

STATEMENT OF MALCOLM HUTCHINSON

INTRODUCTION

1. a. What were your main qualifications and vocational experience at the stage you became involved in the ETP?
- b. What was your experience in major infrastructure projects, including tram and light attached rail systems, prior to your involvement with the ETP?

Please see my CV.

REVIEW PROCESS – OVERVIEW

2. We understand that you led a team that conducted Office of Government Commerce ('OGC') Gateway Reviews on the ETP prior to contract close in May 2008 and thereafter led a number of 'Peer Reviews' on the project. An email from 2011 set out the dates on which the OGC and Peer Reviews took place (TIE00671216).
 - a. Can you explain what the OGC was? What was its purpose?
 - b. In general can you explain what an OGC Gateway Review was? What was its purpose? What were the different stages? Who undertook such reviews?
 - c. In general can you explain what a Peer Review was? What was its purpose? Who undertook such reviews?
 - d. In general, can you explain what the review team's involvement in the ETP was? Between what dates were the review team engaged to work on the ETP? How was it engaged? What was its main duties and responsibilities? Did these duties and responsibilities change over time (and, if so, when, in what way and why)?
 - e. To whom did the review team report to and who reported to it?

The OGC was a section of HMG Treasury. It developed review processes to improve the performance of government procurement organisations in terms of cost, time and operational performance. OGC developed review processes and mandated that they be applied to all Government procurement. OGC recruited (into different grades), trained, awarded contracts to and paid reviewers.

An OGC Gateway Review was a short review, usually 3 days including a planning meeting, and report writing. The purpose of the review was to ensure that the programme did not run over time, not cost more or under perform. Review reports were produced as part of all reviews that I participated in (Gateway and Peer).

A Peer Review was similar to a Gateway Review except that in place of applying OGC rules the review was based on joint discussions between

the review team and the project team.

The review teams all reported to the Senior Responsible Owner and or Project / Programme Manager who had commissioned the review. No one reports to the review team.

Reviews were commissioned for each phase of the programme. The 8 phases are listed on the transport for Scotland website.

THE TRAM PROJECT – OVERVIEW

Procurement

3. In relation to the procurement strategy for the tram project:
- a. What was your understanding of the main elements and objectives of the procurement strategy for the tram project?

I do not remember
 - b. Did the procurement strategy or objectives change in any way (and, if so, when and why?)

I do not remember
 - c. In the event, do you consider that the aims of the procurement strategy were met (and, if not, why not)?

I do not remember
 - d. How important was it to obtain a fixed price for the Infraco contract?

It depends on the market
 - e. What was your understanding of the extent to which the procurement strategy envisaged that the design and utilities would be completed before the Infraco contract was entered into and before the Infraco works commenced?

I do not remember
 - f. How important was the prior completion of these works to the procurement strategy?

I do not remember

Design

4. We understand that there were difficulties and delays in progressing and completing the design for the tram project. By way of overview:
 - a. What was your understanding of the main difficulties in carrying out the design work and the main reasons for these difficulties?

I do not remember
 - b. What steps were taken to address these difficulties?

I do not remember
 - c. Were these steps successful (and, if not, why not)?

I do not remember
 - d. In 2007, a decision was made to continue with the procurement process notwithstanding the incomplete design. Can you comment on the reasons for that decision and whether, in your view (with or without hindsight), it was the correct decision?

I do not remember

Utilities

5. TIE entered into the MUDFA contract in October 2006. Utilities diversion work commenced in July 2007 and were due to be completed by the end of 2008, prior to the commencement of the main infrastructure works. There were difficulties and delays in progressing and completing the utilities diversion works. By way of overview:
 - a. What was your understanding of the main difficulties in carrying out the utilities works and the main reasons for these difficulties? What role, if any, was played by the provision of designs for the utilities works?

I do not remember
 - b. What steps were taken to address these difficulties?

I do not remember
 - c. Were these steps successful (and, if not, why not)?

I do not remember

Risk

6. a. In general, what risks were identified as requiring management and how were they managed?

I do not remember

- b. Who was responsible for managing and monitoring risk?

I do not remember

- c. Did the risk management approach differ from other projects on which you have worked and, if so, in what ways?

I do not remember

- d. Do you consider that the risk management on the tram project was effective and can you give reasons for your view?

I do not remember

- e. In the tram project, do you know what was done when it became apparent that a risk would materialise and how does that compare with other projects?

I do not remember

OGC GATEWAY REVIEWS

Readiness Review (OGC Gateway Review 1)

7. Between 22 and 25 May 2006 a Readiness Review was carried out on the tram project. A report on the findings of the Readiness Review team was issued to the Chief Executive of TIE on 25 May 2006 (**CEC01793454**). The team made a number of findings. The review concluded that the project would not currently satisfy the criteria that would be assessed as part of an OGC Gateway 2 review. The overall status of the project was assessed as Red (i.e. to achieve progress the project should take action immediately).

The accompanying terms of reference explained that the review would be high level and strategic and would not be concerned with contract drafting or detailed provisions of the invitation to Tender Notice (ITN) documentation and schedules, nor with the economic case for the project, but would focus on key issues which underpinned successful procurements (**CEC01881455**). While the review team would have access to the Outline Business Case, the draft Infracore ITN documentation, vehicles documentation and other key documentation on request, they would rely principally on interviews with relevant individuals.

