was also another dynamic running in the background to this. When I arrived, the majority of local Councillors were against the tram. There was one Councillor on the Tram Project Board. I did not have many dealings with Councillors. Willie Gallagher undertook most of this activity and indeed undertook most of the outward facing activities.

27. When I arrived it took me a while to understand why we were doing the tram project as the bus service in Edinburgh was excellent. So much of the business case hung on the airport connection into the city, yet they had a good bus service. I was most excited about line 1B to Granton as I could see the real redevelopment opportunities it offered.

28. TEL were the operator in waiting. They were going to operate the trams but at the outset they appeared not really to want the project.

29. In summary then, my view when I arrived at the project in May 2006 was to get some energy into it, put some processes in place and improve communication. Improving communication was the key because as I said it appeared Ian Kendall kept everything to himself. He did have contractual relationships and arrangements in place with for example SDS but they were not all working as part of the same team and certainly not as a fully integrated project team.

INITIAL PROPOSALS AND ESTIMATES

30. I have been asked about the initial proposals and estimates for the tram project and have been referred to the STAG 2 Appraisal and Draft Final Business Case presented to the Council in December 2006 (documents **CEC01650279**, **CEC01789120** and **CEC01821403**).

31. In relation to the Scottish Transport Appraisal Guidance (STAG 2) Appraisal and Draft Final Business Case (DFBC) my job was to drive the preparation of these forward so that they were completed by the Christmas deadline. I did review these documents but I did not sit down and read them all fully. I got the DFBC in stages, as it was being developed, and I would read it. Once I established that Stuart McGarrity (who was in charge of these matters) knew what he was doing, I was happy. If you read the DFBC, it's quite complicated and often in unfamiliar language, business case stuff always is. But it was prepared under the leadership of Stuart McGarrity and his team with the professional input of Steer Davies Gleave who are a leading independent transport consultancy. They did the business case work. As part of the business case the estimate was produced by Geoff Gilbert, but most of the work in relation to the benefit returns and the ratios was completed by Steer Davies Gleave.

32. I did see the DFBC when I was there. I did not read the final document in detail but I did read most of the key elements. Responsibility for the production of the DFBC was the project team's through Stewart McGarrity. The estimate was pulled together under the commercial director Geoff Gilbert. That also involved the TSS (Technical Support Team) which included the consultants Turner Townsend and Scott Wilson.

33. The person with the most influence on the business case was Stewart McGarrity. I trusted Stewart and the team, they were professional and were doing a good job.

34. The business case went across my desk and then it went to TEL, the TIE Board, then through the Tram Project Board to Transport Scotland and CEC. Bill Reeve at one point in that process asked me if I was comfortable with it and I told him that I was. I was comfortable with the business case because of the quality and experience of the people involved in writing it and it had been through a thorough series of checks and balances. It was not without issues for example we were aware that the design had slipped. We had done all that we could to mitigate and manage these issues. We had reprioritised the design process and we were having

discussions with some bidders at that point and with the MUDFA contractor implementing these proposed solutions.

35. The total capital cost of phase 1 was estimated at £592m. This estimate was constructed by Geoff Gilbert. I am aware there was input from Turner and Townsend (an independent cost transport consultancy) and Scott Wilson (engineering consultancy) I was also aware that it was reviewed by Cyrill Sweett for Transport Scotland. For me it was a well prepared and constructed estimate.

36. It is suggested to me that in the Executive Summary of the DFBC it states that the level of certainty and confidence that was attached to the estimated capital cost of the tram project was 98%. This is incorrect. It says that 98% of the costs have been estimated on rates and prices from various reliable sources. The next paragraph refers to a QRA process and gives an indication of the statistical confidence level.

37. I did not have any major concerns on how the approved estimate was arrived at and was confident at that time that it was as accurate as possible. There was an increase in estimate from £569m in January 2006 to £592m in December 2006 and that was reported to CEC. I did not worry too much about the £569m figure as we were rebuilding the current estimate based on the current proposals. We were looking at what it would cost to build the Tram scheme. If we undertook any comparison between the two it would have been at a summary level as part of the checking and benchmarking activities. I believed that the slippage in the design programme and the delays in obtaining consents and approvals were all either mitigated or allowed for and the estimate was prepared in line with good project management principles and techniques. The estimate was also reviewed by Transport Scotland's advisors Cyril Sweett and CEC.

38. I have been referred to documents **TIE00059601** (Tram Project Board Minutes 23/10/2006) and **CEC01796383** (Email from A Harper 25/10/2006). This email is about checks and balances and providing the assurance that those involved were seeking. I asked Geoff Gilbert if he was confident of the estimate costings. As you can see in his response he did not appreciate my implied criticism as he had

done a very thorough job preparing the estimate. I was not saying that I disagreed with the estimate, I was just providing for wider assurance to others.

39. I note that in the Transport Scotland 5th Quarterly Review Panel 24/11/2006 (**TRS00010611**) Transport Scotland state that there are a number of figures in the Draft Final Business Case which have been incorrectly quoted and correspondingly do not make sense. This is about the KPMG issue I have commented on elsewhere. This was subsequently resolved. If you follow through the documentation that follows you will see that KPMG were eventually content that the matter was resolved.

40. I have been asked about documents **CEC01796477** (Geoff Gilbert Email 30/10/2006 – project estimate meeting notes and actions), **CEC01796486** (Geoff Gilbert Tram Project Estimate Potential Savings 30/10/2006), **CEC01788440** (Value Engineering Exercise Workshop 20/12/2006), **CEC01767090** (Value Engineering Workshop 31/02/2007). These documents were about the need in late 2006 to make cost savings of a value greater than £50m by way of value engineering. This is an established process in the projects arena for reducing costs to get more value. Obviously any cost reduction would enhance the business case. Another benefit is that it allows the project team and client to consider increasing the risk contingency. If this increased contingency is not required to complete the project it can be returned to the Funder. The end game here was to see if we could reduce the base costs without losing required functionality to create more headroom and further increase confidence in the scheme. Bear in mind in this process the overview and big picture was other phases that were proposed in this tram network, it was not just Lines 1a and 1b.

