**The Edinburgh Tram Inquiry**
**Witness Statement of John Ramsay**

My full name is John Ramsay. My contact details are known to the Inquiry.

I was involved with the Tram Project from 2005 until I retired in 2012.
I worked within the Scottish Office / Rail Directorate of Transport Scotland as Project Manager of the Edinburgh Tram Project. When Transport Scotland withdrew from the project's governance arrangements after May 2007, I continued being the main point of contact within Transport Scotland for the City of Edinburgh Council and, on a less frequent basis, TIE.

I therefore wish to emphasise that while I have a reasonable recollection of the key events of the project over the years, having been retired since 2012, I no longer have the same understanding or recall as clearly as if I still had ongoing day-to-day engagement.

Statement:

## Introduction

- In terms of my professional background, I have wide experience of working across various departments of the Scottish Office / Scottish Executive / Scottish Government. Typically, as a civil servant, I would spend two to three years in any one post before being moved to another role - the doctrine at the time was that civil servants should be generalists. I tended however, to focus mainly on estates and property work, covering the Sheriff Courts, the Scottish Office itself, as well as NHS estates and other diverse policy areas such as Emergency Planning, Childrens Hearings and the Natural Heritage. Throughout I maintained and developed an interest in project orientated work – specifically in the case of latter responsibilities on project management.

- In terms of actual personal construction experience I would also add that I have direct hands-on experience – albeit on a much smaller scale, having designed and built 2 of my family homes as well as redesigning / developing 2 others. I have also successfully provided advice and project management to others on similar scale projects.

- In 2003/2004, Ministers initiated a programme of heavy rail improvements in Scotland. This consisted of both new rail projects and the modernisation / renovation of old railway lines such as the Airdrie/Bathgate line, the Glasgow and Edinburgh Airport rail links, the Stirling/Alloa/Kincardine railway and the Edinburgh Tram Project.

- Each rail project had an allocated Project Management team within the Development Department of the Scottish Executive reporting to the Head of the Rail Projects Group – Damian Sharp.

- I applied for a Project Manager's role in this Group in the summer of 2004. My application was successful and I was allocated the role of Project Manager of the Edinburgh Tram Project, covering as was then Edinburgh Tram Lines 1 and 2, in November 2004.

- The duties and responsibilities in relation to the Edinburgh Tram Project at that time were directly relevant to the progress and development of the project but covered:

- Supporting Ministers;
- The administration of the grant, matching Scottish Government resources to its responsibilities in relation to the Project;
- Liaison with all parties;
- Briefing and reporting progress and developments; and
- Handling public enquiries and correspondence.

## Transport Scotland

### Attitude

- From my entry into the Rail Projects Group, it was obvious that Ministers and the administration of that time were actively supportive of City of Edinburgh Council ("CEC") in its development and planning for the Tram Project. CEC had been desperate to get a light rail project started for many years. At the time, it was also clear that there was heavy engagement politically, at CEC level and also at national level, to see what could be done to assist Edinburgh in achieving that. It was all done under the heading of the New Transport Initiative ("NTI"). Consequently Ministers approved a major grant for the Council to enable it to plan and develop such a system

- Trams were widely recognised to offer an efficient and more environmentally friendly method of mass transport within an urban context - a trend appreciated in other UK and European city centres, where people had recognised trams were attractive, efficient and clean and consequently had reduced their car usage and traffic volumes within city centres. Trams were also seen as offering improved public transport interchange and connectivity – in Edinburgh's case potentially offering a key to unlocking areas like Leith and Granton which were scheduled for or already undergoing redevelopment.

- I was also personally supportive of the Tram Project having experienced such light rail across some European cities and within the UK.

- However, it was clear from the outset that CEC was the owner and client of the project. The role of SG / TS was clearly that of major funder with limited governance responsibilities. Accordingly, within TS we were always conscious that we had to maintain a distance, supporting Ministers wishes via limited governance and influence as the major funder whilst also protecting the public purse.

- So, from the outset SG / TS was the 'banker' for the project. Scottish Ministers had promised up to £375m grant on the basis that CEC would provide 10% of the Ministers' contribution. The expectation was that TS would pay for the developmental costs of the project – the initial planning and design on an agreed shared cost basis, with the actual percentage arrangement for the full funding to follow thereafter to permit the project to proceed to procurement and construction. From the outset Ministers had also agreed to fund in parallel the costs of the requisite Parliamentary Bills process. Just to be clear this was in addition to the £375m.

- Planning and design of a light rail project through Edinburgh was going to be a tremendous achievement in itself, due to the historic and cultural nature of Edinburgh. To drive a light rail system through a city centre at a time when traffic increases were increasing almost exponentially would be an enormous achievement given the attendant utility disruption involved. This was a difficulty that was well recognised by all, especially given the previous experiences of other European urban systems e.g. Dublin and Nice which utilised common road routes rather than redundant or former railway lines. It was no surprise that this proved to be challenging.

- Transport Initiatives Edinburgh ("TIE") was an arms-length company of CEC. Whilst SG / TS wanted to ensure that, where we could, we would influence CEC and their arms-length company, it was always a fine line between being banker and being engaged to any great depth with a project of this nature and complexity where SG was not the owner.

- At item 8.4 of the appendix to a letter sent to Stewart McGarrity dated 22 April 2005, in relation to issues that needed to be considered regarding the roles and structure of the public sector bodies involved in the project, it was noted that *"SE will have control and influence over TIE and TEL"* (**TRS00008519**). TIE had the requisite expertise and professional knowledge, CEC were the owners of the project. We were in fact the major funder so there was never a requirement for TS to micro-manage the project. At the same time however, we had to protect Ministers' interests.

- We had a formal relationship with the Council as project owner. They were the client and TIE was their responsibility. There was a Project Board at a higher level on which SG / TS would be represented by Damian Sharp head of Rail Projects Group and his senior manager, John Ewing. That proved to be the basis of our governance. After Transport Scotland was established, attendance at TPB was mainly Damian Sharp as well as the Director of the TS Rail projects Group, Bill Reeve.

- Although until 2007 there existed an open information sharing regime, TS had no involvement in the decision making processes regarding planning / design procurement or construct phasing. From the outset however, there was engagement on behalf of transport designers and planners regarding which routes would present the best possible initial return for CEC. There was always an intention to build a link at a later stage from the city centre out to the south-east, which would reach the science park and the new Edinburgh Royal Infirmary. That was to be Line 3

- The decision to build two lines was made by TIE and CEC under the guise of the Tram Project Board ("TPB"). We were not involved directly with the TPB. We did not interfere in CEC's determination of routes. The reason it was eventually decided to build only Phase 1a was that, given the eventual scale of the Anticipated Final Cost ("AFC"), it was recognised that the Airport to Newhaven route would cover the bulk of the expected return. The route which would run from Granton to Leith was seen to present particular problems which would have to be addressed, and which would reduce the effective return.

## Creation of TIE

- Appended to a Council Report is a letter dated 28 February 2002 from Wendy Alexander, Transport Minister. This letter supported private sector involvement and the principle of an off-balance sheet company (**USB00000232**). You will note that in an email sent by me on 25 November 2010 I mentioned that TIE was set up at the request of Scottish Ministers in 2002/03 (**TRS00011258**).

- The main reason that drove the creation of TIE was that the NTI consisted of a number of projects, not just the Tram Project. It was recognised that CEC did not have the breadth of experience that would be necessary to implement the NTI itself. CEC had expertise in terms of road and traffic engineering, but it did not have sufficient light rail expertise or the breadth of major private sector construction project expertise...

- There was also recognition that an arms-length company would provide CEC with an optimum service - based on the success of similar operations elsewhere in the UK. For example, if you were talking about congestion charging you would be looking to employ people from London who had implemented such a scheme. If you were looking at trams, you would want people who had relevant background and professional expertise from elsewhere in the UK and abroad.

- I did not consider there to be scepticism about the ability of the local authority to deliver the NTI. There were sound reasons for the creation of TIE. The creation of TIE to deliver the NTI projects was the mutual decision of CEC and the Scottish Executive.

## Business case

### Outline Business Case

- On 22 April 2005, I sent a letter to Stewart McGarrity together with TS comments on the 31 March 2005 Interim Outline Business Case ("IOBC") (**TRS00008519**). The background was that SG / TS had decided to form a small in-house expert advice team to advise Damian Sharp and thereafter Bill Reeve on the rail projects that were underway. This team comprised a number of ex-rail professionals (and in terms of the Edinburgh Trams, included John Bygate – who had overseen the construction and operation of the Hong Kong light rail system) and advised TS on the IOBC as well as the other heavy rail projects. When Transport Scotland was formed we built on the success of the in-house expert approach by contracting with Cyril Sweett (mainly) but also with other construction agencies who had specific private sector / major construction expertise and skills.

- I was the focal point for comments coming in and Damian Sharp and I drafted the TS response to CEC and TIE. We incorporated in our considerations comments from across the SG as well as the ex-rail professionals.

- The Outline Business Case ("OB.") was agreed by the Scottish Ministers in August 2005. In April 2006, updated advice was circulated in relation to the OB. (**TRS00002378**). This advice to Ministers stated there was an urgent need for a variant bid from bidders. The suggestion for a variant bid came directly from KPMG, who wanted to test the methodology used by TIE and accepted by CEC. Paragraph 9 of Annex B of the advice stated that TIE's proposed procurement strategy required increased attention to governance issues. Furthermore, it said that the position of TS as majority funder exposed it to continuing funding pressure. If Scottish Ministers were putting up 90% of the funding and CEC only 10%, very quickly we would have got to a situation, if we were not careful, where CEC were requesting additional funding beyond the £375m.

**Benefit Cost Ratio**

- To judge the overall benefit in a business case, you have to compare the benefits of not doing the project against the benefits that the project will deliver, taking into account the capital investment required to reach those benefits. Therefore, you get a "without tram" and a "with tram" case. The "without tram" case contains improvements and investment in the buses and improved traffic modelling. The "with tram" case would include the benefits of the tram and the benefits that would accrue in time from the investment. The outputs were finely balanced, and that is what led to the decrease in expectations for the Benefit Cost Ratio ("BCR").

- A note dated 20 October 2006 was shared between Steer Davies Gleeve (SDG) staff, who prepared the business case (**TIE00738328)**. Alasdair Sim stated that the note, *"does give direction as to where we should direct our arguments"*. He said that because I had shared some of TS's internal considerations. He felt that it was necessary to tell that to Buchanans, to make sure they understood the sensitivities and the reservations that people had at a senior level in TS.

- The marginal business case was also noted in the final draft Cabinet Memo by the Minister for Transport – *"the assumptions made by tie in the business case for the tram are key to the positive BCR and the case for the tram is now marginal and very sensitive to assumptions"* (**TRS00003493**), paragraph 7. It was clear from this that TS were hostages of the ability of CEC and the TPB to get these estimated costs tied down and finalised. This wasn't new - there had always been, within TS, scepticism about the level of the development of the business case and associated AFC.

- In November 2006, I was informed of a serious error in the draft business case (**CEC01797363** and **CEC01797364**). SDG's response was to deny that there was an error in the BCR (**TIE00737785**). I do not recall what the problem was but there was a lot of development work in progress and this should not necessarily be taken out of context. It might seem more significant than it actually was.

- On 7 December 2006, Andy Park sent an email to me saying, *"Firstly, I can confirm that the economic assessment resulting in the calculated Benefit Cost Ratios is in line with the letter, if not always the spirit, of guidance":* (**TRS00003176**). This was critical of the calculation of the BCR and it was self-evident that Andy Park had reservations about the methodology applied by TIE. We had discussions around the desk on regular occasions where Andy Park would reiterate that he was unhappy with the Joint Revenue Committee ("JRC") and that he would have done it differently. Andy Park goes on in his email, *"I would tentatively suggest that it, once looking, or being forced to look, at the detail, may be quite difficult to defend the project on economic grounds. I am certainly not particularly looking forward to doing so".* This is a reference back to the sensitivity regarding the reduced BCR, which was coming out below original expectations. If the BCR fell below one, there was no way that Ministers would have contemplated any kind of further expenditure on a project that could not produce a BCR of at least one.

- On 16 February 2007, Andy Park said he was unhappy at being asked to make a decision on business case as the time for scrutiny was quite limited. There was still concern as to the BCR (**TRS00003681**). Despite this, on 19 February 2007, TS were happy to endorse the position that the BCR was in excess of one (**TRS00003795**). Unless the TPB dealt with these issues successfully, or Ministers were of a mind to instruct us to step in, the weaknesses would remain.

- In February 2007, Ministers approved advance monies for MUDFA (the utility diversion works necessary to clear the way for construction to proceed). They made it clear that the BCR would have to be reassessed when the final case was submitted. This was more pressure on the TPB, CEC and TIE. They had to deal with issues that we recognised as being against Scottish Transport Approval Guidance ("STAG"). TIE came to us in advance of the Holyrood Election in 2007, asking whether we would be happy to release funds for advanced works on MUDFA.