- a. On page 2 of the Readiness Review it is stated that no OGC Gateway reviews have been undertaken and that the project is considering whether to initiate a full OGC Gateway programme from Gateway 2 onwards. Can you explain the status of this Readiness Review? Is it an OGC review? Is it an OGC Gateway 1 review?

Neither

- b. What was the purpose of this review?

I do not remember

- c. What was the genesis of this review? Please explain, for example, who proposed that a Readiness Review should be undertaken and the reasons for that proposal?

I do not remember

- d. Can you briefly explain what the main findings of this review were?

No

- e. Who undertook this review and drafted the report?

I do not remember

- f. How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis of the report of the review? Who provided that information to the review team? Please indicate the main documents and interviews upon which the review was based.

I do not remember

- g. How did the OGC team verify the information provided by TIE staff at interview?

I do not remember

- h. Did TIE, CEC, Transport Scotland and/or contractors have any input into the final review report?

I do not remember

- i. Who approved this report before it was sent to the Chief Executive of TIE?

I do not remember

- j. Who else received a copy of the report? For what purpose did they receive the report?

I do not remember

- k. Did you (or others in the review team) have any concerns about the project at that stage? If so, what were those concerns?

I do not remember

- l. The terms of reference are attached to an email sent by Michael Howell at TIE (CEC01881454). Who determined the scope of the Readiness Review?

- m. Did you (or others in the team) have any concerns in relation to the project at that stage?

I do not remember

8. One of the recommendations made is that procurement and contractual strategy should be reviewed in light of market feedback. The review recommended that the incoming Tram Project Director should lead a review of the procurement approach in light of concerns expressed by some of the bidders at the requirement to accept novation of subcontractors: *"For example, there are reports that potential Infracos may not want to take on designers or charge a premium for full novation of the SDS contract"*.

- a. Why did the procurement and contractual strategy need to be reviewed?

I do not remember

- b. Do you know why Infraco bidders were concerned about novation of the design contract?

I do not remember

- c. Was a review ever carried out by TIE? Do you know what the outcome of any such review was?

I do not remember

9. The OGC review team had not seen evidence of the development of an agreed negotiation strategy for a project of this complexity and recommended that such a strategy be developed for discussion at Chief Executive level.

- a. Would you expect to see the development of such a strategy at that stage?

I do not remember

- b. Was a negotiation strategy developed? Did you ever see or review the negotiation strategy? If so, what were your views on the strategy?

I do not remember

- 10. It was noted in the OGC review that the governance structure for the project appeared complicated (albeit it was acknowledged that it was going through a process of change).

- a. What were your views on the governance structure for the tram project? Was it fit for purpose? Did the governance structure change as the project progressed and, if so, how did it change? What did you consider to be an optimal governance structure?

I do not remember

- 11. The review noted that TIE had "bought in" most of its expertise through the TSS and SDS contractors.

- a. Did you think that TIE had the requisite skills and experience to undertake the tram project?
- b. What were your views on TIE buying in its expertise? Was this a good way to proceed? Was there a different approach?
- c. Did you have any concerns from the fact that TIE, as organisation, had no prior experience on project managing, and delivering, major infrastructure projects?
- d. Did you have any concerns that TIE may find it difficult to manage "disaggregated" contracts (i.e. separate contracts for design, utilities and the infrastructure works) and the inter-relationship between these different contracts and works?

I do not remember

- 12. The risk registers were considered as part of the Readiness Review. It was noted that there was no obvious evidence of risks being acted upon. It was recommended that the Project Director review the process for acting upon and mitigating the risks to ensure successful delivery of the project.

- a. What were your views on the tram project's risk management at this stage and later as the project progressed?
- b. Did a review of risk management take place? Did the risk management on the project change? If so, what material changes were made to risk management?

I do not remember

- 13. It was noted that there had been a number of activities that had taken longer than expected, necessitating a series of revisions to the project programme.

- a. What activities had taken longer than expected and why? How did this impact on the project programme and cost? Did the revisions to the project programme cause you any concerns at that stage?

I do not remember

14. In relation to Affordability and Funding, it was noted that there was no agreed common understanding as to the expected outturn costs of the project and the consequent balance between scope and affordability. Looking forward, the tender returns for the Infraco and Tramco would inform the costs estimating process *“but will not represent comprehensive tendered costs at the time the business case is next considered due to the negotiated procurement procedure being followed. The implications of this will need to be understood by all stakeholders”*

- a. Can you explain what was meant by *“no agreed common understanding as to the expected outturn costs of the project and the consequent balance between scope and affordability”*?
- b. What role do tender returns have in the cost estimating process? Is it good practice to rely on tender returns as the basis for a cost estimate? If not, why not? What other factors need to be considered in the cost estimating process?
- c. What were *“the implications”* that required to be understood by all the stakeholders?