41. Documents **TIE00002892**, **TIE00002893**, **TIE00002893**, **TIE00737784** and **TIE00737785** are documents regarding the problems with the calculation of the Benefits Cost Ratio (BCR). This is the Andy Park issue that he highlighted based on the KPMG report. In my view this was answered by Steer Davies Gleave and then it went away. It was late in the day when KPMG came back and queried the ratio. My view was that it was just another problem the clients were raising. The calculation of the benefits cost ratio is a science lost on me. It is an accountant's world but I was

assured that our figures were correct by the team and KPMG later acknowledged this.

42. The BCR was undertaken by Steer Davies Gleave under the direction of Stewart McGarrity. When I first saw this observation I just thought that it was another obstacle to be overcome and not a show stopper. The experts met and resolved the query to their mutual satisfaction, as far as I am aware there was no compromise required or involved. What I believe happened was that Stewart McGarrity spoke with KPMG and they came back explaining why they thought that the figure in the DFBC was wrong. The issue then went back to Transport Scotland and Transport Scotland eventually signed it off. That is all I can recall on the matter.

43. At that time I cannot recall if I reported the issue with the BCR to CEC. Stewart McGarrity will know this. I can't remember if I reported this to the Tram Project Board. The reality was that it was not a problem as it was quickly resolved. It was resolved as they got agreement on it. I don't remember any more detail. What I do recall is that it was more a wording issue than any calculation.

THE PROCUREMENT STRATEGY

44. I have been asked about the Procurement strategy, in particular, in relation to the Projects procurement strategy of entering separate contracts with novation of the design and tram contracts to the INFRACO contractor, compared to a conventional design and build contract. As I understood it, it was aimed at transferring the risk to the private sector contractors.

45. You have to put this into context with the problem with the Scottish Parliament Building in Edinburgh, that sadly overran from a cost perspective. There was nervousness around big infrastructure projects in Scotland at that time. So I speculate that this is why Ian Kendall came up with the solution regarding the contracts. I thought it was overly optimistic that it would all work in line with the strategy on what is a complex tram scheme. It was too complicated an approach for me.

46. I did not look at alternative scenarios because this arrangement was a given and a constraint I inherited. To challenge it would have been very time-consuming and costly as the project had already appointed some contractors and had involved other bidders who were unsuccessful and they may have used an opportunity of change to make a financial claim against the project

47. The bid costs for the INFRACO Contractors on this project would have been very significant. They (bidders) in essence did not believe the tram project would happen. As a bidder you are investing a lot of money and your chances of success are sometimes slim. Some companies would not bid on projects that had more than three bidders as it reduced their chance of success. Generally this is more true in the Public Sector where the European procurement and competition rules are very strict and more demanding.

48. Companies were keen to do the work but there was a nervousness in Scotland around these large projects. Public Infrastructure expenditure was where the majority of investment was being made. If you were the infrastructure supplier at the end of this procurement process you had to recognise that the overall project risks were being novated to you. The key to a successful bid and build was all about how bidders price and manage the risk.

49. I have been referred to documents **CEC01793454** (TIE Project Readiness Review May 2006) **CEC01780540** (Procurement Strategy 2006), **TIE0070756** and **CEC01791417**. In relation to review of the procurement strategy as Project Director I was aware that Geoff Gilbert wrote a strategy. Taking into consideration the OGC Review in May 2006 that stated that the incoming tram project director should lead a review of the procurement approach in light of the concerns of some of the prequalified bidders. I did undertake a review. However this work was significantly led by Geoff Gilbert. As I have said previously there was a balance to be established between time constraints and the costs of stopping the project against the making of proper provision in both costs and plans for areas of uncertainty. Our approach was to offer a robust solution to work within the constraints before us and then make it work. You will have to speak to Geoff Gilbert about how these strategies and plans worked out.

TIE0070756
should be
TIE00707561
CEC01791417
and
CEC01791418

50. **CEC01841185** (Outline of procurement Strategy paper to Tram Board), **CEC01688881** (Tram Project Board Papers August 2006) and **CEC01791418** (Outline of Procurement Strategy – comments of Andrew Fitchie). Having now reread these documents I recall they were put forward to the Board to outline our approach to taking the procurement process forward. They would have been written by Geoff Gilbert following discussion within the team. I was content that they were a sound way forward based on the constraints we were working to, ie. a pre-determined procurement arrangement. With regard to the last document that purports to be Andrew Fitchie's comments on the Strategy I do not recall receiving or reading these specific comments. I am sure if Geoff Gilbert received them he would have considered them and reacted accordingly.

51. After reviewing these documents again and from my memory of the time, we generally addressed the key issues by reprogramming and by getting SDS to commit to doing things differently. At no point did I think that we were not on top of issues or seeking to resolve them in some manner. I did think that the solutions were there and we knew what we were doing and we could therefore press on.

DESIGN

52. The SDS Design contract was a major issue. I was their number one critic. SDS did not always help themselves. Jason Chandler was supposedly the lead contact, although David Hutchinson was the senior guy on their team. We were in the same office but they were not very amenable. They rarely gave a straight answer. At the heart of it the problem was the contract. They were contracted to TIE and were due to be novated further down the time line to the Infrastructure provider. It was difficult to get them to do work unless they wanted to do it. I would try and get them to deliver what I wanted but I was very conscious that I could corrupt the contract and bring all the risk back. If that contract was subsequently novated with all the risks sitting with TIE that would totally negate the whole intention of moving the risk out of the public sector into the private sector. This was a major frustration to me. This was an existing situation that I inherited. Because of their contract conditions SDS seemed to me to be very worried about inheriting liability

and risk and presumably costs that they may not have been able to recover when novated.