This of course would involve digging up the city streets and diverting utilities. It was seen nevertheless at that time as both logical and cost saving approach. It also gave TS another opportunity to underline to CEC and TIE our continuing reservations about the way in which aspects of the business case were being developed.

**Scottish Transport Approval Guidance**

- There is reference to TIE having undertaken a full appraisal *"in line with the letter of the STAG guidance but in doing so has made a number of assumptions that are open to question"* **(TRS00003494)**, paragraph 1 of Annex A to a Cabinet Memo **(TRS00003493).** TIE seemed to be making a number of assumptions of dubious merit. We were sceptical of TIE's methodology given that we knew about their design weaknesses and were not in complete agreement with their treatment of risk and optimism bias. However, the mechanism for dealing with these was the TPB, in the knowledge that CEC was carrying the risk.

- There was also a lack of a pure *"do minimum"* model in the tram business case, which was contrary to STAG guidance **(CEC01819137).** Andy Park and his staff had identified this weakness but it related to an esoteric viewpoint in respect of the application of the traffic modelling benefit assumption. It did not appear to have an impact on the business case, but it did produce a further exchange of views between TS, CEC and TIE. Whilst there was no clear decision from TPB, that may have been because it was never going to be a 'showstopper'.

**Draft Final Business Case**

- I produced a note around 19 October 2006, stating that the Draft Final Business Case ("DFBC") was due in November 2006. The JRC – consisting of SDG and Buchanan – were responsible for producing the business case (**CEC01819137**). I can recall Alistair Sim being one of TIE'S staff with the responsibility on JRC. SDG and Buchanan's responsibility was to take the planning intentions, model them in transport terms and indicate how this would develop the output as part of the business case. All the input into the Business Case on traffic modelling, benefits returns and so on would have come from the JRC.

- The note also states that, *"a first pass was produced on 7 September that showed a very weak economic case for the Tram. Further work was undertaken to refine this case resulting in a healthier picture as of 29 September and refined again at 16 October. A comparison of these results is shown in Annex A. It will be noted that there are extremely significant differences between the initial and the later versions (which have small refinements and corrections) and work is on-going to examine the reliability of the current position. There are two streams to this – the without Tram model and the with Tram model"* **(CEC01819137)**. Part of this came from the balance, in Business Case terms, of income, savings and reduced traffic flow as people transferred from private cars. The latter was treated as a benefit and could actually be costed. I struggled to fully understand in a financial sense why such impact on the traffic modelling benefit assumption might have been underplayed but overall I accepted the developing / refining of the Business Case, but did not agree that it produced a healthier picture. That is why there were significant changes between the initial and later versions of the business case. It is an area where there is a requirement for somewhat technical expertise that remains open to lay speculation

- On 27 November 2006, a meeting was held between TS, TIE and KPMG at City Point, which I attended. The aim of the meeting was that no parties would leave without resolving outstanding questions that would prevent DFBC endorsement **(TRS00003165).** In general, I believed that this was achieved and consensus reached by all.

- KPMG used the information in their high-level summary report of DFBC issues to TS the following week (**TRS00003164**). On 4 December 2006, KPMG delivered a presentation to TS on the DFBC (**TRS00003162**). In that presentation, KPMG were concerned about the low level of risk allowance and the highly unusual procurement strategy. They suggested an alternative procurement strategy. I cannot recall the detail of the alternative procurement strategy but the options presented would have been based on KPMG experience of other similar projects and their knowledge of the issues relevant to the Edinburgh Trams. Nadia Savage, Damian Sharp, myself and others were particularly engaged over some time progressing the KPMG options particularly those involving the risk and optimism bias methodologies applied by TIE. Despite numerous expressions of "it will be OK on the night" TS retained continued scepticism around the procurement strategy championed by TIE and agreed by CEC, particularly given the costings that were being produced by TIE.

- I note an email dated 5 January 2007 copied to me and its attachments: **(TRS00003491, TRS00003492, TRS00003493, TRS00003494)**. The Cabinet paper includes an analysis of the DFBC **(TRS00003493)**. At paragraph 7, Patronage was important because a key objective of Ministers remained the merging of the buses and trams as an integrated system. So this had to be addressed in financial terms. The main aim was to reduce the number of persons travelling by car. This was one of the key points of TS's Investment Board, which TS had specifically wished be addressed in the calculation of the eventual BCR.

- On 11 January 2007, I contributed to an answer to a parliamentary question which stated that, *"The present programme has no float whatsoever so pressure must be maintained on both CEC and TIE to continue to reduce critical path tasks"* (**TRS00003464**, attached to email **TRS00003458**). TS were aware that the programme was tight and that pressure had to be maintained by communication with the Tram Project Board and by briefing Ministers.

- Another area of contention between TS, CEC and TIE in the DFBC is based on the Council's expectations that the Edinburgh tram project would be covered by the National Concessionary Travel Scheme. This was not acceptable to TS, even though it could have some impact on the business case. Ministers took the view that it was too early at this point to be including the concessionary scheme as a saving in the Business Case and there were implications for other non-bus schemes such as the Glasgow Underground.

- As with all project managers, I compiled progress reports – mainly as part of the Rail Group four-weekly reporting cycle but also as required. My reports went to relevant TS senior staff as well as Cyril Sweett for comment prior to the monthly Rail Projects Group progress review. Cyril Sweett had been contracted to provide in-house professional advice and guidance in relation to project management, cost estimates, risk assessments and programme management. Cyril Sweett, with their professional expertise, offered regular critical responses throughout the process. Whilst they may not have been aware or fully appreciated the political nuances of the Tram Project they were very adept at making TS fully aware (often bluntly) that if they were in our position they would be taking other steps. Whilst we were well aware of this, the reality was that we did not have the ability to do anything other than try and influence - Ministers had never given us authority to step in and manage – that was CEC's job as owner and the TPB's job.

**Final Business Case**

- On 1 November 2007, I drafted a paper to the TS Investment Decision Making Board advising them that, *"Version 1 of the Final Business Case confirms that the Tram Project will meet the three ministerial tests outlined above"* (**TRS00005032**). Mark Warner was one of Cyril Sweett's risk managers and had formally restated his reservations, of which we were already aware, about due diligence on the design, which was important but only valid up to the point in time at which TIE went into negotiations with a final bidder. This was because the TPB had agreed that the contractor would assume responsibility for completing the design. The key point was that the three Ministerial tests were met in general terms. That was the basis on which we could go up to IDM first of all, then the TS Investment Board, and thereafter to Ministers and advise them that CEC had met the three tests.

- By 17 October 2007, the FBC Version 1 was received by TS (**TRS00004923**). Martin McKinlay, Head of Rail Projects in TS, was asked to provide a first pass and he saw nothing fundamentally wrong with it. Martin did say, noting the revised role TS were to take within the project, that the comments previously supplied were not all included and this was within the gift of those now responsible for delivery. In effect we were in a situation where we had to take, at face value, regular reports on progress difficulties, delays and costs. We did whatever we could to achieve a better understanding of what was actually taking place but this remained a key weakness.

**Parliamentary approval**

- An email from Rebecca Andrew, dated 18 October 2007, noted TS's view that the grant covering the Parliamentary process (£17m) was included in the total TS grant for the tram project of £500m (**CEC01541278**), paragraph 6. I was on leave when the meeting referred to took place. That was a misunderstanding on behalf of Nadia Savage (Nadia was the Head of the Cyril Sweett consultants within TS,) who attended the meeting on my behalf whilst I was on leave. At the meeting, Nadia appeared to have said that the costs of the Parliamentary Bill process, around £17m, formed part of the Scottish Ministers' £375m contribution to the project. This was clearly not the case as Ministers had from the outset agreed to separately fund the Parliamentary process The costs incurred by both CEC and TIE, would include legal costs, witness costs and professional input – all the costs of going through the various Bill stages at Holyrood. It was quickly sorted out and wasn't a big deal, but I think it caused a lot of consternation at CEC.

- An email dated 23 October 2007 from Willie Gallagher to Stewart Stevenson stated that, *"The costs for the project start from the moment that Parliamentary approval has been granted"* (**CEC01506875**). Willie Gallagher was wrong. While the costs of the tram project in the Final Business Case in 2007 clearly did not include any costs incurred on the Parliamentary approval process in 2006, (as above we would not have expected them to), the costs did not start on Royal Assent, they started before then, in terms of the initial design and development costs incurred by CEC and TIE. These were capital costs and treated by ourselves as a key component of CEC's grant expenditure – something CEC knew full well, so I can only surmise at Willie Gallagher's intentions here.

**Assessment of Business Case**

- That phase 1a plus 1b would cost £592m and would not be affordable is, in a sense, self-evident. Constructing 1b, which was the City Centre to Granton, was quite cheap in relation to construction costs for the main system. The problem TS had was that, all this work was on-going in relation to the Business Case, whilst the estimated costs were creeping up. The latest costings at that time indicated that to construct both lines was going to cost more money than was available to CEC. The assumptions made by TIE in the Business Case for the tram, in particular about transferring risk from the public purse to the private sector, were key to the positive BCR, and the case for the trams remained marginal and very sensitive. There were significant levels of risks remaining with the project. CEC were of the view (doubtless at the behest of TIE) that to some extent, a key risk regarding capital costs may have been mitigated by February 2007 through receipt of initial bids for the main Infraco. The formal position of CEC was therefore: *"The ability to proceed as proposed depends on the receiving sufficient quality information from the initial infrastructure bids and this may not happen - it is possible that the bids will be too high (and thus making the scheme unaffordable) or too qualified to give the necessary confidence in the overall scheme price".*

  The Scottish Ministers were aware of these issues; but noted that CEC took the view that there was nothing that constituted a 'showstopper' at that time. Hence, they were happy for further work to proceed to Final Business Case.

- The Cabinet Memorandum by the Minister for Transport in January 2007 in relation to the DFBC said *"The scheme needs to be managed very robustly and I will be requiring further improvements in project governance and control from tie Ltd and*

*City of Edinburgh Council"* (**TRS00003493**). I cannot recall what changes Ministers envisaged making to TS's involvement in the governance of the tram project at that stage. At this period however, TS's engagement was continual through the TPB, ensuring that we got all the intelligence that we needed.

- There appeared to be a significant level of satisfaction with the way in which the TPB was working – at least as far as Damian Sharp, who mainly represented TS over this period, was concerned. In general terms, TS understood the high risks. We assumed or were reassured that they were being taken into account at that time and there was therefore an on-going assumption that this was a work in progress – you cannot expect everything in a project at one particular point to be 100% satisfactory.

## Budget

### Capping of TS funding

- A consolidated note of actions was drafted for TS in November 2005 (**TRS00000233 and TRS00000232**). The note shows that a cap on TS funding was contemplated in 2005 and that CEC would have to fund the difference. I think this was restating the status quo from the SG perspective as the grant funding was always to be capped by TS. Later, in an email from Stewart McGarrity to me dated 14 July 2006, he reports from a meeting between TS and CEC on funding and risk sharing (**CEC01818162**). In September 2006, I was involved in drafting the financial agreement between CEC and TS (**CEC01722068**). In that agreement it was stated that CEC was incentivised to manage cost overruns as that was the only way by which Phase 1b was likely to be affordable. In an email dated 22 March 2007, Stewart McGarrity suggested that TS and CEC would like to share all risk in the *"same proportion"* **(CEC01714284).** As above this was never going to be acceptable to either TS or Ministers.

- I cannot remember how the estimate of £375m was reached, what constituted the key elements or who was involved in calculating final cost estimates. As you know the difference between this initial £375m and the final £500m was entirely due to inflation proofing or indexation as approved by Ministers. CEC were well aware that anything in addition to the £500m was CEC's responsibility.

- Grant payments were made to CEC (never TIE) on demand and on the basis of an agreed annual cost plan or *ad hoc* requests such as for the advance monies on MUDFA. If CEC did not use its allocation of money for one year it could not roll it over to add to successive annual grant funds.

- The £500m was a capital grant, which came from the block grant allocated to the Scottish Government by the UK. We had to account increasingly regularly to HM Treasury, via TS's reporting mechanisms to the Scottish Government finance officials on a month-by-month basis. TS would get a set amount from the block grant according to their programme for funding projects.

**2006**

- On 13 January 2006, it was suggested that TS were worried about TIE rushing to tender without Ministers' approval or funding (**TRS00002092**). While the phrase 'rushing to tender' is not one I readily recall, there may have been concerns that TIE was being premature in some of its procurement plans I believe that CEC agreed with TS concerns and instructed TIE accordingly.