I do not remember

OGC Gateway Review 2

15. Between 26 and 28 September 2006 another review was carried out (the scope of which was aligned with the criteria for a Scottish Executive OGC Gateway 2 review). It was carried out on the instruction of the Chief Executive of Transport Scotland **(CEC01629382)**.

- a. Why did the Chief Executive of Transport Scotland instruct this review to be carried out?
- b. What was the purpose of this review?
- c. Who determined the scope of the Gateway 2 review?
- d. Can you briefly explain what the main findings of this review were?
- e. Who undertook this review and drafted the report?
- f. How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review? Who provided the evidence to the review team? What were the main documents and interviews upon which the review was based? Were the OGC team able to verify the information provided?
- g. Did TIE, CEC, Transport Scotland and/or the contractors have any input into the final review report?

- h. Who approved this report before it was sent to the Chief Executive of TS?
- i. Who else received a copy of the report? For what purpose did they receive the report?
- j. Did you (or others in the review team) have any concerns about the project at that stage?

I do not remember

16. The overall status of the project was assessed as Amber (i.e. the project should go forward with actions on recommendations to be carried out before the next review of the project). The majority of the recommendations from the previous OGC review had been fully achieved with a few being partially achieved. The procurement timetable appeared "tight but deliverable".
 - a. What was your awareness, at that stage, of any difficulties and delays with the design and utilities works?
 - b. Why was the procurement timetable considered "tight but deliverable". What problems would arise if the procurement timetable was not delivered on time?
 - c. What process was there for following up recommendations made in reviews and checking whether they had been carried out?

I do not remember

17. The Gateway 2 Review Follow Up Report was issued on 22 November 2006 to Transport Scotland (CEC01791014, attached to CEC01791013). This review was undertaken for TS to check progress has been made against the recommendations from the Gateway 2 Review and to comment on the robustness of the project going forward. Some of the conclusions of the review were that:
 - All of the recommendations from the Gateway 2 review had been fully or substantially achieved
 - There were improvements in working and communication between the main bodies
 - There was a challenging timetable for submission of DFBC
 - SDS were being better managed
 - a. What was the purpose of the follow up? Was a follow up conducted after every review?
 - b. Did you have any remaining concerns?

I do not remember

OGC Gateway 3 Review

18. An OGC Gateway 3 review took place between 1 and 4 October 2007 and a report was delivered to the Chief Executive of CEC (**CEC01562064**).

CEC01643186 is an email from Willie Gallagher to others in TIE dated 27 September 2007 in which WG summarises the issues discussed with you. WG said that you were not a fan of the procurement strategy, you favoured design and build contracts and that "this may partly explain the pressure from the group on SDS novation".

- a. It would be helpful if you could explain your views as set out in that email?
- b. What was your view of the procurement strategy at the time?
- c. What do you consider Mr Gallagher meant by his comment "this may partly explain the pressure from the group on SDS novation"?

I do not remember

19. In relation to the OGC Gateway 3 review (**CEC01562064**):

- a. What was the purpose of this review?
- b. What was the genesis of this review? Please explain, for example, who proposed that a review should be undertaken and the reasons for that proposal?
- c. Who determined the scope of the Gateway 3 review?
- d. What were the main findings of this review?
- e. Who undertook this review and drafted the report?
- f. How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review?
- g. What material and evidence were the review team provided with for this review? Who provided that information to the review team? Please indicate the main documents and interviews upon which the review was based. Were the OGC team able to verify the information provided?
- h. Did TIE, CEC, Transport Scotland and/or the contractors have any input into the final review report?
- i. Who approved this report before it was sent to the Chief Executive of CEC?
- j. Who else received a copy of the report? For what purpose did they receive the report?
- k. Did you (or others in the review team) have any concerns about the project at that stage?

I do not remember

20. The overall status of the project was assessed as Green (i.e. "The project is on target to succeed provided that the recommendations are acted upon")

- a. Given that this was the final OGC review before contract close, what process was in place to make sure that the recommendations were acted upon? Who or what organisation was responsible for ensuring the recommendations were implemented?

- b. The review stated that all of the recommendations in the Gateway 2 report had been fully or substantially achieved. How did the reviewers ascertain that?

I do not remember

21. The project faced a challenging period with a number of matters requiring to be addressed. 65% of detailed designs had been completed. There was a tight programme of planning and technical approvals. The timeliness of project delivery was of concern. The review team believed it would be very challenging to finalise the matters noted in the report by the target date at the level of quality expected and recommended that the preferred bidder was appointed as soon as possible and that the programme during the preferred bidder period was monitored closely at a senior level.

- a. What was your awareness at that stage of the difficulties and delays with the design and utilities works? What steps had been taken to address these difficulties? Had these steps been successful? What consideration had been given to how these difficulties might affect the procurement strategy, including obtaining a fixed price for the infrastructure contract? What consideration had been given to how these difficulties might affect the infrastructure works?
- b. Why was the timeliness of project delivery a concern?
- c. What concerns did you have at this stage about the project? What were the implications for the project? Were your concerns adequately addressed?

I do not remember

22. At paragraph 10 on page 7 it was noted that tie's risk management was generally good. It was noted that the discussions of risks had not always been reflected in specific actions in the TPB minutes.