53. I had various discussions with them at every level, including an individual called Mike Jenkins who was at one time their engineering lead at head office but who later had to leave the company due to his personal circumstances. Eventually I spoke to a Chuck Kohler who was drafted in from the US and we appeared to be making some progress. At the end of the day they (Parsons Brinckerhoff) won the SDS contract. Walking away was not an option for us without ruining the programme, as no one would have ever taken on their design. It would also have been costly in penalties and would have ruined the procurement process and programme. Part of the big debate was whether the contractors would take on the design in due course under the novation arrangements. Our approach was to continue to try and work with SDS and seek to find solutions to issues as we progressed. SDS's performance was my number one concern. You can read the documents that I sent that highlight this concern and the scale of the challenge. I kept the team and the Project Board informed, and reassured them that the team could manage it. I constantly reviewed the progress of the design issues. I believe that in an effort to improve SDS performance Willie Gallagher spoke or met with Tom O'Neill PB CEO about our concerns and received some assurances of improvement. The development of the independent standard setter role and approach that utilises universal and generally accepted procedures, dimensions or materials is a step forward but not a guarantee of success, and in reality some form of concessions are requested and necessary. For example in London Underground (LUL) we would buy new rolling stock and it would rarely comply with all of the specific LUL standards and we would report these non-compliances back to the engineers and question if they were show stoppers or not? If not we would ask them to engineer with the contractor around the problem and find a solution.

54. My approach was to get this project to a place where a decision could be made (to go for the trams or not). We communicated these issues and were open about them and what we were doing to resolve them. This is all clearly recorded within the papers. There was a regular update. When I received improvement plans from SDS, I to an extent took them at their word, they were our contractors and part

of the team. We would then monitor their performance against these improvement plans.

55. We were seriously looking for ways to improve the situation with SDS, and trying to address these issues at the time was difficult as there was a lack of engineering expertise in TIE. We relied heavily on bought expertise and to address this shortcoming Willie Gallagher employed Stephen Bell. To assist Stephen Bell and to focus specifically on the SDS design an engineer that I previously worked with, David Crawley, was also brought in. David started with the project just after I left.

56. My personal view is that the SDS team were somewhat lightweight for the project. Their leads David Hutchison and Jason Chandler were theoretically sound having been involved in lots of other tram projects. If I was honest I think they were a little out of their depth with what was being expected of them in these circumstances. Their team did not appear to have the expertise required. Scott Wilson were the reviewer of the design and CEC did not have anyone. Transport Scotland might have done, but I don't recall that they did. Bear in mind that this was new to both funding parties and there was a heavy reliance on our bought in resource.

57. I have learned from past experience that Parsons Brinckerhoff are great bidders, they won the Manchester tram contract with virtually the same team as Edinburgh. I heard someone from Parsons Brinckerhoff speak at a conference on how they prepared bids. They made virtues of their past failures in bids and made a virtue of what they had learned from that. They were winning bids regularly with that philosophy and they retained their reputation as leading experts in transportation projects.

58. Parsons Brinckerhoff were not used to having their design novated to an INFRACO. That has not happened elsewhere to my knowledge. In this project eventually Parsons Brinckerhoff were not going to be working for the client, they would end up working for the Infrastructure contractor. I think that they were very worried about this whole process. It was an unusual project to bid, however, they would have been aware of that at the time of bidding.

59. Going back to the procurement strategy that Ian Kendall developed. It had the potential to be the perfect solution, but was almost certainly not the perfect solution in reality.

60. I have already explained some of the issues I had with the SDS contractor, Parsons Brinckerhoff. At that time I was extremely concerned about SDS. I raised that with them on a regular basis and at a senior level. I thought initially that the issues were poor communications between them and their client, TIE. However, I have to say that in my opinion, their performance was poor. They were poor in the quality of what they delivered and the timeliness of it. They had less than adequate leadership at project level. They failed to grasp the role of CEC and on reflection maybe that should have been made clearer. This seemed to lead to a requirement for a fair amount of design rework. They would do the design and CEC would comment and send it back. Towards the end of my involvement, CEC started to become a lot easier to deal with and maybe more willing to work with SDS to develop acceptable solutions.

61. What CEC wanted was designs to the best standard. You can't fault that, but it is often impracticable. There is a balance. The cause of the delays in producing the designs was that SDS just did not have the standard of resource. They, in my opinion, failed to grasp that and would certainly not acknowledge that.

62. I spoke to Parsons Brinckerhoff's head office in the States and the email is in the documents. This led to Chuck Kohler's involvement and that was the most positive response I received. Willie Gallagher and I had a meeting with Chuck Kohler and Greg Ayres in November 2006 in relation to our concerns. An action plan was prepared by Parsons Brinckerhoff with their proposals to address our design execution concerns (**CEC01797353**). It was only at that point they appeared to realise that I was serious. I did threaten termination. Whether I could have ever carried out that threat, as I explained earlier, was a different thing.

63. I have been asked about documents **TIE00002499, TIE00000206, TIE00001892, CEC01796317, CEC01796318, CEC01810621, TRS00003014,**

CEC01355258, CEC01360998, CEC01797353 and CEC01797352. These documents demonstrate the actions the project team took to ensure that the design was produced on time by Parsons Brinckerhoff and how we addressed this through the contract as best we could. We reprioritised a lot of the work and tried to find solutions and worked through them in that manner.

64. Seeking formal contractual remedies against Parsons Brinckerhoff for breach of contract including seeking damages and termination were considered, but the termination would have meant the end of the tram project. We did hold a lot of money from them to try and get things moving. I held back 20%. You have to find reasonable and sustainable sanctions to get improvement. Some people think that draconian solutions are the only answer. You have to make it hard but ensure that there is an incentive for them to come to the table. If you get too entrenched in a position, the other party are not going to come to the table because they know that they have a major contractual fight on their hands and would not want to weaken their position in any way. We did look at what we considered were all our viable options to get improvement but I cannot recall if there were other contractual remedies we could have used.