- In an email of 24 January 2006, I said that the budget would not cover both Phase 1 (later Phase 1a) and phase 2 (later 1b) (**TRS00002106**). That was the consensus based on growing concerns about the costs being reported by TIE against the experienced views within TS. I recall that it would have been difficult to get, at that time, CEC and/or TIE to accept that.

- In an email dated 28 February 2006, it is noted that the Scottish Ministers announced available funding of £450m to £500m (**TRS00002202**). This was derived from the original figure of £375m, which had been index-linked. However, there was no wish from the outset to have Ministers agree index-linking on the original £375m. At the beginning nobody was sure what the £375m would actually deliver or be required to deliver. TS had no input into the estimates for constructing the tram network. We had the ability to second guess estimates with the expertise from Cyril Sweett, as they were based with TS, but though we had our doubts about the reality of the official cost estimations, we were not involved in the process.

- The February 2006 quarterly review noted, *"An important part of the implementation plan will be a robust process to ensure the tramway was built to "fit for purpose" quality levels and avoid pressures either for over specification or for infrastructure cost savings that would have a long term impact on operation. TIE Ltd would propose a process for CEC and Transport Scotland to consider"* (**CEC01642263**). Damian Sharp would have approved this process via the TPB.

- Value Engineering ("VE") savings were used on the project to reduce cost. The exercise produced certain sums, which were perceived as savings. Whilst the ideology behind this is quite logical, TS was always sceptical and, as we subsequently found to be the case, the savings never transpired. Neither did we expect that VE would have any long term impact on operations.

- I am aware of notes for a meeting between the Scottish Executive and KPMG on 6 March 2006 (**TRS00002204** and **TRS00002205**). In that meeting, KPMG highlighted the 'agent-principal' dilemma for the Scottish Executive where they believed that TIE had an incentive not to give full information on costs and contingencies. The advice and oversight of the project progress reports by Cyril Sweett was invaluable to TS in this regard and supported our own awareness of this potential problem. It is in fact worth noting that I asked KPMG to make a point of this because TS had for some time – even in 2006, been concerned about the validity of TIE's reports. One option would have been to ask for a variant bid in addition to the standard bid. I cannot recall whether a variant bid was submitted. In the same document, it was noted that costs over the Executive's budget would have to be funded by CEC. TS's contribution to the project was always to be capped from the outset. John Swinney made it quite clear to Parliament that not a penny more than £500m would be available. He was making the point that previous administrations, while not actively encouraging such advances from CEC may have been open for further CEC requests or claims for more money.

- In the quarterly review dated 8 May 2006, it was stated that TS were to provide more information on the indexation methodology being applied (**TRS00004679**). I believe this subsequently formed a report by Damian Sharp to the TPB.

- On 24 November 2006 there were doubts as to whether lines 1a and 1b could be built for £592m (**TRS00003127**). This exchange was triggered by a letter from Tom Aitchison requesting more funding for 1a and 1b. As noted before, TS maintained continuing skepticism about CEC's ability to deliver the project at the cost levels they were reporting to us. There was a growing realisation that the optimal solution being aired by TIE was to deliver Phase 1a – from the city centre to the airport.

**2007**

- On 29 January 2007 I was copied into an email setting the agenda for an upcoming meeting between TS and TIE to discuss TIE's cost estimates (**CEC01789893**). The basis for the meeting was TIE's paper on cost estimates (**CEC01789822**). This information led to a further briefing to the Minister. CEC were already aware of TIE's advice to them and that there were increasing pressures on the budget.

- In the May 2007 four-week report, at paragraph 1.3, it notes that the delivery of the Anticipated Final Cost ("AFC") for Phase 1a within forecast is dependent on achieving negotiation and Value Engineering savings (**TRS00004377**). This is exactly what TS predicted and our view on the reality of VE savings has already been indicated above.

- In an email on 28 September 2007 Ministers were content to offer £500m for 1a and 1b (**TRS00004849**). Bill Reeve said, *"1. This is now a greater commitment than the previous administration ever made. 2. In the event that some of the £500m is spent on Line 1b, and cost pressures emerge which exceed the total of £500m + contribution which City of Edinburgh can afford, the scale of the any gap left for completion of 1a will be increased*". Bill Reeve subsequently said, *"[John Swinney] was under the impression that spend on 1b would follow 1a, whereas there will actually be significant parallel expenditure. He is content to stick with the offer of £500m for 1a and 1b"* Scottish Ministers were providing money for Phase 1b, when the business case was for Phase 1a only. This was based on the unlikely scenario, that TIE were reporting (and CEC accepting), that they could deliver 1a with savings going towards 1b. A part of that had to do with Value Engineering (see above). Phase 1b remained a priority within the budget.

- That TS were unhappy with the quality or reality of progress reports and project information being provided by TIE (**TRS00005020**) was as already stated a constant for TS. Approaches had been made both by myself and Cyril Sweett to both CEC and TIE that effort was really needed by TIE to improve on these areas. I am aware that in an email from Nadia Savage on 31 October 2007 she said *"In light of the Willie email to Bill Reeve, I think Bill needs to be aware of just how poor the substantiation is for what is nearly £80m of public funding potentially in advance of need. The results of the spending review are imminent but all indications are that £120m cannot be breached next year – so no roll over"* (**TRS00005021**). This is another example of TS thinking about this area of sensitivity, and our scepticism about the position. We were mindful of what John Swinney had said about what we needed to do in terms of withdrawing from the Tram Project Board. We would have no executive authority from that point on, but we needed to be seen to be doing all that we could to support our obligations in terms of the Scottish Public Finance Manual. Bill Reeve approached Willie Gallagher and said that, post-Contract close, TS continued to need good robust information about what was going on. He made it clear to Willie Gallagher that the standard of TIE's reporting up to that point had been poor, inconsistent and confusing. TS were often only able to advise Ministers on the basis of what we thought was the real situation, not the reported situation.

**2008**

- The TS Grant Letter was formally issued on 17 January 2008 (**TRS00011023**) – we had already received an earlier letter from CEC accepting the terms of the grant, dated 14 January 2008 (**CEC01385592**). I was responsible throughout this process, obtaining senior management sign-up without any great difficulty. It was made up of the conditions which we knew Ministers wanted and those that we had determined ourselves were necessary in terms of TS standards and the required elements of the Public Finance Manual. Essentially, the terms of the grant letter protected Scottish Ministers, not CEC as they were the owners of the project risk.

**14 January 2008 should be 15 January 2008**

**2009**

- By March 2009, Bill Reeve considered even the revised estimate of £527m 'optimistic' **(TRS00016973).** On 24 June 2009 Bill Reeve told me that Bilfinger Berger ("BB") was seeking an additional £50m, and that essentially the whole contract was in dispute (**TRS00017060**). By 28 July 2009, TS were aware that BB was requesting an additional £100m to resolve disputes (**TRS00017088**).

- In the subsequent August 2009 four-weekly report to TS, it was admitted that it would be unlikely that the full scope of Phase 1a would be completed within the available funding envelope of £545m (**CEC00376398**). TS believed that costs would exceed £545m and we made Ministers aware of that. The possibility of extra funding for the project was not considered by TS at all. It was always made clear to TIE that Ministers had provided for £500m and not a penny more.

- In a daily bulletin report by me on 23 March 2009, it is stated that the Princes Street Supplemental Agreement *"is intended to provide an acceptable payment mechanism for any additional costs caused by unforeseen ground conditions along Princes Street – reportedly the main concern of Bilfinger. The "Supplemental Agreement" does not involve paying Bilfinger any additional moneys but gives them greater reassurance and confidence that TIE is not going to be difficult about any additional costs caused by unforeseen difficult ground conditions. In fact, these risks had never been transferred to Bilfinger through the Infraco contract and will as before be covered by risk/contingency so no changes to current contract were required to get Bilfinger's agreement. At this stage TIE doesn't anticipate that this will lead to greater costs"* **(TRS00005103).** TS did not agree with this evaluation report by TIE. We always had doubts about the prospects for TIE post contract award and were of the view that again this was an example where TIE was being either over-optimistic or putting a brave face on things.

- One of the mechanisms that TIE wanted to consider was the use of a demonstrable cost basis agreement with the contractor. They had a fixed price contract in place, but with the disputes and the weaknesses of the contract this was one mechanism that they could use to entice the contractor back. The downside is that it would immediately raise the question of additional costs for works for which they had already agreed a fixed price. No agreement had been reached on demonstrable cost at that point in time. The shift to demonstrable cost did not happen overnight – it took time and was trialed on a few occasions.

- On 2 April 2009, I was advised that the additional agreement was at, *"no extraordinary additional cost"* (**TRS00005106**). However TS were sceptical that this would be the case, even though at the time we did not know what that impact on overall cost might be. Hence, we repeated the advice which was that there was no additional cost at that point. We were therefore unsurprised when we were subsequently advised that despite earlier assurances the shift to a demonstrable cost basis would lead to cost increases.

- TIE then began considering what alternative options were realistic given that the contractor was allegedly failing to work as per the contract programme. One option was to retender the contract and start afresh. Another option was to re-negotiate some of the weaknesses of the contract, continuing with the status quo even though that would have meant sticking to the current contract but at additional cost.

- I am aware that, in September 2009, Bill Reeve received an email from Ainslie McLaughlin which set out a damning picture of the contract. It referred to an estimated AFC of £700m, albeit that was for the full line. BB was requesting that TS take over the project or that personnel be seconded to assist TIE (**TRS00017238**). We were aware that BB had also demanded that TIE be removed from the project.

- At this time there was fluidity in the process of regular amendment on the AFC, at a time when negotiations were on-going between the parties on the dispute process. From reading the papers, it is clear that that reference to *"no extraordinary additional cost"* was a reference to the Princes Street agreement to recommence work. That was the advice TS were given by TIE and CEC. At the same time, CEC had quite clearly said that the new AFC was £527m. TS accepted that information but believed the final cost would still exceed £546m. So there was a continuing recognition throughout TS of the potential for increases beyond what CEC were advising us was the case.

- By October 2009, although the estimate was still officially £527m, TS had been told by CEC/TIE that completing for £545m was "untenable" (**TRS00017242**). TS were aware that Dispute Resolution Process ("DRP") decisions had gone against TIE by December 2009 (**TRS00017326**). The impact on costs was 'unquantifiable', so TIE maintained their estimate of £580m. We had been given formal notification of the Council's view on the AFC. We were at the point of being quite open with our scepticism about TIE/CEC's estimated of the AFC. From the information we had, we were going to continue being dubious about TIE and CEC's view on the AFC.

- Richard Jeffrey gave Bill Reeve an over-optimistic view of the project in October 2009. Reference was made to the report to CEC in which TIE said the project should be completed for £524.5m plus an allowance for the settlement of the claims from the consortium (**TRS00017211**). It would be very difficult, but not impossible, to bring the project within the budget of £545m. To be fair to Richard, TIE and to CEC, this was a time when there were ongoing discussions and reviews of what alternatives were open to CEC and to TIE, and the impact they would have on final cost. One of our criticisms of TIE had been that they were always more optimistic than they had grounds to be, but we had to take that advice from the Chief Executive of TIE at face value.

- At the November 2009 Quarterly Review, TIE advised that a final cost of £545m would be very difficult, with £600-£620m most realistic (**TRS00005121**). It was noted that *"£545m has continuing relevance for politicians just now but for how much longer?"* CEC had a difficult job on its hands with the ongoing political pressure, from councillors, and probably beyond, in managing the content of their reports. Essentially politicians were being told £545m, until a more accurate AFC was available but how much longer that could be adhered to as realistic was a problem they were grappling with. We well understood the problems because we had anticipated that the £545m budget was unrealistic and would be far exceeded.

**2010**

- The January 2010 four-weekly report states that, *"a detailed review of costs was undertaken with Transport Scotland on 10 December 2009, and updated milestones and forecasts were presented"* (**CEC00472988**). This was as a result of a good number of TIE reviews and exercises which covered ways in which CEC could manage either to achieve additional funding or to keep the project within the available budget. CEC had undergone a parallel exercise, looking at options for additional funding above their £45m, such as borrowing.

- I prepared a briefing for the meeting between the Minister of Transport and Richard Jeffrey on 25 January 2010 which considered shortening the route (**TRS00010626** and **TRS00010627**). We were aware that funding was an issue and that TIE was looking at alternative options, such as shortening the route. It was agreed that the full scale of the proposed network could not be achieved within the available funding limits. The choice was either to completely end all interest in certain parts of the route or to phase the construction of the route. CEC were obviously unwilling to lose their rights within the two Tram Acts to construct and operate the tram network. As long as that permission remained, CEC were entitled to utilise whatever funding to subsequently complete the construction in full. So it was logical to opt for what was referred to as the 'phased option'.

- TIE had been tasked by the TPB in January to bring things to a head to enable a report to be made to full CEC in late March 2010 (**TRS00005134**). All options were in the context of the full Phase 1a. TIE had not considered truncation at this stage.