- a. What were your views on TIE's risk management?
- b. It was mentioned that not all the risks had been incorporated into the risk register and should be included. What risks were not at this point included in the risk register? Do you know whether they were subsequently included?

I do not remember

23. At the top of page 4 it was stated that the latest version of the business case was provided to the review team. It is a document listed in Appendix C of the report.

- a. Did the review team review the Draft Final Business Case?
- b. Did the review team review the Final Business Case?
- c. If so, what were your views, in general, on these documents?

I do not remember

24. **CEC01399632** is a thread of emails between Rebecca Andrew and others in CEC around 19 October 2007 in relation to critical issues arising from the OGC3 review.

Critical issues were:

- Concerns that TIE did not have the team nor a strategy in place to adequately manage the contract, that it was important that the team who will be managing the contract know it inside out and that that was best done by involving them at the negotiation stage. OGC had provided names of people who were appropriately skilled and experienced.
- Concerns about the contract itself that had not been previously highlighted in either TIE's risk register or the risk matrices provided by DLA
- MUDFA works were behind programme which would have an impact on Infracore
- The risk of change after financial close was very high, the critical design of phase 1a would only be considered after financial close

It was noted that while negotiations are still ongoing with the preferred bidder, these issues can be addressed, but only if TIE and DLA accept these criticisms and act quickly.

- a. What were your views on the concerns expressed in these emails?
- b. Do you know if anything was done to address those concerns?
- c. Who did OGC recommend to help TIE with contract negotiations and to, thereafter, manage the contract?

I do not remember

Project Risk Review

25. **TIE00663266** is an email dated 24 September 2007 in which it appears that CEC were to use Turner & Townsend to conduct a separate review of risk. It appears that the OGC review team were asked to review risk instead.

In an email from Rebecca Andrew at CEC to Jim Grieve dated 2 October 2007 (CEC01567757) RA said that TIE has engaged OGC to look at risk. She said she had concerns that the OGC review may be at too high a level to cover the details of the risks. Attached to that email is document setting out proposals for a review (CEC01567758). Those proposals said that the FBCv1 and DFBC would be made available for review.

- a. Do you know if CEC undertook an independent review of risk or were they, in the end, content for the OGC review team to review the risk?
- b. What are your views on Rebecca Andrew's comments that the OGC review may be at too high a level to cover the details of the risks?

I do not remember

26. On 15 October 2007 the OGC review team produced a further report, '*Project Risk Review*' (CEC01496784).

- a. What was the purpose of this review?
- b. What was the genesis of this review? Please explain, for example, who proposed that a review should be undertaken and the reasons for that proposal?
- c. Who determined the scope of the Gateway 3 review?
- d. What were the main findings of this review?
- e. Who undertook this review and drafted the report?
- f. How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review?
- g. What material and evidence were the review team provided with for this review? Who provided that information to the review team? Please indicate the main documents and interviews upon which the review was based. Were the OGC team able to verify the information provided?
- h. Did TIE, CEC, Transport Scotland and/or the contractors have any input into the final review report?
- i. Who approved this report before it was sent to the Chief Executive of CEC?
- j. Who else received a copy of the report? For what purpose did they receive the report?
- k. Did you (or others in the review team) have any concerns about the project at that stage?

I do not remember

27. The report noted that a number of risks remained with the public sector. The report further noted *"we endorse the assessment that the level of public sector risk on the capital expenditure programme is currently £49 million at a 90% confidence level. Further our best estimate of the schedule risk is currently 21 days also at a 90% confidence level. This equates to a capital expenditure risk of a sum of £2.2 million in the context of proposed contracts"*. The report concluded *"We believe that the overall headroom of £49m in the capital expenditure is a prudent provision at this stage of the project's development"*

- a. What was your awareness at that stage of the difficulties and delays with the design and utilities works and the extent to which the steps taken to address these difficulties and delays had been successful?
- b. How confident were you that the outstanding design and utilities works would be completed in accordance with the respective programmes in existence at that time?
- c. What was your understanding of the likely effect on the Infracore works, and price, if the design and utilities works were not completed in accordance with the respective programmes in existence at that time?
- d. What was the basis for the OGC team's assessment that the level of public sector risk was £49m at a 90% confidence level and was a 'prudent' provision at that stage of the project's development?
- e. To what extent was the OGC team able to independently come to its own view on that matter and to what extent was the OGC team reliant on the information

provided by others?

- f. What were the main assumptions on which the OGC's conclusion on the risk allowance was based?

I do not remember

28. On 25 October 2007 the Council's approval was sought for the Final Business Case, version 1, in respect of phase 1a (Airport to Leith Waterfront). A joint report was provided by the Directors of City Development and Finance (CEC02083538).