65. Termination was in my opinion a nonsense and ineffective solution but I can't remember specifically about seeking damages. Ideas like that may have come from Andrew Fitchie at DLA. They did the legal side of all the contracts. If we were to terminate, where would that have left us? What we would have been left with was a design part finished and no one else to take that design forward, unless we, as the client, were prepared to do that. CEC and TIE did not have the resources to take it on so we would have had to employ someone else and hold the design risk ourselves. At the same time we needed to be very sure of our grounds as we may have been potentially breaking the rules of EU Procurement. It would also possibly have given rise to the other unsuccessful bidders involved potentially claiming against us for financial recompense for their bid costs. EU Procurement Rules can be quite punitive in the event of client non compliance

66. In relation to **CEC01761655** (DPD Sub 13/09/2006 – Reference made by James Papps of Partnerships UK to a more radical approach) I am struggling to

remember what James Papps meant by a more radical approach, but by his response Geoff Gilbert did not think it was a productive idea at that time. I do not recall who employed or engaged Partnerships UK to sit on the Tram Project Board. Geoff Gilbert would know this.

67. In relation to CEC causing any delay in the design programme, **(TIE00001457)** there is something about never biting the hand that feeds you. Inevitably a client by definition has the right to challenge assertions made by the project team. It is all part of the check and balance process. Inevitably there were occasions when the Client did contribute to delays by diverting focus. There was a problem with delivery in terms of communication and SDS will state without a doubt that CEC were the cause. Getting concessions to designs against standards was a problem but as the document suggests we had a process in hand to address and ensure CEC were able to respond more effectively.

68. In relation to **TIE00001877** there were steps taken to reduce the risk of CEC causing or contributing to delays and this was in part through a weekly meeting that was set up with Keith Rimmer (CEC) and myself. On reflection we did not involve SDS in these discussions it was just TIE and CEC as the issues were wider than just the design. But the SDS issues were discussed. We could have done this better, and maybe improved the communication across the project. We also tried to more clearly identify the workload and resources CEC would need to respond to going forward to try and identify any resource shortfalls.

69. I was not the only person focussed on the design issues. These issues were reported to the Tram Project Board. I made recommendations and put these to the Board for approval. There were senior and very experienced individuals on the Board including Bill Reeves from Transport Scotland and Andrew Holmes from CEC who were both members.

70. I have been shown **TIE00000107**. It was agreed after 17 July 2006 that a weekly planning summit of key players from TIE, CEC and TEL would take place. From experience putting the right people together to discuss issues often helps to resolve many matters quite effectively if everyone has the same agenda and CEC,

TEL and TIE should have had, in that they all wanted the trams. Whether the councillors wanted it was a different thing. In this weekly meeting the TIE representative was myself, with Andrew Holmes or Keith Rimmer from CEC and from TEL, if it was anyone it was Bill Campbell or Alastair Richards, but I don't remember. From reflection this process worked well and identified real issues for discussion at the Board.

71. I don't really recall if those meetings actually resolved any design, approvals or consents issues, but it was a helpful way of communicating issues. I cannot recall if there was a formal agenda, notes or minutes taken of those meetings. I can't honestly say that they went on for a long period of time. I don't remember.

72. I have been asked about documents **TIE00071739**, **CEC01787528**, **CEC01790901**, and **CEC01791335** in relation to the charettes process and whether it contributed to delays or any difficulties in the design programme or in obtaining approvals or consents. Basically the charrettes were proposed to find ways of improving the public realm. They were aimed at creating better design solutions to improve the visual environment of Edinburgh. I had a lot of sympathy for CEC. Many people said that the charettes process was a complete and utter waste of time. I took the view that if we could improve things, and as potentially we had some funding for this, we should. As we were going to significantly disrupt the streets of Edinburgh, we should at least see if we could accommodate within the plan, some of these works. It did not seem unreasonable to me. I did send people to the meetings. It would have clearly diverted focus and resource, but CEC were the client and this process was CEC led. Now you are getting into the other world of CEC. This is not CEC the promoter, this is CEC the council. They were saying that they have the responsibility for the public realm and they wanted to take the opportunity to improve things. Some of the things they were looking at were for example where the tram lines went through one of the junctions there were existing statues already in place and CEC wanted to consider options to relocate them. It also could be simple things such as looking at signage at junctions. Road clutter is a problem everywhere. Could we incorporate improvements to this within the project. There was also a lot of discussion around bridges. You could put up a concrete bridge that is cheap and fit for purpose but it may not enhance the environment. So

if there was an opportunity to provide a better visual solution and it was not excessively over budget it may have been worth looking at. The biggest problem was that it just came late in the day. It came far too late in the process. As I have said it was diverting focus and resource. I do not know what all the outcomes were but there were some where, as a project team, we said they could not be done or would have increased costs outwith the project's estimates and Business Case. As the documents show the project team were quite robust in challenging these proposals if they felt they would have an adverse effect on the project in terms of time and cost. The Charette process was established by CEC and was documented and should be available in the records. It involved some worthies in terms of architecture (Sir Terry Farrell) and town planning, but again the names and details must be contained in the records.

73. Re documents **CEC01797673** and **CEC01821403** (and the query as to the consideration given to the effect of design delays on the other contracts), the Draft Final Business case was based on the assumption of getting it right first time with very little float in the programme. The bottom line is that project managers and directors are required to deliver projects within time, cost and quality parameters and are criticised if they exaggerate programmes as the resultant impacts escalate cost. The expertise is in assessing the activities and building in only the necessary float and creating a cost effective and achievable programme with contingencies for undefined concerns.

74. When I was at London Underground people would ask me, why do programmes only ever slip? I would answer that you have to be aggressive in the first place. This is one of the fundamental challenges facing project managers and project teams. Projects rarely go exactly to plan, the expertise is to only allow the minimum float in the programme to accommodate such circumstances. I would suggest you talk to Geoff Gilbert about this. In summary we thought that we had taken the effect of the delays in design and approvals and consents into account.

75. Referring to document **CEC01810026** once it was clear that the design was late and it would impact on other works it was always reported to the Tram Project Board so CEC and Transport Scotland were fully aware of the design issues. That

said I cannot comment on this exact instance as it does not indicate what action was subsequently taken to manage this situation, although I would be confident a solution would have been proposed to address these particular delays.