- In the 4 March 2010 Quarterly Review, TIE advised TS that on 10 March 2010 the TPB would be given the clear advice that Phase 1a was no longer achievable for £545m (**TRS00005134**). It was suggested by TS at the March 2010 quarterly review that a new mutually acceptable fixed price contract might be an option. TIE advised that there was a problem settling a new fixed price contract, because there was no fixed scope for construction – BSC had not yet provided details of all the required changes.

- At the June 2010 quarterly review, formal intimation of the cost overrun was given and Bill Reeve notified ministers (**TRS00010733**). It is noted that, *"Transport Scotland advised that Ministers had been briefed on the Council's letter of 10 June and the full Council report of 24 June 2010 which advised that the Council recognised the "reasonable expectation" that it could not complete Phase 1a within the agreed affordability of £545m and nor by June 2012. Given this there was a need to consider the continuing basis of the Scottish Government grant particularly* *as the next meeting with the Cabinet Secretary was scheduled for 28 July"* (**TRS00011377**). Ministers considered withholding grant payments at this stage, but not to the extent that it was something we had actively explored with CEC. It was becoming quite clear that withholding the grant would exacerbate the position and increase pressure on the AFC for CEC. That, we felt, would have caused more pain than gain, as CEC would have to have funded any withheld funds to meet their contract obligations with Bilfinger and their Infraco. If they did not have the money from TS they would have to get it elsewhere, and that could only mean additional borrowing.

- The TIE response to any suggestion that they did not keep TS fully informed was likely to be that there was an agreement that they would not speculate on costs until they had certainty. This is referred to in an email exchange on 26 May 2010 (**CEC00267054**). TIE felt they were obliged to report the position to CEC as if the outlook had not changed. TIE may well have had views on how realistic that was. Hence, over this period lasting about one and a half years, the information we were getting was that the AFC was under continual pressure and was being revised upwards. However, at the same time TIE was under pressure to report that nothing had changed and CEC was under pressure to report this politically.

- In that email exchange, Richard Jeffrey makes reference to the 'deteriorating relationship'. They are referring to the deteriorating relationship with their contractor and not with us.

- TS was aware of the scope for criticism of TS. In his email of 5 October 2010, David Middleton said *"But if we, like other sane onlookers, knew that the project itself was not progressing, what is our defence for continuing to pay out money?"* (**TRS00018048**). Ainslie McLaughlin's said that *"It may well come out in the wash that having the major funding party remote from the decision making and management of the contract is not a sensible way to manage projects like this in the future"* (**TRS00018049**). Bill Reeve's view was, *"We should be clear that the* *decision to distance TS from "active" governance was taken by the current Ministers. The governance which Audit Scotland endorsed was the previous arrangement, during which TS had a place on the Project Board"* (**TRS00011064**). David Middleton and Ainslie McLaughlin subsequently provided comprehensive answers to the Parliamentary Accounts Committee on these issues.

- Essentially the SG had a contractual agreement with CEC to fund the project. The fact that the Tram construction project itself was in difficulties was irrelevant to the contract between SG and CEC who were only obliged to convince us that the money they were requesting from us had been legitimately spent on the Tram construction contract. The fact that it was covering the costs of the dispute is irrelevant to that point; they were still legitimately spending money on the contract, and we had no grounds to withhold money because that was still a legitimate expenditure on their behalf.

- On 28 October 2010, Ainslie McLaughlin produced advice to Ministers that stated, *"The conditions of the Grant agreement allow Ministers to take action in the event that the project runs into difficulties that would threaten delivery of the project. Clearly the termination of the contract constitutes such an event. There are a range of possible actions which would enable some form of direct intervention in the situation. We are discussing these with SGLD and will provide Ministers with more detailed advice in due course. However, the most obvious measure that Ministers might wish to consider is a suspension of payments for any new contracts as an interim step until they are satisfied as to the business case and governance arrangements for proceeding with further work"* (**TRS00011010**).

- There were a range of actions TS could have taken, including the issue of a Cure Notice. A Cure Notice was a mechanism which allowed us to step in and secure some kind of remedial action from CEC, hence the phrase "Cure Notice". We already knew that that was self-serving, as CEC had already taken action and informed us of its relevance to the contractual dispute situation. Therefore, a Cure

Notice would not have achieved anything. The withholding of grant would have been counter-productive even if we were clear from legal advice that we were able to do so. I think what we were looking at was the influence we could apply to CEC to get them to actively consider other options to conclude things.

**2011**

- Parties entered mediation at Mar Hall in March 2011, and settled on a final cost of £776m for the project. Work then restarted on the project. My involvement with the mediation talks was only to brief Ainslie McLaughlin, who represented SG in the mediation. Those briefings directly related to ongoing developments. The picture was quite stark. The relationship between BB and TIE had broken down. TIE was requesting that TS come in and assist BB. BB were requesting that TS consider coming in to help TIE, they were also requesting at around the same time that CEC consider replacing TIE altogether as the relationship between TIE and BB had broken down completely.

- I was not engaged in the development of the remedial budget of £776m which was agreed at Mar Hall and I never saw the detail of the Mar Hall agreement. Beginning a year before March 2011, we had received information from CEC about the work TIE had carried out considering the potential option of removing BB from the project. This led to a series of exercises where they looked at the potential impact on the AFC of various decisions. We knew in TS that, a year before Mar Hall, if BB were removed and the contract renegotiated with someone else, the cost would be around £667.5m. Their lower estimation was only £646.8m, so there was not a great deal of difference between that. There were a range of other potential AFCs depending on what options were agreed, but they all ranged from around £622m to £667m to as high as £691m. The budget rising to £776m as a result of the Mar Hall Mediation Agreement came as no surprise to us.

- What TS actually did after they re-engaged with the tram project was, in effect, a mirror of what had happened before. The only differences were that TIE were replaced with Turner & Townsend; a much closer working relationship between the new Chief Executive of CEC, Turner Townsend and TS / Ministers was established; and there was much more focus on achieving an acceptable outcome with BB. Additionally, CEC would need to provide additional sources of funding beyond the £525.

- It is no secret that Turner & Townsend had a much more successful relationship with BB and achieved a successful completion of the remaining parts of the project on time and budget.

- In the September 2011 four-weekly report it is reported that *"On 25 August 2011 Members of CEC voted to complete the first phase of the Tram route to Haymarket. A Special Council meeting was convened on 2 September 2011 to discuss the recent decision to build the route to Haymarket. A motion was subsequently passed to build the first phase of the tram route to St Andrew Square. The motion passed also instructed the Chief Executive Officer of CEC to enter into a full settlement with the Infraco contractor"* (**TIE00099961**). It was quite clear that CEC was under pressure politically to ensure delivery to the city centre. There were political differences, apparent to all, as to what that actually meant: whether it was Haymarket or St Andrew Square. By that time the bulk of the infrastructure to St Andrew Square/York Place had

- already been completed, albeit not finalised. It still had to be energised and the signalling completed etc. However, there was on balance a preference to continue to St Andrew Square, as being the more logical of the two options. The Haymarket option as the terminus at that point was a political preference and the subject of much discussion in CEC alone. TS advised CEC that our preference would be for completion to St Andrew Square/York Place as the bulk of the infrastructure was in place along that section of the route. Completion of the route to Haymarket would not save much either in political terms or in financial terms. We advised Ministers of the situation and they agreed.

## Risks

**Optimism Bias concept**

- Put simply, Optimism Bias refers to the psychological failing in our make-up that means that humans are prone to underestimating the full table of risks That is not perhaps such a problem in day to day existence but can be particularly damaging when calculating the financial cost of the scale of risk in multi-million pound public sector construction projects. Experience has shown that this tendency has led to considerable cost overrun specifically in large scale public sector projects. There will always be degrees of uncertainty or risk attached to construction phases but these are often not only quantifiable but the impact of unforeseen events can be mitigated in terms of a realistic level of Optimism Bias added to the risk costing.

- This risk and cost underplay factor was most recently recognised by Bent Flyvbjerg, who advised the Department of Transport and HM Treasury.

- Like everything else in accounting and modelling, there is a divergence of views and methodologies, so understandably there is no clearly prescribed methodology for calculating optimism bias; any level of optimism bias must be in the correct context with clear understanding of the overall risk.

- TS had reservations about TIE's optimism bias levels but CEC were reassured by TIE on the basis that their ultimate goal was to achieve contract close with a full transfer of risk. They knew that they would not complete the design, so they asked that design be included in the contract novation of the outstanding contract work to BB. There were remaining risks which they could not determine – they could estimate them but not put figures on them. These were ultimately to be taken up through the procurement negotiations with BB.

**Optimism Bias application**

- On 22 April 2005, I sent a letter to Stewart McGarrity together with TS comments on the Interim Outline Business Case ("IOBC") of 31 March 2005 (**TRS00008519**). At 2.2 of the appendix to that letter, TS asked whether a 10% risk allowance is sufficient in the costs. At 2.3, TS suggested that 23% optimism allowance seemed quite low and asked whether a higher number would be appropriate. At 2.3, TS asked whether TIE have appropriately considered the methodologies for calculation Optimism Bias. TS suggested that it may be appropriate to use Flyvbjerg's 80% percentile number and suggested that this will increase the 23% Optimism Bias limit. At 2.6, TS raise Flyvbjerg's agent/principal problem and asked for TIE's arrangements for minimising that problem. At 3.3, TS raise a concern that the design contract appears to increase public sector involvement and reduce the risk transfer to the private sector. I cannot recall if the above concerns were addressed by TIE to TS's satisfaction. We advised the TPB that we remained unhappy, but ultimately it looks as though Optimism Bias was accepted by the TPB at 12%. The owner of these risks was CEC, not TS.

- TS considered a risk allowance of 12% to be a little optimistic. TS expressed concerns about how risk was being expressed and mitigated, and about how Optimism Bias was being addressed. It is one thing for our professional advisors to advise us of their professional scepticism and unhappiness about particular risks regarding the programme being carried out by TIE. But TPB and CEC were responsible, not TS. There was a sufficient level of confidence within the TPB in relation to the risks and ultimately CEC accepted the risks. They knew TS were sceptical. We had reservations about their continued use of lower levels of risk, and would have been happier if it had been higher.

- A memo was produced by Cyril Sweett on 27 November 2006 in relation to the Draft Final Business Case (**TRS00003141**). In that memo, Cyril Sweett raise concerns about the lack of information on how TIE reached its cost estimates, the low level of risk contingency, the lack of Optimism Bias uplift and the extremely tight timetable for the project. This report was sent to TS. I cannot recall this memo or what consequent action TPB took in relation to it. KPMG and Cyril Sweett had the task of evaluating the DFBC. KPMG and Cyril Sweett were external consultants. We relied on them principally for financial advice and also for Business Case development advice.

- Risk 269 in the risk register of TPB papers for December 2006 states that *"Agreement on financial over-run risks sharing has not been reached between CEC and TS due to doubts over costs staying in budget... [And it is a] Potential showstopper to project if agreement is not reached"* (**CEC01695695**). I am recorded as the 'Risk Owner'. Risk 269 still appears in the papers for February 2007 TPB (**CEC00689788**). The March 2007 four-week report to TS states that TS and CEC need to agree to risk sharing (**TRS00004183**). In the December 2007 four-weekly report to TS it states that funding has been agreed with TS (**CEC01365560**). There was never any intention to share cost overruns between CEC and TS. Risk 269 was re-emphasised by Damian Sharp on our behalf because it was allied to the point that we were reiterating to the Council - that it was responsible for cost overruns, not the Scottish Ministers.

- On 18 October 2007, Mark Warner, of the TS Programme Management Team, raised concerns about the risk issues in the FBC Version 1. He said *"the exact status of the cost risk provision and the programme confidence should be a major concern to both Transport Scotland and City of Edinburgh Council"*. He was concerned that there was no Optimism Bias included, and that that the project would not be delivered on time. He also raised the concern that due diligence on the design may delay the design development process (**TRS00004942** and **TRS00004943**).

## Utilities

- Regarding the cost to Statutory Utility Companies ("SUCs"), I was involved in responding to complaints from Scottish Water about the sums they were required to pay under the New Roads and Street Works Act 1991 (see **TRS00017217** and **TRS00017234**). This was all about the question of 'betterment'. It was again an issue that did not directly involve TS rather it was a question for TIE to secure agreement with Scottish Water regarding the level of betterment that they were required to pay to TIE

- On 22 April 2005, I sent a letter to Stewart McGarrity including TS comments on the Interim Outline Business Case of 31 March 2005 (**TRS00008519**). At 3.5, TS asked whether the UK approach to utilities should change. We had a discussion from time to time about whether it was sensible to try and achieve a different approach since utilities were causing so much angst.