The report to Council noted that:

- The SDS had prepared preliminary designs and were currently finalising the detailed designs. (para 3.22)
- *"It is anticipated that the SDS and Tramco contracts will be novated to the provider of the infrastructure works. This means that significant elements of the responsibility for the design and vehicle provision and the risks associated are transferred to the private sector"* (para 3.27);
- The estimated capital cost of phase 1a was £498m; *"There is detailed information behind [the] estimates, which take due allowance for risk contingency and further scope for savings, but a fuller breakdown cannot be provided at this stage for reasons of commercial confidentiality"* (para 4.2).
- *"The infrastructure costs are also based on the fixed prices and rates received from the recommended infrastructure bidder. However, there is scope for this cost to move slightly, prior to contract close as further design work is required to define more fully the scope of the works to allow a firm price to be negotiated. There is a risk allowance to take account of these variations. The price also assumes that savings can be made on the proposals through certain Value Engineering innovations proposed by ... TIE and the infrastructure bidder"* (para 4.3).
- The estimates included a risk allowance of £49m, which had been calculated based on the perceived cost and likelihood of over 400 risks in the project risk register. A statistical analysis known as Quantified Risk Assessment was carried out at a 90% probability level and had concluded that there was a 90% chance that final costs would be within that risk allowance, which *"demonstrates a higher than normal confidence factor for a project of this scale and complexity"* (para 4.10).
- It was noted that *"The risk contingency is designed to cover additional unforeseen costs, but it is recognised that there is an element of residual risk of costs exceeding current estimates. It should also be notified that the risk contingency does not cover major changes to scope. The scope of such changes will be reviewed after completion of the Tram works and commencement of Tram operations"* (para 4.32).
- "Fixed price" and contract details would be reported to the Council in December 2007 before contract close in January 2008. (para 5.3).

The Final Business Case, version 1 (CEC01649235) noted:

- *"The level of risk allowance so calculated and included in the updated estimate represents 12% of the underlying base cost estimates. This was considered to*

be a prudent allowance to allow for cost uncertainty at that stage of the project. It reflected the evolution of design and the increasing level of certainty and confidence in the costs of Phase 1 as procurement had progressed through 2006. TIE continued to comply with the HM Treasury recommendations for the estimation of potential OB and had determined, in consultation with TS, that no allowances for OB were required in addition to the 12% risk allowance above” (paragraphs 10.13 and 10.14) (these provisions were essentially the same as the provisions on risk and optimism bias included in the draft FBC dated November 2006, CEC01821403, paras 9.11 and 9.12).

- *“By the time of the DFBC, OB was effectively eradicated, as per the findings explained in the Mott MacDonald Review of Large Public Procurement in the UK. This was in view of greater scheme certainty and the mitigation of factors built into the procurement process, as well as project specific risks and environmental and external risks. Instead of using OB, TS and CEC adopted a very high confidence figure of 90% (P90) in the estimate of risk allowances to cover for specified risk, unspecified risk and OB” (para 11.43).*
- a. In general, did the report to Council and the FBC v.1 accord with your understanding of the project, including the risks that remained with the public sector?
 - b. Do you have any comments on any of the passages from the report and FBC (v.1) noted above?
 - c. What was your understanding of how the Infraco contractor could provide a fixed price, and how design risk could be transferred to the private sector, given the delay in design, approvals and consents (and given the design and TRO milestones noted at page 191 of the FBC whereby, for example, detailed design for phase 1a was not expected to be completed until September 2008)?
 - d. Did you agree that from late 2006 onwards optimism bias had been effectively eradicated and that it was appropriate to make no further allowance for optimism bias in addition to the risk allowance? Do you consider that the decision to make no allowance for OB should have been re-visited in light of the continuing difficulties and delays with the design and utilities works?

I do not remember

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

The report to Council noted:

- *“The cost estimates for the project reflect provision for evolution as the detailed design will be completed in the coming months. The design is completed under the Infraco contract from the point of award of that contract through novation of the System Design Services contract with Parsons Brinkerhoff to Infraco” (para 3.2).*
- *“ ... Some cost allowance has been made for the risk associated with the detailed design work not being completed, at the time of financial close ...” (para 8.1).*
- The estimate of £498m for phase 1a inclusive of a risk allowance as reported in

October 2007 remained valid. The current price estimate was based on a compressed construction programme (para 8.2).

- *“The fundamental approach to the Tram contracts has been to transfer risk to the private sector. This has largely been achieved”* (para 8.10).
- *“Risks retained by the public sector and which therefore bear upon the Council are explained in the Final Business Case section 11. These risks include:*
 - *Agreements with third parties including delays to utility diversions.*
 - *Finalisation of technical and prior approvals.*
 - *The market cannot provide Professional Indemnity Insurance to TIE vis-à-vis a claim by the Council against TIE, because TIE is wholly owned by the Council”* (para 8.13).
- *“There are additional risks such as third party agreements and consents where discussions and negotiations are continuing to reach an acceptable position in respect of allocation of risks”* (para 8.15).
- *“The risk contingency does not cover major changes to scope. It should be noted that the current construction programme is compressed to reduce the length of disruption and provide best value. Changes to the programme could involve significant costs, not currently allowed for in the risk contingency”* (para 8.16).
- It was anticipated that the Notification of Infraco award would be issued on 11 January 2008, the Tramco and Infraco contracts would be awarded on 28 January 2008 and that construction on phase 1a would commence in February 2008 (para 8.19).
- The Conclusions included that, *“The preferred bidder negotiations, in terms of price, scope, design and risk apportionment, give further reassurance that Phase 1a can be completed within the available funding and are consistent with the Final Business Case”* (para 9.2) and that *“The total forecast project cost is consistent with the final business case. TIE is confident that risk contingencies and the final approved design can be accommodated within the funding available”* (para 9.3).