76. In relation to **CEC01688881** and **CEC01793949** in September 2006 a paper was prepared on the novation issue. Reflecting on whether it adequately addressed the likely effect on design slippage on the proposed novation of the SDS contract to INFRACO (and whether INFRACO bidders would be prepared to accept novation on an incomplete design) I am not sure, as I don't recall the paper specifically but having read it again recently, it outlines both issues and proposed solutions to address these issues.

77. I come back to the fact that we must have felt at that time that we were covering these issues. At the end of the day Trudi Craggs must have been happy with things. She was part of the team at that time. The truth of that matter is that I can't remember.

78. In my handwritten note to Geoff Gilbert on 1 December 2006 the "doomsday scenario" that I refer to was if the bids were going to come in higher than the estimate or that we might not get any bids and therefore the project might not even go ahead (**CEC01797886** and **CEC01797888**). The fact that we might not get any bids was more of an issue than the novation. The bidders were more nervous at that time as to whether the tram project would go ahead rather than the novation. There was a worry that the finance would not be forthcoming.

79. In the project team until the day that it was approved we were not totally convinced either. We thought we had a good project but we did not know that it was going to get approved. At the end of the day no one predicted that if I recall correctly 58 out of 62 councillors would have voted in favour of the trams.

80. My thoughts around the doomsday scenario in that we might only get bids higher than the estimate, made me think that we needed someone on the team who had experience negotiating with tram bidders. I suggested that we use Brian Hannaby as I knew him from other projects. He had done a lot of work with Mersey

Tram and although the Scheme had not gained approval at that time. Brian had a comprehensive amount of information and experience regarding tram costs and I thought this may be useful for our project at this stage. Liverpool had a lot of similarities with Edinburgh as it had a lot of wide streets and it led to a different approach. So I suggested to Geoff Gilbert that if we were going to get high bids then Brian had done a lot of negotiation previously in this regard on other tram projects and we should use his experience. I left it with Geoff Gilbert, I had made the suggestion but it was his call. I did not know the outcome as I had left by that time. I think that Geoff eventually had one of Brian's associates come up to Edinburgh and do some benchmarking on cost levels. In simple terms benchmarking is based on comparing different cost elements of the project to establish if there are any obvious anomalies. Examples might be the cost of track, the depot, tram stops. Having identified anomalies investigation of the reasons for this may give clues as to areas that may be over or indeed under specified or priced.

UTILITIES

81. I have been asked about Utilities. (**TIE00000255**). The MUDFA contract was entered into in October 2006. I was content with this contract. I knew that utility diversion was always problematic. We thought we had done everything we could to minimise risk. The specifics of this document were made at a less senior level and I left them with Trudi Craggs to resolve. The strategy for separating the utility diversions from the main infrastructure track works in my opinion is a sound one as it should allow the main track works a clear run avoiding costly hold ups and delays as utilities are diverted. It also allows for the employment of specialist utility contractors and does not leave this work with infrastructure and track contractors.

82. **CEC01808716** is a thread of emails in October 2006 regarding the MUDFA contract and the lack of alignment with the SDS contract and deliverables. I have no recollection of the issue that Alan Hill of TSS is raising or if I attended the subsequent meeting. Geoff Gilbert may recall this.

83. **CEC01672004** and **TIE 00041030** refers to a review that the project prompted. It was a review of the TSS report on SDS Preliminary Designs. On

reading the emails again I can see that the package of delivery design material given to TSS to review did not include any utility designs. I did not read this document. I do not know why that was or if it contributed to the delay in carrying out the MUDFA works.

84. Re document **CEC01821403** (the December 2006 Draft Final Business Case), my understanding in relation to MUDFA was always to get that finished before the INFRACO works commenced. That was always the plan. I was aware with the geography involved, you could run one behind the other, but the plan was always to complete the MUDFA works first, so it was an easy run for the infrastructure contractor after that. As my memory served me I thought that there was enough time in the programme to allow for the MUDFA works to be completed before the infrastructure works.

85. In relation to the consideration given to the effect on the INFRACO contract of any problems or delays with the utility works you would need to speak to Geoff Gilbert. I do not recall the detail. These concerns appear to be pre-finalisation of contracts and I believe would have been resolved prior to contract placement as part of a risk review. Geoff will have a clearer view on this. (**CEC01621728, CEC01621729**)

THE INFRASTRUCTURE CONTRACT

86. I have been asked about INFRACO. The invitations to tender for the INFRACO contract were issued in October 2006. I can't remember the identity of the bidder described in a paper 'INFRACO – strategy in the event of only having one bidder'. I can't remember who this bidder was. My guess was that it was Bilfinger. They were the toughest in that period of time. Geoff Gilbert will know this. I couldn't remember who the other bidders were until I read the paper in the above document

87. In an email on the 28 September 2006 (**CEC01828656**), I noted that Bilfinger had suddenly reopened the costs issue looking for reimbursement of their bid costs and that if it wasn't for the problems that having only two bidders would cause I said (using a rugby term) that I would have liked to kick them into touch. Bilfinger were

quite aggressive and wanted their bidder costs recovered. We took a firm line and were never going to agree to that and yet at the same time we were trying to do our best to keep the process competitive. The cost issue refers to tendering costs.

88. I think they reopened the costs issue because they had to get approval from their board for the bid money and I think they were testing our resolve. My concerns at the time with Bilfinger is that they just did not seem interested. They didn't seem to want to do it. Maybe they were testing me or just chancing it.

89. In the minutes of the Design, Procurement and Delivery sub meeting on 8 November 2006 (**TRS00003014**) it states that Amec had withdrawn their INFRACO bid for terms and conditions reasons. I do not remember what the terms and conditions issues were. They did have some joint venture problems with their partners and contractors. I can't remember any other details. You would have to ask Geoff Gilbert about this.

90. With Amec withdrawing it left two bidders and after consideration I felt that this was a sufficient number and would still provide a good competition. We could have stopped the process but it would have been costly and extended the programme but on balance I, and the team, felt we could still achieve a competitive bid utilising just two bidders. I went back to Transport Scotland and CEC and told them the situation and our views on managing it. They agreed we should continue.