- In January 2007, there was consideration given to how TS should be represented on a committee looking hard at MUDFA progress. (**TRS00003538**). It is again important to note that TS were not engaged in any way at all in either the contractual process or procurement processes. However, as with DPD, through our engagement we aimed to be better informed and able to raise issues as necessary on behalf of TS. I do not think we had particular questions about MUDFA at that point, although these certainly arose later. This was prior to the MUDFA contract being issued. The concerns with MUDFA at that time arose out of increased delays and the programme time they were eating into. What had been thought to be quick and easy operations digging up key roads in the capital were proving to be prolonged and costly.

- Works on Phase 1b was an issue because of the desire to get MUDFA under way prior to tendering for Infraco. The final decision as to scope was taken later. As the aim of TIE was to complete 1a and 1b, there was a wish to carry out the utilities works for both prior to tendering for Infraco. This caused concern in TS, as we were aware they were spending money on a project which had not yet been demonstrated to be affordable. This was particularly focused on Crewe Toll, which would be one of the key junctions with bridge crossover points. I argued that this was an unnecessary expenditure on 1b when the focus was on 1a, and it was taken up by Damian Sharp.

- TS produced a review of the DFBC dated 30 March 2007 (**TRS00004145**). Damian Sharp and I drafted that review, and it was shared with Andy Park and his staff, Cyril Sweett, and KPMG. The review stated *"[TS's] main comments regarding procurement now appertain to the associated risks and consequences of failing to achieve the planned convergence and closure within the required timescales. Many of these risks relate to progress of design and perhaps interfacing utility design to core infrastructure". "The programme describes a best case scenario … This is a very critical programme issue and if the key early milestones cannot be achieved the delay will be extended to months".* The risks regarding utility design and core infrastructure were that if the design was wrong then the construction would be wrong. A situation could transpire where the road was dug up to move utilities, only to find that – because the design was wrong – the act of moving the utilities itself was wrong, or would not be accepted by utility owners, or there was another hold-up. There was a lot of uncertainty about utility diversion and getting the design work right.

- In the September 2007 four-weekly report, at 5.2.4 one of the risks reassessed was that SUCs were unable to meet the design programme and that the delay had increased to eight weeks (**CEC01362481**). TIE alleged that SUCs were causing a delay to the design programme. This was an issue for TPB not TS directly.

- A September 2008 report to TS states that Carillion had appointed a new Project Director as a result of TIE's management intervention to address Carillion's poor performance (**CEC01210435**). In September 2008, TS were not close to the detail about the utlility ground work. From memory of discussions about the MUDFA problems, TIE had failed to complete the estimates of the operation they were embarking on. This is a lot to do with the status of utilities across the city centre. There was an expectation in CEC that they could progress through this on the basis of their assigned records. However, relying on the accuracy of utility company records and historical knowledge about across the city was a big problem in itself.

- I am aware that, on 6 October 2009, Bill Reeve sent an email about MUDFA related to Scottish Water having problems with cost of replacing utilities and Carillion **(TRS00017217).**

## Infrastructure contract (Infraco)

### Budgeting

- As before, TS maintained grant payments to CEC against an agreed annual cycle related to TIE's contract expenditure programme. This spend profile was also related to the overall TS budget for all TS projects. Given the scale of the Edinburgh Trams projected spend; this had a considerable impact on TS's overall budget. One area where TS experienced considerable difficulty with this profile was that when disputes arose actual construction work reduced, so impacting on the Council's overall spend profile. This gave TS considerable difficulty in generating realistic current and future capital requests for the SG Finance teams to account to HM Treasury. Capital requests elsewhere within TS in this period of time also became quite inflexible and it proved very difficult to divert money from underperforming projects to those that required start-up capital, for example.

### Information provided to TS

- On 11 December 2007, Guy Houston at TS sent an email to Rebecca Andrew at CEC expressing dissatisfaction at the level of information being provided to TS. He said *"As primary funder to this scheme by contributing £500m, I really have to question why "commercial confidentiality" means we should only get limited information (irrespective of whether the information provided tonight is adequate or not). Why we cannot be considered trustworthy is beyond us. The last thing we want is for Scottish Ministers to be seen to be holding this project up, but we need partnership working here"* (**CEC01494454**). Guy Houston sent this email at my request because I had got frustrated about the confidentiality excuses that were being used to withhold information from TS. TS were bankers to a CEC project, so we should have had a partnership approach. We wanted to ensure that CEC remained fully funded for a project that Ministers wanted to see continue.

- The four-weekly reports to TS included very brief summaries of the DRP. The summaries usually presented the outcomes of the DRP in a positive light (eg a Bilfinger Berger Siemens claim has been reduced), even where TIE had lost on fundamental points regarding the interpretation of the contract. We did not know when it was happening or what the details of the disputes were and nor did we know the full extent of the process or exactly where it was at a given time. We were not engaged at that level. TS often knew what the subject of the dispute was, but it was more or less a geographical description, for example, "problems with the Roseburn viaduct". While TS did not really need to know the full detail, what we needed was a realistic level of information to keep Ministers appraised throughout a period of major project uncertainty.

- I drafted briefings in July 2009 on developments (see **TRS00017076**, **TRS00017077** and **TRS00017078**). From April 2009, the four-weekly reports began to report programme slippage every month (see **CEC00885508 and subsequent reports**). To an extent this did allow us to keep ourselves informed in a general way and able to advise Ministers and senior managers accordingly but as we know the quality of critical information was consistently poor from TIE .

- Richard Jeffrey and CEC provided updates to Transport Scotland in 2009 (see

**CEC00667242** and **TRS00017139**). They were indicative of the failure of people to understand the position that TS was in. Ministers had agreed with Parliament to continue with the previous agreement on funding. All uncertainly over the scale of that funding was removed by John Swinney in June 2007. He had made it clear that he wanted TS to remove itself from the Project Board, underlining the point that we were the major funder, or 'banker,' only. But we had to balance the Ministers' wishes with the need to maintain a level of ongoing intelligence about what was actually going on with the project. TS were not engaged in an executive role by doing that.

- We had a clear steer from Ministers on our relationship with CEC/TIE and, depending on the information received, whether to attempt influence. We had discussions with Ministers, not so much directly on the topic but around the topic, for example: could we do more, what would that actually mean for us, how could we re-visit the project with an aim of getting it out of the difficulties, would that mean replacing TIE? At that point CEC had never come to TS and asked for help on particular issues. They had never discounted TS advice whenever it was tentatively requested, but it was clear that they wanted to maintain control as owner of the project and had a degree of difficulty in realising our advice.

**2006**

- I am aware that on 19 December 2006, James Papp sent an email to Damian Sharp raising concerns about how much still needed to be agreed once the preferred bidder had been appointed (**TRS00003242**). He provided advice on how to maintain competitive pressure on a single preferred bidder during negotiations. I cannot recall what TS did with this information – I can only assume that Damian reported these concerns directly to the TPB.

**2008**

- The January 2008 four-weekly period report to TS mentions Wiesbaden and the agreement to fix contract price based on a number of conditions (**CEC01369999**). It states that it was essentially fixing the Infraco contract price. Wiesbaden refers to a meeting between TIE and BB. The intention was to transfer as close to 100% of the public sector risk to the Infraco contractor. The intention was not just to transfer risk; the intention was also to fix the contract price, which is why there is frequent mention of it being a fixed price contract. TS were not party to the discussions and did not know what conditions were agreed. Our knowledge of what was agreed between parties under the contract was based on any information provided to TS by CEC and TIE.

- On 26 March 2008, I sent an email to Alan Coyle at CEC after Contract Close was delayed. I asked Alan *Coyle, "It would be helpful to know something more about the run up to FC – what were the difficulties faced and something about how they were overcome and any potential future issues".* Alan Coyle responded, *"the difficulties faced on the run up to ITA were regarding BBS indemnities and SDS Novation which are now resolved. With regard to future issues I cannot comment other than the completion of most of the contract docs/schedules are hoping to be completed the end of next week"* (**CEC01506222**). Alan Coyle said contract close would be on 14 April 2008. On 15 April 2008, Alan Coyle told me that contract close would be 24 April 2008. He said, *"As before we are being told there are no problems and it is just time taken to sign off the legals"* (**CEC01401871**). There was a level of general scepticism about the robustness of the information that TIE were presenting to enable CEC to keep TS fully informed. As before we were dubious about these levels of excessive optimism, given that we were aware of rumors about an unforeseen increase in the final cost at contract close. Contract close was expected before Christmas of 2007 and we were now into April 2008. This was indicative of the problems that TIE were having with their preferred bidder.

- In the May 2008 report to TS, the following passage appears – *"Progress – Infraco negotiations (as at 1 May 2008) – Negotiations with the Infraco have proven to be protracted and complex with the main difficulties surrounding the effective transfer* *of risk in relation to design and systems integration to the private sector in a manner which is consistent with the Business Case and which represents value for money to the public sector"* (**CEC01247012**). This did not come as a surprise to me. When these issues are looked at in isolation from the overall context, it would certainly look as though it was a shift. But I do not agree that it was.

- TS were aware that, in order to complete the award of Infraco, it would be necessary that further design was carried out (**TRS00004547**). TS stated that what was required was completion of *"critical design elements"* but not the whole design. The issue of 'critical designs' was mentioned much earlier in the 'Infraco Initial Analysis and Updated Project Estimate' in February 2007, *"This means that critical design must be completed well before contract award"* (**TRS00003667**). From my recollection, we understood critical design to cover: critical junctions, critical areas of the city to ease traffic congestion caused by the construction works, and design work which was not detailed enough to allow a contractor to begin work.

- TS wanted a lot of detail about the impact on the programme caused by delayed contract close. TS was not as involved as before June/July 2007 but we needed to balance the hands off approach with the need to be an informed banker. We were trying to get a handle on what was happening behind the scenes regarding TIE's and their contractor's failure to reach agreement.

- On 30 April 2008, I sent an email to CEC about the protracted delay to contract close. I said, *"However, ministers are taking note of the developing position as it now has potential to impact on Transport Scotland's overall programme and we should now anticipate a degree of closer less reactive engagement on our part"*: (**CEC01221966**). This was another attempt by me to encourage Alan Coyle to keep us informed. TS felt considerably exposed as we were well aware that TIE was having great difficulty reaching an amenable financial conclusion to the contract negotiations. However, we were generally unsupported by any quality of on-going commentary from either TIE or CEC. For whatever reason – presumably one of confidentiality CEC decided to keep us in the picture but only insofar as they wanted to – we were always aware there were other things they could and should have told us but chose not to.

- On 1 May 2008, I sent an email to CEC saying, *"Mr Swinney has asked me to make very clear to the City of Edinburgh Council (and TIE) that, "as major funders, they are deeply concerned by the delays and want assurances that the delay is at an end""*. I also said, *"Lack of real time information especially over the question of delay has been and still is causing us some angst at the moment"* (**CEC01248908**). TS had wanted a scaled back approach, and this sort of situation was not entirely expected.

- On 20 May 2008, Rebecca Andrew sent me an email saying that there had been a number of changes in the price and risk profile of the contract (**CEC01246322**). This was a change between the position reported in the Final Business Case and contract close. I cannot recall if TS were made aware of those changes before contract close. If we were not made aware of those changes, it would not have come as any surprise.

- In June 2008, a report to TS stated that Infraco's rate of mobilisation was disappointing (**CEC01246951**), paragraph 1.1. The rate of Infraco mobilisation was not a surprise. By that time, I do not think that TIE knew how tough it was going to be, however we were aware that TIE were quite apprehensive about their engagement with Bilfinger Berger Siemens ("BBS"). The lack of action from BBS, its difficult relationship with TIE, and the fact that it would start on some things but not on others, were potentially indicative of a number of things – either the design was insufficient to allow them to start, or there were other financial pressures that the contractor wanted to exert on TIE. It is a well-known action for contractors and it is called 'squeezing the margin on a fixed price'.

**2009**

- On 9 March 2009, I formally requested sight of the Infraco contract (**CEC01010946**). – TS had not been party to the preparation of this or any other of the procurement contracts and had not even seen a copy prior to that request. TS needed to be assured about the possible exposure of Ministers by this contract and had appointed Dundas & Wilson, an established Scottish law firm to conduct this review. By email on 9 March 2009, Stewart McGarrity stated that I was about to request a copy of the Infraco contract. The subsequent report from Dundas & Wilson advised us that, while their view was that the Infraco contract that had been let was not fit for purpose, there was no apparent exposure for Scottish Ministers.

- On 12 March 2009, I sent an email in which I noted that CEC were minded to get an independent report on Infraco prior to close but did not, and relied instead on TIE's report (**TRS00016897**). I do not know why they did not get an independent report; I was amazed that CEC made that decision. I would find it strange if CEC did not look at the main contract before it was signed. TS could not look at the contract as we were not part of the contractual process or the owner of the project. It would have immediately overridden Ministers' wishes for us not to be that close to the project.