The draft FBC noted that the procurement strategy was intended to *“Transfer design, construction and maintenance performance risks to the private sector ...”* (p16), that *“Following novation of SDS, the design risks pass to Infraco”* (p86), that *“Full design risk passed to Infraco post contract award”* (p95) and that *“The creation of the Infraco contract as a lump sum contract transfers the pricing risk to the private sector”* (p97).

It was noted that *“It is expected that the overall design work to Detailed Design will be 100% complete when the Infraco contract is signed”* (p84) and that risks associated with novation would be mitigated by ... *“Detailed design being largely completed prior to award of the Infraco contract”* (p86).

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

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

- a. In general, did the report to Council and the FBC (v2) accord with your understanding of the project including the risks that remained with the public sector?
- b. Do you have any comments on any of the passages from the report and the FBC (v2) noted above?
- c. What was your understanding at that time of the extent to which the Infraco contract would be for a 'fixed price' and the extent to which, and the circumstances in which, it would be liable to increase?
- d. What was your understanding of what would amount to a 'major change to scope'? Can you give examples?

I do not remember

GENERAL QUESTIONS RE FINANCIAL CLOSE

30. Infraco contract close took place on 14 and 15 May 2008, as part of which a number of contracts were signed, including the Infraco contract (CEC00036952) and novation of the SDS contract to BSC. Schedule 4 of the Infraco contract (USB00000032) contained a number of Pricing Assumptions.

- a. When did you first become aware of Schedule 4? What were your initial impressions? What did you understand to be the purpose and effect of the Pricing Assumptions? To what extent was Schedule 4, and the Pricing Assumptions, consistent or inconsistent with the assumptions used by the OGC team in October 2007 in arriving at their conclusion that the risk allowance was prudent?
- b. If the OGC team had seen Schedule 4 prior to financial close what questions would the team have asked? On what matters would they have wished to be satisfied on?
- c. If the OGC team had seen Schedule 4 prior to financial close might that have affected the OGC report on risk and the conclusion reached and, if so, in what way?

I do not remember

PEER REVIEWS

July 2008

31. In July 2008 a Peer Review, led by you, was carried out on the tram project. The report of that review is dated 2 July 2008 (CEC01327777).
- Did you (or the OGC) have any involvement in the tram project between the Risk Review in October 2007 and the Peer Review in July 2008?
 - Do you consider that the OGC ought to have conducted a further review of the project, including the risks, prior to financial close in May 2008?
 - This appears to be the first peer review of the peer review process. Is that correct?
 - What was the purpose of this review?
 - What was the genesis of this review? Please explain, for example, who proposed that a review should be undertaken and the reasons for that proposal? Who instructed a review to take place?
 - Who determined the scope of this review?
 - What were the main findings of this review? What were your main concerns?
 - Who undertook this review and drafted the report?
 - How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review?
 - What material and evidence were the review team provided with for this review? Who provided that information to the review team? Can you indicate the main documents and interviews upon which the review was based?
 - Did TIE, CEC, Transport Scotland and/or the contractors have any input into the final review report?
 - Who within the review team approved this report?
 - Who received a copy of the report? For what purpose did they receive the report?
 - Did you (or others in the review team) have any concerns about the project at that stage? If so, can you explain what those concerns were and whether they were addressed?

I do not remember

32. The report noted in relation to the MUDFA works that *"The fact that the completion date remains uncertain (works 60% complete) will have an increasing impact on the Infracore works"*.

- Were you surprised that only 60% of the MUDFA works were complete and the completion date was uncertain?

I do not remember

33. In relation to design, it was noted that design was not complete at the point of novation to BBS and that *"It is unclear to the review team where risk lies for design development"*.

BBS and tie in interview considered risk lay with the other party".

- a. Where did the review team think the risk lay?

I do not remember

34. It was also noted *"We consider that the bespoke nature of the contract introduces additional risks arising from the inevitable areas of uncertainty associated with the interpretation of this unique form of contract"*.

- a. Can you explain further what is meant by this statement?
- b. More generally, what were your impressions about the state of the project at that stage?
- c. How did the state of the project at that stage (including the progress of the individual contracts and works) compare with what you had anticipated would be the state of the project at that stage at the time the OGC team carried out their last review in October 2007?

I do not remember

November 2008

35. There was discussion of a Peer Review taking place in November 2008 but it does not seem to have taken place. People were asked to hold space in their diaries but we cannot find any evidence of it taking place.

- a. Did a peer review take place in November 2008? Do you consider that it ought to have? Is there any guidance, or a practice, on how often peer reviews should take place?

I do not remember

2009

36. In an email you sent to David Mackay on 23 February 2009 you set out your views on possible problems facing the project **(CEC00951615)**.

"you" should
be "Mike
Heath"

- a. Can you elaborate on what your views were at the time? Why did you hold those views?
- b. Did your email prompt your draft report on the background to the dispute in February 2009 (discussed below)?