91. In relation to **CEC01795260** and **CEC01795314** I was aware that in October 2006 Bilfinger sought a three month continuation of the period for submitting their tender. At this point we still had three bidders with one of the bidders saying that they could not get this done in time. In this situation and not wishing to exclude someone we listened to what they had to say and took the view that we would allow the extension. Obviously this had to apply to all the bidders. Geoff Gilbert will be able to give the details.

92. In the draft business case it was TIE's intention to have a well advanced design by the time that bids were sought from the private sector for the tram vehicles and infrastructure. I am referred, for example, to the May 2005 Draft Interim Outline

Business Case (**CEC01875336**) which stated that it was envisaged that the design work would be around 60-70% complete when the INFRACO contract was signed (para 5.7.1). I am also referred to the December 2006 Draft Final Business Case (**CEC01821403**) which stated: "Responsibility for the preparation and application for most necessary consents and approvals has been passed to the SDS provider and this risk will pass to the Infraco at the point of novation" (para 1.84); "The novation of the SDS Contract to the Infraco will mean that responsibility for the design and all risks arising are transferred to the private sector integrator (Infraco) (para 7.50); "It is expected that the overall design work to Detailed Design will be 100% complete when the Infraco contract is signed" (para 7.53); "The novation risk is mitigated by: ... Detailed design being largely completed prior to award of the Infraco contract" (7.61). This was always the case. But in relation to all the questions around detailed design and novation and the business case you should ask Geoff Gilbert. I can't recall the specifics mentioned.

93. My preferred solution would be as the client to acknowledge that they will carry some of the risk. You need to be much clearer about where risk can sensibly be managed and dealt with and find a solution to meet that. The concept that you can pass all risk to the private sector is not really achievable.

94. In relation to considerations given to the risks of incomplete design on the INFRACO contract and what would happen if the INFRACO bidders refused to accept novation (**TRS00003669** and **CEC01881455**) you would need to speak with Geoff Gilbert. It was him that came up with the solutions to overcome these scenarios

95. In relation to the OGC 1 Review in May 2006 (**CEC01881455**), and the recommendation that the procurement strategy be reviewed in light of concerns expressed by some of the bidders about novation, including that "there are reports that potential Infracos may not want to take on designers or charge a full premium for full novation of the SDS contract", I was aware of that and we did review it and we decided to carry on. We took note of it and we carried on as we felt we could manage that scenario.

96. In the email dated 29 September 2006 (**TIE00079638**) James Papps from Partnership UK informed Graeme Bissett that the knock on effects of problems with novation is that serious risks come back to TIE and the public sector, and I agree with this. It is a fact of life. Where else would these risks go. The public sector is the last resort.

97. I sent an email (**CEC01796411**) in October 2006 where I expressed a view that it was unlikely that INFRACO would take on approvals, consents and liability transfer in respect of incomplete design. This was my view, but my aim was that the team would overcome this in the process of what we were doing.

98. In the report to the Council on 21 December 2006 (**CEC02083466**) it sought approval for the Draft Final Business Case. In the report I see that it noted that negotiations with bidders should continue with a focus on achieving a high proportion of fixed cost in the final contracted capital costs. This is what we aspired to do. Geoff Gilbert will be able to provide details.

99. I was away after December 2006 and I have only spoken to Matthew Crosse once since he took over and this was at a value engineering workshop. I did recommend him to Willie as he was the best of the people I considered at the time. I do not know what happened after that.

100. I have been asked about document **CEC01360998** which notes that the intended programme for commencement of revenue service was by December 2010 and was considered extremely challenging by INFRACO bidders and I agree with this. Willie Gallagher and I had a disagreement about this. He announced that date without consultation. His motives were good as he saw the impact that New Year has on Edinburgh. He saw the benefits of finishing this before Hogmanay. He thought that would influence public acceptance. I challenged him over that, but his motives were genuine. He announced it to the media and at that point it was done. He had not checked with me first. It became another target to be achieved.

101. We thought through all considerations in relation to the risk that an award of a contract for priority works to the preferred bidder may weaken TIE's position with that

bidder when negotiating the main INFRACO contract. We thought that we could deal with it. You need to speak to Geoff Gilbert for the detail.

102. You have asked, given the delays in designs and in obtaining the necessary consents and approvals in late 2006, what consideration, if any, was given to putting the INFRACO tendering process on hold until the necessary design, consents and approvals had been obtained. We were not looking to delay. If you wait for everything nothing would get done. We were pushing this on. I do not recall considering putting this tendering process on hold, we felt we had solutions to mitigate these issues.

THE MANAGEMENT OF THE TRAM PROJECT

103. I have been asked about Management. The email **CEC01762856** on 20 December 2006 follows on from a Programme Issues Workshop where I highlighted my concerns to my team that they were failing to complete some actions within timeframes. My message to the team was let's not point the finger at other people when we were not meeting targets ourselves. These were my deadlines, not other peoples. I didn't want the team to take their eye off the ball.

104. My assessment of the senior project team staff at that time was that they were very good and solid professionals. I had every confidence in them. There had been quite a lot of changes in my 7 months there. Certainly the old guard when I arrived and the people that I had interviewed on my first day, with the exception of Trudi Craggs and Stuart McGarrity, had all left. The others couldn't quite see things how I saw things and wanted things to carry on as they had before my arrival, that was not sustainable. Some decided to leave and some were helped. Names of people who decided to leave that spring to mind are Willie Frazer and David Ramsey.

105. In relation to documents **TRS00002791** and **TRS00002789** and questions about risk registers and whether risks were managed properly, generally I would say that my view on risk was that we had a process that worked reasonably well and that was available to all. We produced our risk registers and anyone could see them. These were also reported to the Tram Project Board.

106. I got frustrated sometimes with it being a process for process's sake, rather than it being a tool to benefit the management process. I did not spend a lot of time on the risk registers. Most of the risks we knew about. Yes, there are risks shown as green that should have been red. I can't get excited about this. Mark Bourke ran the actual process. I thought that it was somewhat bureaucratic. There is nothing in the substance of this that is a surprise. They were issues that we were dealing with.