- In the March 2009 Quarterly Review, it is noted that *"although Bilfinger Berger is working across the geography of the project, their overall performance remains mixed, poor in some places and elsewhere acceptable. The reasons for this relate to;* (1) *"Utilities – in some cases the utility works are outstanding and in others Bilfinger Berger are unwilling to begin work in advance of agreements in place".* (2) *"Outstanding Design – Design was novated at Contract close but in some areas their design completion remains poor".* (3) *"Package/Sub Contractors & Supply Chain – Performance here remains questionable"* (**TRS00017047**). None of this was of any surprise to TS. BBS were obviously playing hardball with a contract that they knew was in their favour. TIE had been anxious to transfer up to 90% of the risk to the contractor. We knew that TIE had signed a contract based on design that had not performed well. Latterly, we also knew that the contractor was going to play hardball because the weaknesses of the contract was in their favour and not in TIE's.

- On 22 July 2009, I sent an email to Bill Reeve saying, *"As you know from your recent discussions with Richard Jeffrey, TIE's programme of intensive negotiations and mediation has proved unsuccessful overall with no substantial progress towards a commercial agreement on recovery programme and costs and BSC sustaining their argument for an additional sum of up to £100m to conclude"* (**TRS00017076**). The Transport Minister was informed of this (**TRS00017078**). TS used the word 'dispute' to cover a variety of geographical issues as they arose across the city. The Princes Street dispute was merely the beginning of the numerous geographic disputes that arose.

- On 30 July 2009, I sent an email stating that *"It is clear however that CEC are struggling with how best to advise their full council of TIE's revised costs range of £561m, through £582m to £601m when the public figure is currently £512m"* (**TRS00017090**). On 3 August 2009, I wrote to the Transport Minister to advise on progress and that the project would be over budget and late with BSC asking for an additional £100m (**TRS00017098**). On 19 August 2009, it was noted that Ministers were considering re-financing options for the tram project (**TRS00017140**). This followed on from being advised by CEC that TIE's latest forecasts were even more depressing. CEC quite clearly explained to us that they were reporting these figures to us, but they could not report them as their official latest AFC. They had no political clearance for that. At that point we could not influence at that level. We were merely relying on information received, so we could advise Ministers.

**2010**

- It is worth noting in the context of the following points that from the outset TIE had refusec to give SG/TS a copy of their fully costed project programme. Accordingly references by TIE to subsequent revisions viz Rev 1 or Rev 3 were always irrelevant. In the June 2010 four-weekly report, it was reported that BSC were reporting against a Rev 3A project programme and that TIE was reporting against a Rev 1 programme (**CEC00113638**). This was typical TIE nonsense at a key period in time. TIE were losing key staff and morale was at rock bottom. This was self-evident, but there did not seem to be any particular progress to be gained by discussing these issues with TIE. As soon as contract close was reached the programme became live. Time and cost was generally managed on a day-by-day basis, but would be inputted into the software programme on a week by week basis. The intention was to have a handle on those areas where savings were disappearing fast and those areas where they were actually going to be made very quickly. The Rev 3A programme was a justification of what was and was not happening and the immediate effect on cost and time. BBS were reporting a much later completion date. BBS were in the driving seat. The dispute resolution processes were usually coming out in the contractors' favour.

- On 17 June 2010, John Swinney and Stewart Stevenson were advised that the project would be significantly over budget and late. I advised that CEC had effectively served their own Cure Notice (**TRS00010722**).

- On 11 October 2010, I raised questions about the advanced payment of £30m to BBS (**CEC00044689**). That is when we found out about the bonds and the payment on milestone scheduling. Once again an example of TIE reporting key developments after – not before the event.

**Assessment of contract**

- John Swinney wanted 'chapter and verse' on the tram project on 5 October 2010 (**TRS00018055**). Ainslie McLaughlin expressed concerns that TS could be blamed for being 'asleep on the job'. Bill Reeve said the decision to withdraw from active governance was taken by the current Ministers, going against Audit Scotland's clearance of governance arrangements in 2007. Bill Reeve points out that many of the problems arose out of amendments made to the contract in the final stages of negotiations before contract close. I recall discussing this with Ainslie McLaughlin - his problem was that, in his experience, TS had never had a situation where they were the major funder but did not play a part in project management, and merely sat back and relied upon being provided with variable quality information about what was happening. Ainslie McLaughlin's concern about TS "being asleep on the job" was based on difficulties in the run-up to contract close, when all of a sudden all hell broke loose. He had never experienced that before.

- At that point I was involved in discussions with both Ainslie McLaughlin and Bill Reeve on a regular basis. Ainslie then had experience of dealing with BB on the M90 project and although this was a contract entirely different from the Edinburgh Tram situation, he was of the opinion that the BB M90 contract was performing well. TS' responsibility for the project was subsequently transferred from Bill to Ainslie However, my view is that the point that Bill Reeve was making was that TS's problems were a result of the failure to have any direct influence through the TPB, not just after the TS withdrawal.

- An email from Damien Henderson at the Herald on 3 February 2012 said *"I have heard allegations that, prior to award of preferred bidder status for the Edinburgh Tram Project, TIE artificially drove down the value of the main construction contract: i) By making an "off the record" approach (which I am told may be illegal) to the Bombardier/Grant Rail/Laing O'Rourke consortium to persuade them to lower their price. They declined. ii) By "bullying" the Siemens/Bilfinger consortium to lower costs by removing elements from the project, with the tacit understanding that these would then be added back in once the contract was signed and the design finalised"* (**TRS00014187**). I do not know if these allegations are true. We were not engaged with the contractual negotiations in any shape or form. I also find it hard to believe that TIE had "bullied" Bilfinger Siemens – if anything based on post contract close reservations expressed to me by Stewart McGarrity about their experiences of

Bilfinger, I would have imagined it to be more accurately the other way round.

## Political factors

**2007**

- As Bill Reeve said, TIE were 'losing the plot' a little prior to the election because there was a complex situation developing. The SNP had made no secret of their antipathy towards the project. CEC knew that TIE were aware that, were they to be elected, the likelihood was that the project would be dropped. At the same time, TIE had successfully approached the preceding administration to release early funds to allow them to get the utility diversion work started prior to Contract Close. So they were in a difficult situation, and their problems were essentially down to lack of design. The problems with design flowed into everything that TIE wanted to do and ultimately into their difficulties in contract negotiation.

- On 28 June 2007, after Parliament voted to retain the tram project there was immediately an approach on the part of TS to protect themselves against requests for additional funds (**TRS00004481**). The motivation for this was to ensure it was understood that TS would not be funding any more than £500m as originally agreed.

- On 7 August 2007, Davie Haggart from Cyril Sweett sent an email to me expressing major concerns about the tram project programme (**TRS00004656**). This was no surprise as following the withdrawal from the TPB we had begun to experience all manner of difficulty in obtaining reliable / quality project information from TIE and obtaining such from CEC often proved almost as difficult. As noted previously, it also refers to the fact that, from the beginning, TIE had released various versions of their project programme but steadfastly refused to release a copy of their fully costed programme. I can confirm however that some information was gained from within TIE's programme staff to allow some reasonable evaluation of progress – but the programme reporting from TIE remained problematic - constantly insufficient for purpose.

**2008**

- In April 2008, long before the conclusion of Infraco, John Swinney had concerns about timescale and the effect of slippage in response to a paper prepared by me (**TRS00005076**). In May 2008, before contract close, the same concern was expressed in response to another paper drafted by me dated 8 May 2008 (**TRS00005074**). John Swinney was concerned on a number of levels. One of these was the reputational damage that was being caused – not just to CEC but to Scotland – by the perception of failure to achieve agreement on a major contract of this nature. John Swinney, despite his party's antipathy towards the project coming into power, was engaged in assisting the Council to conclude the contract, albeit without further government funding.

**2009**

- In the First Ministers Questions ("FMQ") briefing to Ministers on 24 February 2009 I wrote, *"Programme slippage on this project has been developing since Contract close on 14 May 2008. While the key weaknesses in design at the time of contract signature, together with subsequent changes necessitated by CEC's planning and technical requirements, remain contributory factors, TIE and CEC consider that the main cause of current slippage continues to be the failure of the main infrastructure contractor, Bilfinger Berger, to mobilise according to contract timescales with construction milestones missed and costs rising accordingly"* (**TRS00016803**). At that point we began to realise that CEC and TIE were going to have considerable difficulty with their contractor. TIE really began to realise they were dealing with a big beast, and that the contract was weak in a number of areas. It did not give TIE sufficient power to get the contractor back on construction. In other words, the disputes were going to increase. The weakness of the contract was becoming apparent, and this was all being relayed to us in a very haphazard fashion.

- On 2 March 2009 I recorded a discussion with Mr Swinney. I said, *"A range of scenarios were discussed. As major funder, the formal Financial Agreement supporting the grant offered Transport Scotland a number of options that might be deployed. Depending on the level of information and assurances flowing from Tuesday's meeting, the Minister wished to consider the development of a "Cure Notice" to CEC. Also as both TIE and Bilfinger now appeared committed to the formal dispute resolution process, it was agreed that the Cure Notice should be timed to coincide with the dispute resolution timescales"* (**TRS00016823**). Regarding the point about the Cure Notice being timed to coincide with dispute resolution timescales, we were of the view that the dispute resolution process had to be quick. The longer you take to negotiate yourself out of the dispute resolution process the more you are going to impact on the eventual programme cost.

- Mr Swinney wanted TS to maintain regular dialogue with TIE and Richard Jeffrey about where the project was heading. In an email dated 4 March 2009, I said that John Swinney requested that there be more regular communication between TS, CEC and TIE (**CEC00888693**). TS considered that this might mean daily updates and this appears to have been carried out (see **TRS00005097, TRS00005099, TRS00005103** and **TRS00016897**). This lasted until May 2009, when it was replaced by weekly updates (**CEC00905500**).

- This was during the Princes Street dispute. Although we were getting intelligence, it was both censored and reactive. Dispute resolution had set timescales, and then there was a certain amount of time at the end for parties to review the outcomes. We needed to be in a position to regularly give Ministers, particularly John Swinney, live updates. The rate at which decisions were being made at one point, and the rate at which disputes were arising, gave rise to concerns that we would be behind every time. This is what John Swinney meant by getting close to TIE and CEC – we needed to be, as much as we could, in a more executive role.

- I drafted a briefing to Stewart Stevenson dated 13 March 2009 in which I referred to

Siemens' concerns about the behaviour of BB (**TRS00016901** and **TRS00016902**). I was advised by one of my TIE contacts that Siemens had let it be known that they were concerned about the perceived entrenchment of TIE and BB. They no longer wanted to side with BB as clearly as they had before and wanted to try and achieve some sort of mediation. I do not know the detail of their concerns, but I would imagine that they were keen to get on with the contract. Siemens' role was to deliver power and signalling. I believe that they were concerned that they could have got on with that part of the construction, but that the entrenchment of the other parties was getting in the way of that. They were dependent on the willingness of BB to actually complete construction across various areas that would allow them to do this.

- An email from Bill Reeve dated 20 March 2009 notes that a Princes Street agreement had been reached (**TRS00016949**). I sent an email dated 23 March 2009 providing a summary of the Princes Street Agreement in which I claim that I had been advised that "no additional money will be paid and that the Princes Street Agreement does not affect the Infraco contract "(**TRS00016963**). This was a reiteration of the advice given by Stewart McGarrity of TIE at that point in time. TS did not agree with those comments. It was important to us to advise senior managers and Ministers that an agreement on Princes Street appeared to have been reached, so there was a degree of optimism coming from that.