I do not remember

37. **CEC00989336** is an email sent by Mike Heath to David Mackay on 2 March 2009 which outlines Mr Heath's thoughts on an upcoming review. He thinks the upcoming review should look at the causes of the current contractual dispute. Further emails were sent by Mr Heath requesting documents and information (**CEC00862112** and **CEC00944716**). The terms of reference can be found in an email sent by Stewart McGarrity to Mike Heath dated 6 March 2009 (**CEC01009882**). This appears to be an attempt to determine the circumstances of the dispute.

On 15 March 2009 Mike Heath provided Stewart McGarrity with a draft report of an independent review of the issues surrounding Change Order 21 and its referral to the dispute resolution process (DRP) (**CEC00864983** and **CEC00864984**). This outlines the issues surrounding the Princes Street dispute that arose in February 2009.

- a. What was the purpose of this review?
- b. What was the genesis of this review? Please explain, for example, who proposed that a review should be undertaken and the reasons for that proposal? Who instructed a review to take place?
- c. Who determined the scope of this review?
- d. What were the main findings of this review? What were your main concerns?
- e. Who undertook this review and drafted the report?
- f. How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review? Who provided that information to the review team? Can you indicate the main documents and interviews upon which the review was based.
- g. Did TIE, CEC, Transport Scotland and/or the contractors have any input into the final review report?
- h. Who within the review team approved this report?
- i. Who received a copy of the report? For what purpose did they receive the report?
- j. What were your (or others in the review team) concerns about the project at that stage?

I do not remember

38. It appears that TIE did not react well to this draft of the report. TIE were worried about how it might affect relations with CEC (**CEC00982191**).

- a. Can you explain why TIE reacted in this way?
- b. Why were TIE worried that the report might affect relations with CEC?
- c. Are you aware whether the report was provided to CEC?

I do not remember

39. It appears that another review was due in May 2009 but it was postponed. In an email from Mike Heath to Julie Smith at TIE dated 17 April 2009 Mr Heath said "the peer review team has to be mindful of its responsibilities to the wider group of stakeholders" (**CEC00971612**).

- a. What do you understand Mr Heath to have meant by that comment?
- b. What was the review team's responsibilities and who were the wider group of stakeholders?

I do not remember

40. The Terms of Reference (TORs) for the June Peer Review are at **CEC00964156**.

- a. Who determined the TORs for this review? What input did you, or others within the PRT, have into the TORs? What input did TIE have into the TORs?
- b. From the TORs it appears that evidence was gathered and the report was written over a two day period. Can you confirm that was the case? Was this the case with all Peer Reviews undertaken on the project?
- c. Did a two day period provide sufficient time to undertake a meaningful review? What were the review team able to achieve within this timescale?

I do not remember

41. The final version of the report from the June Peer Review is dated 29 June 2009 (**CEC01012780**).

- a. What was the purpose of this review?
- b. What was the genesis of this review? Please explain, for example, who proposed that a review should be undertaken and the reasons for that proposal? Who instructed a review to take place?
- c. Who determined the scope of this review?
- d. Who undertook this review and drafted the report?
- e. How was this review undertaken? What were the main findings? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review? Who provided that information to the review team? Are you able to indicate the main documents and interviews upon which the review was based?
- f. Did TIE, CEC, Transport Scotland and/or contractors have any input into the final review report?
- g. Who within the review team approved this report?
- h. Who received a copy of the report? For what purpose did they receive the report?

I do not remember

- 42.
- a. The review team produced six conclusions on page 3 of the report. Do you still agree with each of those conclusions? Can you explain the basis for each of those conclusions?
 - b. What concerns did you (or others in the review team) have about the project at that stage?

I do not remember

December 2009

43. A further Peer Review seems to have been produced in December 2009. The report is dated 22 December and appears in a slightly different format to previous peer reviews (CEC00584282, attached to CEC00584281).
- What was the purpose and outcome of this review?
 - Why does it appear in a different format to previous peer reviews? How does this peer review differ from previous review?
 - What was the genesis of this review? Please explain, for example, who proposed that a review should be undertaken and the reasons for that proposal? Who instructed a review to take place?
 - Who determined the scope of this review?
 - What were the main findings of this review?
 - Who undertook this review and drafted the report?
 - How was this review undertaken? What methodology was used to reach the findings contained in the review? What evidence formed the basis for the review?
 - What material and evidence were the review team provided with for this review? Who provided that information to the review team? What were the main documents and interviews upon which the review was based?
 - Did TIE, CEC, Transport Scotland and/or contractors have any input into the final review report?
 - Who within the review team approved this report?
 - Who received a copy of the report? For what purpose did they receive the report?
 - Did you (or others in the review team) have any concerns about the project at that stage?

I do not remember

January 2010

44. On 5 January 2010 you sent a letter to Richard Jeffrey outlining your concerns regarding the review process (CEC00585164). You said that the peer review process was "management directed consultancy" that conflicted with the principle of an independent review process.
- What were your concerns at that stage? Did these concerns apply to all the peer reviews undertaken since contract close in May 2008?
 - What was the "rescue effort" referred to in this letter?