107. **CEC01796593** is the primary risk register dated 31 October 2006 and I note that the treatment strategy for risk 280 as being "identification of key areas requiring SDS attention. R-focus SDS effort" and it was coded as amber. **CEC01695695** refers to the risk register that was submitted to the Tram Project Board on 11 December 2006 and in relation to risk 280 additionally states "Apply micromanagement to SDS delivery. Weekly reviews to press for deliverables" Coded as red. These were issues we were dealing with. The extra information added some weeks later was how we were going to deal with this, the solution. Micromanagement was where we were getting on the SDS issue. The problem with micromanagement was that it potentially diluted their accountability.

108. In the emails dated 21 December 2006 and 3 January 2007 (**CEC01788354**) regarding the closure and reopening of risk 184 was just an error. It was past my time but I am sure it was just an error.

109. You refer me to an email from Nina Cuckow (**CEC01792722**), who in 2007 was the Tram Project Risk Manager, to Mike Jefferyes who was a consultant at that time. I do not recall Nina Cuckow. I had left the organisation by that time. Mark Bourke was the risk manager when I was there.

110. Generally I can understand that people involved in preparing risk reports may have felt that we did not take enough time over them. But we were addressing the issues at the highest level that we could and on a very regular basis. Maybe Nina Cuckow felt that there was a need for further action. I would not share her concerns. I would not spend time deliberating over whether it was red or green. I was more

interested in knowing what I, or the team needed to do to mitigate or manage the risk.

111. In relation to the Technical Support Services (TSS) provider, Scott Wilson Railways Ltd, I never read their contract. My view was that they were there to assist the project team in terms of engineering processes at the highest level. Turner and Townsend were sub contracted to Scott Wilson. They were looking at cost, estimating, bid pricing and Scott Wilson was for engineering. They were part of the our check and balance process to ensure we had a robust project. They were engaged before I started.

112. I do not know if their remit was to assist in ensuring that designs, consents and approvals were produced in time or indeed managing the interfaces between the procurement and implementation of the different contracts. I cannot remember thinking too closely that I should be getting them to do more. I looked at them as a resource that was available. I can't recall who in my team that they reported to.

113. **CEC01630352** is a letter dated 22 June 2006 from Scott Wilson raising concerns. I remember this letter. I had a meeting with Mark Jackson from Scott Wilson who I had met before on a previous contract. Generally I agreed with all the concerns that he raised and I used it to influence the approaches I took with certain issues. I did not follow it letter by letter nor did I make an issue of it. It contained advice that I took on board. It influenced some of my decisions but I did not use it as a checklist.

114. **CEC01796735** and **CEC01796736** refer to dashboard documents prepared by TSS. To be honest I don't even remember these. They obviously did not light a fire in me at any point so as I would recall them. When I saw them in the documents provided by the Inquiry I didn't even recall them then. I do not believe I ever included them in the Project Board Reports. If anyone was to address these in my team it would be Geoff Gilbert. The records show that I questioned if they added value and whether we needed them or not in the email (**CEC01796734**) that I sent to Geoff Gilbert in November 2006. I can add nothing further.

GOVERNANCE

115. In relation to Governance, the OGC review in May 2006 (**CEC01881455**) noted that the governance structure appeared complicated. My views of the governance structure at that time was that governance arrangements become clearer and improved over the time I was there. Graeme Bissett did a lot of good work in this regard. He made roles and responsibilities clearer. During that time we improved process and procedures and had more structured reporting. We took on board OGC's comments. The exact role(s) of CEC was more complex. Transport Scotland was straightforward in that they were the funder. CEC were a part funder. You would have thought that the final approval of the scheme rested with Transport Scotland as the majority funder, whereas in reality it rested with the councillors of CEC. The onus was put on CEC to confirm it wanted the Trams. The Approval decision was made by the councillors not by CEC officers.

116. My approval route was simple, through the Tram Project Board. I reported to them first and foremost.

117. In the email **TIE00002180** I sent on 5 July 2006, I advised staff to give Julian Ware from KPMG what he asks for but no more, at this time it was still not fully clear what all the parties' roles were. I note that this visit was as a result of KPMG having reviewed matters and that they were concerned about the INFRACO procurement novation.

118. Information that was commercial and confidential we would not have shared. From my point of view anything that went into the Tram Project Board would be for all to see. We did not go out of our way to be secretive.

119. In relation to the KPMG issue, I was trying to avoid mischief. Give them the answer to what they want but don't give them more as people create work for themselves. We did not have the time for this. We did not deliberately not share information and issues. Sometimes we had to be a little sensitive about what we told people because of the commercial and confidential nature of what we were progressing. KPMG were Transport Scotland's Advisor on business case.

120. The Tram Project Board were properly advised in relation to the issues and concerns, in particular in relation to the delays in design, approval, and consents and any knock on effects on the MUDFA and INFRACO contracts. I'm not sure if the TIE Board were advised as I did not prepare the TIE Board papers. I can't remember who did. I don't recall any details of TEL Board meetings. CEC officers were represented on the Tram Project Board. There was also a CEC councillor on the Tram Project Board.

121. For me, when I left and Bill Reeve thanked me for my contribution, in public, and said that if I ever wanted to work in Scotland again I would be most welcome, I perceived on balance that they must have thought that I did a good job.

122. I have been asked about documents relating to the OCG1 Review carried out in May 2006 (**CEC01881455, CEC01778889, CEC01629382, CEC01355258, CEC01850949** and **CEC01797590**). I was responsible for implementing the recommendations of the OGC May 2006 review and implemented everything that they suggested. I made sure that we got the recommendations to the position of green as I knew if they were still red I had to explain why that was so and the project could be stopped. I closed out all the recommendations. We didn't have a specific action plan to close down these issues we used the review document itself.

123. The developments leading to closure of these recommendations were recorded on them. There was a further review in September and then a follow up in November 2006 and I can recall that all the recommendations were cleared to the review team's satisfaction. The member of the review team that I dealt with was Sian Dunstan. I knew there would be a major issue if any of these recommendations were not executed by the time of the follow up reviews.