- In the March 2009 Quarterly Review, *"CEC/TIE were advised of the extent of Ministerial concern regarding the current contractual dispute at Princes Street and its potentially damaging impact on the project"* (**TRS00017047**). There had been on-going concern about the failure of the contract, and the failure of TIE and CEC to appear to have a handle on it. This was merely an indication of continuing efforts by the contractor to use the contract to frustrate TIE on the question of additional cost on what had, at face value, been a fixed price contract. In other words, as we know now, they were using the contract's weaknesses to exploit their situation - 'squeezing the margin on a fixed price'

- It is apparent from a note of a CEC/TS Quarterly Senior Management Meeting, held on 3 March 2009, that CEC were told that the Ministers were concerned about the effect the dispute was having on project costs and programme (**CEC00966220**). The record of the meeting notes that Bill Reeve wanted CEC to look at a scenario in which BB wanted to terminate. It noted that there has to be a point where termination would be the best option. TIE and CEC were reaching a position where things were not going their way. Dispute resolution was not going in their favour. There was widespread recognition that the contractual relationship between TIE and BB was going from bad to worse. As Bill Reeve put it *"there has to be a tipping point at which you cut your losses and move on to have to look at what was going to be the costs of termination, what would be the cost of re-contracting the outstanding work, could they in fact get anyone to do that etc?"*

**2010**

- John Swinney was briefed on the Princes Street dispute (**TRS00005100**). He contacted TS to "review options" (**TRS00016823**). He wished to consider service of a Cure Notice under Infraco. In May, August and December 2009 and January 2010 there were meetings between Ministers and Richard Jeffrey (**TRS00017098**, **TRS00010627**). It was noted that the project would not be delivered for £512m and would not be ready on time. There was reference to *"Mr Swinney's demand for an orderly conclusion to the current contractual difficulties"* (**TRS00017088**). On 25 January 2010, Mr Stevenson met with Richard Jeffrey. A briefing note was provided on 21 January 2010, advising that cost would be significantly over £600m and that the dispute with BSC continued (**TRS00017363**). Ministers were having meetings with CEC/TIE on a monthly basis in 2010 (**TRS00017673**). The involvement of Ministers is dependent on the nature of a particular project, and whether it has gone out to any particular form of funding and contract etc. The M80 project was a Private Finance Initiative, and although it was BB doing that work too there were wholly different circumstances. You cannot compare the role of the Ministers in a generic way across projects.

- By email dated 11 March 2010 it was mentioned that Mr Swinney was keen that TS should 'stay close' to TIE (**TRS00010651**).

- In August 2010, I drafted an advice note to Ministers that they might wish to withhold payment of the grant (**TRS00017806** and **TRS00017807**). We took the view that more pain than gain would arise from withholding funding.

## Design

### Parsons Brinckerhoff

- Key project risks are set out in an Annex to a Cabinet Memorandum in January 2007. It is noted that the tight programme presents a high risk and that SDS were performing poorly **(TRS00003494)**. TS were aware of this. It was an on-going problem from the beginning. Parsons Brinkerhoff were the main contractors brought in by TIE to undertake the design development. Despite the fact that they were globally renowned for their design expertise, TIE continually reported that they could not deliver on time and to the requisite quality.

- That Parsons Brinkerhoff failed to deliver on time and to the right level of quality almost from the start was of continuing concern to TS given that it was TIE's strategy to novate any outstanding design work through the INFRACO: The more incomplete the more costly it would be. It was an issue that was never settled prior to financial close despite reported multiple serious attempts by TIE. It was apparent that failure to resolve these problems by contract close would cause further dissatisfaction between TIE and BBS mainly because the sub quality design was novated to BBS as part of the Infraco.

### Transport Scotland's role

- It is alleged that TS were proceeding in the knowledge that there would be a problem with availability of designs (**TRS00003494, attached to TRS00003491**). We need to be clear on this - TS was not proceeding with the project – CEC was proceeding with the project - TS was proceeding with relevant project funding. TS always expected that the TPB and TIE would resolve the design problems. That this was never achieved was an everlasting puzzle for TS.

- In an email sent to me, Bill Reeve noted that the SDS needed fixing but acknowledges that the problem lies with TIE (**TRS00003551**). TS had no authority over TIE about its management of such problems.

**2007**

- Concerns about design and design slippage were consistently being raised in the 4 week reports to TS throughout 2007. I cannot recall discussing them in isolation of the other associated difficulties that TIE had reported - Ultimately, an increased final contract price would be the result if the design problems were not sorted out

- Throughout 2007 I was provided with minutes of the DPD Committee which noted the problems with SDS at the time of the elections (see **TIE00064786** and **TIE00064787**). Prior to the election we were appraising ourselves of the way in which these issues were developing in TIE to allow us to raise issues through the TPB.

- In March 2007, the four-weekly report to TS states that the TPB are to approve proposals for settling historic SDS issues. The historic issues referred to were failures to deliver on time and to the right quality.

- A number of issues arose in the July 2007 four-weekly report (**TRS00004495**) Despite attempts to arrest design slippage, the problem of design arises in the next monthly report to TS, *"Designs due from SDS in the period were not delivered to schedule. The impact of the delays is being managed carefully to ensure works* *can start in the following period as per the plan"* (**TRS00004588**).

- Further on in that report it states, *"The 'critical issues' are items which are preventing SDS from achieving their programme".* They would have been dealt with by TIE or the TPB.

**2008 onwards**

- In the January 2008 report, it was stated that that the 'Agreement for Contract Price for Phase 1a' was signed on 21 December 2007, which fixed the Infraco price and effectively transferred design development risk to BBS (**CEC01369999**). We foresaw it being a continuing problem right up to Contract Close. I would describe the quality of TIE's assessment and reporting as questionable.

- The four-weekly report submitted in December 2009 notes that there is little evidence of better management of SDS by BSC (**CEC01369999**). Every four-weekly report to TS included delays to the design programme. The design problems got worse under the Infraco contractor when improvement in design had been one of the key objectives of novation. BBS were to assume management, resolve the problems and complete the work. TS had no locus to do anything about this problem as we were not party to the contract.

## Governance

**Pre-May 2007**

- TS were involved in establishment of the governance structures. James Papps of PUK sent an email dated 25 October 2006 in which he said, *"As you know the poor project governance for Tram was a particular concern for us earlier this year, and a key prompt for the initial Readiness Review. The process to put revised arrangements in place has been protracted at times, but we would agree with you* *that the new structure represents a significant improvement"* (**TRS00002949**). What James Papps means is that we had identified governance weaknesses that we wished CEC and TIE to address before starting procurement. PUK had direct experience, not just of other transport projects across the UK but also of funding problems and answers. They were a quasi-private partnership as I recall, an offshoot of HM Treasury, so they had a foot in both camps. They were able to understand the difficulties and the problems that were associated with major central government funded projects. They were also able to ascertain which projects could achieve successful outcomes with different methods of funding, such as PFI or PPI. As I recall TS did not directly engage PUK, we were encouraged to work with them prior to our engaging KPMG. KPMG had worked previously with James Papps and regularly discussed mutual areas of interest to ourselves.

- I am aware of Damian Sharp's email of 19 September 2005, where he said, *"As principal funder of the Edinburgh Tram Network, the Scottish Executive will participate fully in the Tram Project Board"* (**TRS00001923**). He was merely reiterating the guidance contained in the Scottish Public Finance Manual at that point. The circumstances in 2005 were however, different by 2007. The counter-argument is that it should have applied more fully in 2007 than it did before, which is why a lot of criticism had been applied to TS's decision.

- In March 2007, TIE/CEC began submitting 'Four Week Period Reporting Packs' to TS. The four-weekly reports were very much an industry standard and replaced the previous Monthly Progress Reports. Up to 2006 we had monthly reports from the Council, with monthly meetings between ourselves and including TIE. The information provided to TS from 2007 onwards was in essence a subset of that which went to the Tram Project Board minus the agenda and minutes.

- In an email from Bill Reeve dated 2 April 2007, he says, *"I raised the issue of Willie's combined Chairman/CE role. He is alive to this, and sees different solutions depending on the scale of TIE's portfolio after the election"*. I knew there were reservations about Willie Gallagher's combined role - these related to potential governance conflicts where the same person was the Chief Executive and Chairman of TIE, the roles having been split before. At that stage, it was seen as a potential future difficulty which CEC would reassess after John Swinney's agreement with Parliament. In effect this was not done until after his resignation.

**Withdrawal from TPB**

- After John Swinney made his stipulation that there would not be a penny more than £500m, he wanted TS to be even more removed from project governance procedures. Given that we had to withdraw from the TPB, it made it more imperative that we received as much continuing quality intelligence on the project as possible. So, although we had come off the TPB, TS remained the major funder and in a scenario where there were critical concerns. The fact is that well into the dispute process TS did not receive any quality information from TIE despite increasing pressure from TS senior management.

- The non-participation of TS in the TPB after May 2007 was quite a clear decision. The project had reached the development stage, where it was about to go out to tender. Negotiations had already taken place and the project had reached the stage where we could legitimately leave the governance to CEC as project owner. There were severe concerns within the new administration about the project itself, but agreeing with Parliament to continue funding clearly meant that Transport Scotland would continue as banker or major funder.

- I am aware that on 20 March 2007 Stewart McGarrity sent a note of a meeting involving me that took place on 19 March 2007 (**CEC01637930**). It is suggested that there was consensus that risks should be shared on a proportional basis between CEC and TS. This proportional risk sharing principle would be underpinned by TS's role in the governance structure through the TPB in monitoring and controlling changes to cost. I do not recall that anyone in TS had made or agreed such a risk sharing proposal and I can only assume that TIE were either mistaken or attempting some other ploy. CEC had already accepted that it would be responsible for all risks and all cost overruns beyond the £545m.

- Following John Swinney's desire that TS must vacate their place on the TPB, there was a series of meetings between senior managers in TIE, CEC and with Damian Sharp from TS about how best to continue governance of the project. From the TS perspective, we had to take account of what the Scottish Public Finance Manual would require us to do. The result was termination of our access to TIE and the regular meetings, and TIE's presence at the four-weekly progress meetings with TS and the Council also stopped. Willie Gallagher, at the time, took me to one side and made it quite clear that I would no longer have access to TIE. I would be there by invitation only and all the information that we required would come through the four-weekly report. At this point I reminded Wullie Gallagher that the quality of reporting from TIE that we had been receiving to that date had been problematic abnd from that point would require significant improvement given the revised governance.

- TEL, as far as I can recall, was the management company for TIE and Lothian Buses. The point was ultimately to integrate the management and running of both trams and buses. I did not have a lot of dealings at Chief Executive Level. I did meet Willie Gallagher and David Mackay from time to time, and I found the latter very helpful. However, overall I thought that when TIE especially was under pressure they were most unhappy with TS's role and I think it fair to underline that as a classic client-principal issue. TIE were often concerned that I was going beyond the perceived need for data especially given our amended governance role, despite the fact that the SG continued to be the major funder. They felt happier dealing directly with either the TPB or CEC as their employers, but not with TS.

**June 2007**

- In an email from me dated 28 June 2007 I wrote that Bill Reeve described our new role after the election as "bankers rather than facilitators" (**TRS00004489**). This was terminology that we often used in-house. It reflected a relationship which we had often made quite clear to CEC and which they understood. The governance needed to be changed to reflect that. I was uncomfortable with the knowledge that TS would be exposing itself unnecessarily without continued quality reporting arrangements – bearing in mind previous references to the problems experienced with TIE's reporting and against TIE's claims for improved reporting before this period. Quite clearly the issue for us was to maintain sources of intelligence above other formal reporting arrangements agreed between CEC and ourselves.

**July 2007**

- On 4 July 2007, I drafted a paper on Edinburgh Tram Network ("ETN") Funding and Governance (**TRS00004511**). In that paper it states, *"Ministers subsequently committed the Executive to this decision but then went on to say that, a) the funding support would be capped at £490m "and no more" and b) affirmed that the Tram project "was the City of Edinburgh's – not the Executive's... Accordingly the Projects Team together with Jerry Morrissey and Damian Sharp met last week to analyse what these two decisions mean for Transport Scotland and future management of the project".* It then states that, *"Option 4 has some attractions and is now apparently receiving support from CEC and TIE, but there is an accompanying expectation from the promoter that there would then only be a very minimal engagement/oversight from Transport Scotland. While this may be attractive to them I cannot envisage a project funded to this scale by the public purse being managed at such a distance and with such a hands-off approach... Following on from the question of funding limits, ministers also made it perfectly clear that this is a CEC project not the Executive's. We have therefore assumed that our role has now changed from being that of a fully supportive and promoting funding partner to that* *of major funder or banker. Given minister's strength of opinion on the project and accompanying comments on capped funding, this has implications for the style and level of management that we see Transport Scotland assuming responsibility for... Parliament's decision highlighted by Mr Swinney's subsequent comments, make it clear that beyond the overall Executive funding limit (as above) all risk is to be borne by CEC... We argue that the recent clearance on project governance etc by Audit Scotland is a clear reflection of the project oversight and management that Transport Scotland has maintained to date. Against the argument for its removal we also consider that sound financial control and public probity should remain our priority and be safeguarded through continuing engagement, regardless of the promoter's wishes but this must be balanced against the redundant need for the higher level supportive and promotional role that we have previously adopted. This may be a decision that can be made within Transport Scotland but we recommend that ministers are advised accordingly".*

- I was not unduly concerned to see TS withdraw from the governance structure, given my previous reservations about its efficacy, however in doing so I agreed with the view that we may, as an undesired consequence, leave ourselves open to even poorer quality reporting and uncertainty.