124. In the email **CEC01797628** dated November 2006, Trudi Craggs told Geoff Gilbert and I that she was concerned to meet the OGC Panel as she was aware that they would cover progress against recommendations of the last review. She goes on to discuss various concerns she had about the procurement process to date. I would have expected Trudi Craggs to raise her concerns within the team and work

with them to find a solution, which is what she did. I don't know what happened at her interview or whether her concerns were answered beforehand or not.

125. In relation to her comments about the quality of the Invitation to Negotiate (ITN) and the ability to get a robust price from the ITN/Employers requirement, and that she didn't think that the quality was of a sufficient standard. I have to say that in terms of OGC it was not raised as an issue. When she highlighted this in the email I told her to fix it with the team. You would need to ask Trudi Craggs about whether or not she was content about this, it would have been Geoff Gilbert that she spoke to.

126. I am asked why TEL were created. I do not know why Transport Edinburgh Limited (TEL) was created. Trudi Craggs mentioned this in her email dated 18 June 2006 (TIE00002060). I see that she states that she feels that "we were back fitting a solution to a problem we've created" in relation to the TEL/TIE structure. You would have to ask Trudi Craggs about this.

127. TEL's aim was simple that they were to be the long term operator post project of the Edinburgh Tram System and Bus Network and were involved with the project team to optimise post project operation.

OTHER MATTERS

128. When I ceased being Tram Project Director I would be very surprised if I did not leave a handover document for Matthew Crosse. I do not have any of my notebooks or diaries from that time. I left the Tram Project for personal reasons. I had a good relationship with Willie Gallagher and the team. I had signed up for 3 months and had completed 7 months. When I said I was going I didn't have another commission to move on to. However soon after I left I was asked to work for London Underground.

129. I knew that Matthew Crosse was going to replace me when I left. He did a couple of days handover with me. In any case I was going to be around in the new year, as stated I did not have another position when I left. The deal was Willie Gallagher asked if he could keep me for one day a week. I was not keen to

undermine Matthew, so Willie Gallagher and I agreed that when I came back my role was to run a value engineering process. The aspiration was that £50 million would be saved off the capital cost of the project. This was to create headroom and more contingency. That was the arrangement but I was never going to run the process of value engineering. I just had a few ideas on where the money might be saved. For example there was massive debate about the depot which was at the end of the runway for Edinburgh Airport. As you look at it there was a safety point for clearance of planes and this was always an issue with the depot. One of the lads (Phil Douglas) went out and looked at it and said if BAA could agree to move the runway safety zone back we could build the depot at ground level and this would stop the need for the expensive excavation, removal and drainage involved in lowering it. This potential saving needed exploring with a saving of up to £10million available. I sent Phil to speak with BAA and that was one of the savings that we managed to achieve. So instead of the depot being 3 metres under the ground it was at ground level. I had other ideas that I wanted to suggest. My new role was just to manage this process. The other reason was that it allowed Willie and Matthew access to me during this time.

130. This arrangement did not last that long. The bottom line was that Mike Jefferyes of Dearle & Henderson as it was then, was doing the value engineering workshops. My involvement was to attend and contribute. Once Mike Jefferyes had established his credibility I left him to it. I am not sure if I was still employed by Nichols at that time or whether TIE contracted me directly.

131. The cost savings I have referred to were not for another part of the project (for example line 1B) they were solely for contingency. It was about challenging the assumptions that you have not had the chance to challenge previously. I couldn't tell you if they ever made the £50 million savings, you would have to ask others this.

132. **CEC01796477** is an email dated 30 October 2006 from Geoff Gilbert to others including me in relation to the cost of a mock up tram costing £500,000. I believe that money was allocated to a tram in the Princes Street Gardens. Whether it actually happened I do not know. The costing would have come from the tram supplier. This would be a decision for Willie Gallagher and the Board not for me. If it

was me making the decision I would have said it was a non-essential thing to do. I do not believe I approved or agreed that expenditure.

FINAL OBSERVATIONS

133. In hindsight and as I reflect back on the fundamental issues in respect of the tram project I would ask; What was the overall political or infrastructure driver? I am not sure I know the answer to that. Would there now be a problem in Edinburgh if they were still reliant on buses and not the tram? That said on a recent visit to Edinburgh I got some very positive feedback on the Tram.

134. For me I would have questioned at the earliest stage the procurement strategy. But what would have been the right one I don't know. I think that Ian Kendall's motivation was to transfer risk from the Public Sector. He appears to have tried to manage the project by himself. His management model was in my opinion flawed. The project was spending £40 million a year on internal costs and fees alone. TIE was a fairly big organisation. I do find it hard to be critical about what I inherited and I believe the project team worked very hard in delivering the project to the approval stage. I am sure someone would and could criticise the 7 months I was involved. There was no big handover document when I arrived. At that time the CEC and Transport Scotland appeared quite distant from the project team. I am proud of my contribution to the tram project.

135. Overall I would say that clarity over roles and responsibilities should have been agreed earlier. I think the procurement strategy was flawed. I am loathed to criticise SDS because someone else created the framework in which they were working. I did not rate Parsons Brinckerhoff at the time. They were a very successful organisation and if people talked about exemplars ironically it was most often about Parsons Brinckerhoff. My personal dealings with them have never been that stunning. In my opinion they could have done better.

136. For me, my contribution was about turning the project around and getting it back on course, getting people motivated, and I wouldn't have been as successful at this without the support of Willie Gallagher. Nor would Willie Gallagher without me

as I was able to get the project team organised which allowed him the time to undertake the vital promotion and PR activities.

137. I have responded to the questions I have been asked and provided answers and opinions as requested except when my memory of events fails me. I would observe that the questions asked and thereby the responses provided do not always fully capture the context at the time.

There is nothing more I would like to add to my statement.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 36 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, as are any opinions expressed by myself.

Witness signature.... 
Date of signing..... 6th JULY 2016