- I am aware that, on 6 July 2007, Malcolm Reed drafted a memo to John Swinney which stated, *"To achieve this clarity of roles, and ensure that situations could not arise subsequently in the governance of the project which might generate further calls on central funding, I propose that Transport Scotland's future engagement with the Edinburgh Tram Project should be on the basis of revised grant conditions and once these conditions are in place Transport Scotland staff should withdraw from active participation in the governance of this project"* (**TRS00004523**). In response to this memo, Jerry Morrissey said, *"We need to define and discuss our level of involvement in trams. It may be slightly different to what we proposed"* (**TRS00004522**). What we had was a decision to make as to whether we withdraw completely from the Tram Project Board but continue in our funding role. That would not give us reassurance that we were able to meet the terms of the Scottish Public Finance Manual. In other words, we were signing over monies on the basis that this had all been agreed through the Tram Project Board and ultimately by CEC. CEC were ultimately responsible for billing us and they have to reassure us that that money was actually being used for the project, and nothing else. There was always the desire to reduce the prospect of TS being asked for more money but the grant conditions ensured that both CEC and TS were comfortable with the mutual recognition that the final capital sum, £375m, as indexed to £500m, was going to be the full amount and they were not going to get any more.

- I am aware that on 12 July 2007, after a TPB meeting that day, David MacKay wrote to Malcolm Reed to confirm the oversight process which he thought involved TS officials sitting on the TPB. In reaction to that, Jerry Morrissey insisted on producing a short note on *"scale back"* with Bill Reeve (**TRS00004540** and **TRS00004541**). On 17 July 2007, Damian Sharp sent an email providing feedback on the TPB held on 12 July 2007. On the role of TS, Damian Sharp said, *"David MacKay, James Stewart and Neil Renilson all expressed strong support for Bill continuing to be a member of the TPB and for TS to be actively engaged with the project: Willie Gallagher was silent on this but we know he doesn't quite share that view. I said that we would need rapidly to conclude our consideration of our role and that we would need to ensure that future arrangements were consistent with the Scottish Public Finance Manual given the scale of Scottish Executive funding being invested".* In response to that email, Malcolm Reed said, *"I am getting very strong signals from the Cabinet Secretary that TS should not be on the Project Board – he reiterated this at the Portfolio Meeting on Tuesday morning. Of course we need to fulfil any obligations under the SPFM, but we need to withdraw from active engagement in the delivery of this project and – crucially – in any decision-making processes that could compromise the new arrangements for allocation of financial risk for this project".* In response to Malcolm Reed's email, Bill Reeve said, *"The clarity of John Swinney's advice is helpful. I remain concerned about the risk arising from withdrawing from governance arrangements that Audit Scotland have found* *satisfactory. Compliance with the SPFM must be seen in this context. We must have a well recorded reason for making these changes"* (**TRS00004547**). I was not present at the discussions with the Minister. They shared compliance with the Scottish Public Finance Manual. I do not know why David Mackay thought that we were still on board. At that time, there were discussions being held between Damian Sharp and members of TIE that did not immediately align with what others were doing, and that caused a bit of additional pressure on TS.

- On 20 July 2007, Matthew Spence produced a short note on *"scale back"* for Malcolm Reed (**TRS00004558** and **TRS00004559**), referred to as the *"one pager"*. The purpose of the note was, *"to define the revised, 'scaled back' role of Transport Scotland with respect to the Edinburgh Tram Project in light of the modified funding arrangements"*. Matthew Spence rejects Willie Gallagher's earlier suggestion of TS approving preferred bidder and the FBC. Instead, *"the 'approval' by TS at contract close will be based on the following: (1) Compliance with standard grant conditions to date. (2) Having received a copy of the completed Final Business Case as endorsed by City of Edinburgh Council. (3) Having received confirmation that the project has successfully passed a standard OGC Gateway 3 Review. (4) On-going information received via the standard TS reporting process and four-weekly meetings with the City of Edinburgh Council"*. Those four points were draft grant conditions because we were going to put a new grant agreement, or financial agreement, to CEC at that point. I knew that Matthew Spence did some work on clarifying the roles of TS for Malcolm Reed and, ultimately, I am sure the Minister agreed to it.

- The new arrangements set out in the paper, *"detail an appropriate role for Transport Scotland in line with the wishes of the parliament whilst maintaining the appropriate controls expected/required in relation to the investment of public funds"*. On 2 August 2007, Malcolm Reed wrote to Tom Aitchison at CEC informing him of the new scaled back role of TS. This was a consequence of the position reached in Parliament on 27 June 2007 (**TRS00004634**). The proposals were ratified at the TS meeting of Directors on 8 August 2007 (**TRS00004732**). In September 2007, the TPB noted that withdrawal of TS was consistent with the position adopted in England, although it was questioned whether it was politically motivated (**CEC01561047**). I do not have any view on the political motivation. As referred to previously, I was busy getting on with ensuring the new arrangements worked as intended and as required to support the public purse.

- CEC produced a supplementary paper on the governance arrangements for TIE in July 2007. The first option in the paper suggested winding up TIE to allow CEC to take over the project directly, but this would be contingent upon TS no longer insisting upon an arms-length company being required to deliver the project (**CEC01567396**).

**August 2007**

- The Quarterly Review meetings ended in August 2007 due to the revised role of TS. However, they then restarted at the beginning of 2009 under the terms of the formal Financial Agreement between CEC and TS. The four-weekly reports ran until 2012. Responsibility was assumed for the tram project by Ainslie McLaughlin, taking over from Bill Reeve.

- There was little we could actually do to encourage TIE to be more forthcoming and more realistic. At the same time, we appreciated that they were in all sorts of trouble and generally were not able to overtly document how bad things actually were because of the commercially sensitive nature of the issues it was dealing with. However, it was always my belief that commercial sensitivity was used as a reason to withhold information from TS much more than was either logical or necessary. I could understand why TIE might be reluctant to show anybody beyond those immediately responsible, but nevertheless that led to the situation where things did not change in the reports for long periods despite the reality being widely debated amongst everyone involved - or there developed a pattern of confusion or contradictions appearing month by month.

- TS remained suspicious of the continuingly positive risk registers, and sceptical that the treatments identified were likely to be effective in mitigating the scale and potential impact of the risks identified. The contract had been signed and the risk had been transferred. Although there were disputes, we were not interested in the risk as we were only interested in the impact that had on the project.

- Whilst I had already escalated TIE's poor reporting to Director Level everyone in TS was aware that further complaints would only impose an additional burden on CEC beyond that which would ultimately improve the areas that we were particularly interested in.

- On 3 August 2007, I sent an email to TS colleagues in relation to an increase in the SDS claim from £2.2m (reported in TIE's period 3 report) to £2.8m. I said, *"As usual TIE have been less than explicit about this and it could have made with much clarity but ... Also CEC might need to be a little more concerned about any further escalation of £0.3m month"* **(TRS00004646).** On 15 February 2008, I expressed concern about the lack of detail in CEC's application to TS for payment (**CEC01401466**). Applications made to TS for grant payments were signed by directors in CEC, such as Donald McGougan or Dave Anderson. We did not get applications from TIE directly.

- I was sent the papers for the DPD committee and attachments (see **CEC01567145** and **TIE00064786**). These were provided to me as TS then had a place on the DPD committee so that we could relate our concerns back through via the TPB.

**October 2007**

- On 5 October 2007, I sent a document attached to an email which reported on grant letter issues (**TRS00004883** and **TRS00004884**). The answer to question one, under the heading 'CEC commentary on current grant letter negotiations', states that, *"while there is no reason to treat either CEC and the Tram project any differently to any other part of the TS Major Programme, we do have Ministers' interests and wishes to account for whilst balancing the requirements of the Scottish Public Finance Manual"*. This did not mean that TS was treating CEC and the tram project differently to other TS projects. I was underlining the point that the Ministers' decision left us to find a way which would be consistent with maintaining the probity of the Scottish Public Finance Manual requirements.

- In emails exchanged between myself and Rebecca Andrew in October 2007, it was confirmed that I would lead monthly meetings based on the four-weekly reports and that the senior level meeting would be quarterly **(CEC01565345).** What myself and Rebecca were talking about was carrying on the process of the four-weekly report follow-up meetings, which were somewhat confusingly titled "monthly meetings". In addition, there was meant to be more regular senior level meetings – but they were subsumed into the quarterly review meetings. We had what we called a two meeting cycle following on from these meetings with CEC. It was Rebecca Andrew (until she left and then Alan Coyle) and the project managers from CEC (who varied from time to time) who attended these meetings. TIE did not attend the meetings unless at the invitation of CEC. The four-weekly meetings achieved their objective in the sense that Alan Coyle and the CEC Project Managers went away with more tasks than I did. I asked more questions than they asked of me. It was my job to consider and act on the reports provided by TIE. The reports from TIE/CEC were circulated for comment in-house, largely from Cyril Sweett. Our finance colleagues were interested in the AFC as it developed. It was a grant condition that TIE needed to produce regular reports on the situation as it pertained to the development of the contract, particularly post-contract close. TS's response to the reports went back to CEC not to the ministers. We subsequently advised Ministers thereafter at various appropriate stages. It was not tied to any particular chronological event; it was tied to the development of the situation at any particular time. The reason for these meetings and reviews was because what it also contained was a spread sheet showing the breakdown of costs. Therefore, all the costs TIE were attributing to the project and billing the Council for, the Council would incorporate all that information into their bill to TS.

**2008**

- TS continued to take an interest in the project after contract close. In May 2008, I requested sight of the DLA report on the Infraco contract suite (**CEC01372447**). TIE were not happy with providing so much detail. Graeme Bissett suggested that *"I think the debate should be escalated because of wider concerns about TS officials seeking to re-enter the management of the contract, which was explicitly not what the Minister proposed when the £500m was agreed last year"*. Andrew Fitchie asked *"why does TS need this information? It cannot just be "because we want to read it""*. I recall that I felt that TS did in fact need such information, not as an adjunct to interfering or seeking development of alternative but by way of securing Ministers' position viz the various contracts. It also seemed relevant at the time as a way to test TIE regarding the quality of the information we were getting.

- CEC submitted a number of interim reports to TS (see **CEC01215906**, **CEC01083773**, **CEC01049710**, **CEC01074779**). This was part of the Council keeping us in the developing picture. They would relate to aspects of the delay in securing contract close

**2009 onwards**

- In the September 2009 four weekly report it is reported that, *"regular briefings will be provided to both CEC and Transport Scotland to keep them updated on progress and implications for the project programme and finances of all the above matters, and TIE met with TS most recently on 9 September 2009"* (**CEC00680381**). This is a reference to the developing requirement for robust information from the Council, not TIE, on the situations that were developing. This was so we could, in turn, keep

Ministers appraised. They were in the form of meetings, not written briefings.

- I attended a Tram Budget meeting on 3 February 2009 (**TRS00016779**). The report of the meeting which shows TS concerned about the AFC, about slippage in delivery dates, and that the monthly reports are inconsistent (**TRS00016780**). Changes to the AFC were noted, and the variety of different dates for works is set out. We immediately informed Ministers. We wanted, as quickly as possible, to get the reassurance from CEC and from TIE that they had a handle on this – that they knew what was happening and how to fix it. They had a handle on it, but only in the sense that they suddenly became appreciative of the difficulties that lay ahead for them with BB. We were immediately concerned about the sudden impact that would have on the AFC and on the programme. At the time, when public opinion was very much against the project, politicians of all colours were slowly coming out of the woodwork to declare their antipathy towards the project. Those that had previously supported the project were noticeably quiet. We felt the political temperature had suddenly and dramatically got less favourable, both in terms of support for CEC and confidence in TIE and CEC to get to grips with the issues. It did not come as a great surprise. TS immediately informed Ministers and got round the table with CEC. We asked what was going on, what were they doing, and what impact was it going to have on the project? TS did not get involved in any direct action other than getting more information.

- From October 2010 onward, the four-weekly reports were countersigned by Dave Anderson at CEC. This happened from time to time. It was not a problem as the TS stipulation was that the document required to be signed at Director Level at CEC.

## Audit Scotland

- On 6 June 2007, the Scottish Executive made the decision to ask Audit Scotland to complete a review of the tram costs methodology.

- When Audit Scotland became involved they permitted considerable input from TS as to the facts and its opinions (**TRS00010878**, **TRS00010933**). There is a set of comments by James Casey (**TRS00005079**). These documents illustrate the level of influence of TS over Audit Scotland reporting. Whether such input into an Audit Scotland report was normal depends on what Audit Scotland want to do. They were requested by Ministers in the run up to the new administration, because of their clear opinion towards both the tram project and the EARL project.

- When Audit Scotland reported in 2011, they recommended that Ministers should consider whether TS should use its expertise in managing major transport projects in the tram project (**ADS00046**). They were voicing what was beginning to be a common theme amongst politicians and the industry as a whole. People were wondering why we were not more involved. Even informed parties did not know what the actual position was between the Scottish Government and CEC; all they saw was the continuation of funding at a difficult time.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 64 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

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

Date of signing........24 MAY 2017..........