I do not remember

45. **CEC00574066** is an email from Susan Clark to you dated 19 January 2010 in which she mentions an upcoming teleconference. She said that the team need to explore options for the future and report to the TPB on 10 March.

- a. Can you explain what this was in relation to?

I do not remember

46. **CEC00588414** is an email from Mike Heath to Susan Clark, copied to you, dated 21 January 2010. In that email Mike Heath records his concerns about being able to verify the information provided by TIE.

- a. What was your understanding of Mr Heath's concerns? Did you share these concerns? If so, when did you first have these concerns?
- b. MH said "*I put this to you as an example just to help clarify the methodology. If we believe that evidence is wrong or is insufficient or a conclusion has been drawn that is questionable how will that be presented by Tie management to the TPB, since, as you know, previous reports have been caveated by Tie management?*" Can you elaborate on what MH meant when he said this? Were you aware that previous reports had been 'caveated' by TIE management? Did you consider that to be appropriate?

I do not remember

47. **CEC00570512** is a paper from the review team to Susan Clark dated 25 January 2010 (it is attached to email **CEC00570511**). It sets out proposals for future PRT involvement in the project.

- a. What was the outcome of these proposals?
- b. It is noted that you do not appear to be involved in the drafting of this paper. What was your involvement in the tram project at this stage? Can you comment on email **CEC00625468**?

I do not remember

March 2010

48. **CEC00574745** is an email from Susan Clark to others in TIE dated 2 March 2010 discussing review team involvement. A note of the meeting with the peer review group on 4 March is **CEC00541592**.

- a. Were you still involved with reviewing the tram project at this stage? If not, when was your last involvement? Why did your involvement stop?

I do not remember

If you were still involved with reviewing the trams project at this time:

- b. What was the purpose of the peer review team involvement at this stage?
- c. What is Susan Clark referring to in this email? What role did she envisage for the peer review team? It seems to suggest that TIE were making a decision on recommendations to the TPB in advance of any recommendations from the peer

- review team. Do you consider that to have been appropriate?
- d. What was the peer review team involvement in involvement in Project Pitchfork? What was Project Pitchfork?
 - e. Was a peer review report ever produced from their March involvement? If so, where can it be found?
 - f. Was March 2010 the end of the peer review team involvement in the project (and, if so, why)? Were they involved in any other capacity in the project after that date?

49. The note of the meeting (**CEC00541592**) recorded a number of key messages:
- a. Do you have any views on whether the advice, apparently given by the peer review team (as set out in that note), was consistent with the peer review team's role of independent reviewers rather than "management directed consultancy"?

I do not remember

- 50.
- a. Did the role of the Peer Review team change over the course of the project?
 - b. Did what they were being asked to do change over time?
 - c. What was their role in the latter stages?
 - d. Did the role of review team change to something that you agreed with?
 - e. Why was the Peer Review process stopped around March 2010?

I do not remember

PROJECT MANAGEMENT AND GOVERNANCE

- 51.
- a. By way of overview: Which body or organisation do you consider was ultimately responsible for ensuring that the contracts and works were properly managed, including managing the interface between the different contracts and works?
 - b. Which body or organisation do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?

I do not remember

52. In relation to TIE:
- a. Did you have any concerns at any stage in relation to TIE's management of the tram project or the performance of any of TIE's senior personnel or Board members?
 - b. Did you have any concerns at any stage in relation to TIE's reporting to the OGC or Peer Review teams?

I do not remember

53. In relation to CEC:
- a. What was your understanding of CEC's roles and responsibilities in the project?

- b. Did you have any concerns at any stage in relation to the performance of senior CEC officials or councillors?

I do not remember

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

- a. What was your understanding of the role and responsibilities of the TPB in the project?
- b. Did you have any concerns at any stage in relation to the performance of the TPB or any members of the TPB?

I do not remember

55. In relation to TEL:

- a. What was your understanding of the role and responsibilities of TEL in the tram project?
- b. Did you have any concerns at any stage in relation to the performance of TEL or any members of TEL?

I do not remember

56. In relation to the Scottish Government (SG) and Transport Scotland (TS):

- a. What was your understanding of the role and responsibilities of SG and TS in the tram project?
- b. Did you have any concerns at any stage in relation to the performance of SG/TS or any ministers or senior officials?
- c. What were your views on the decision taken around July 2007 that TS should play a lesser role in the governance of the project?
- d. What do you understand to be the benefits of greater TS involvement in the governance of the project?

I do not remember

FINAL THOUGHTS

57. By way of final thoughts:

- a. How did your experience of the Edinburgh Trams Project compare with other projects you have worked on (both previously and subsequently)?
- b. Do you have any views on what were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?
- c. Do you have any comments, with the benefit of hindsight, on how these failures might have been avoided?
- d. Do you have any views on why, despite a number of OGC and Peer Reviews, the project encountered difficulties and ended up costing so much more than had been

budgeted for?

- e. Have project reviews changed in any way since the reviews were carried out on the tram project? if so, what, if any, improvements in the review process have been made? Do you consider that any further improvements of the review process could be made?
- f. Are there any final comments you would like to make that fall within the Inquiry's Terms of Reference and which have not already been covered in your answers to the above questions?

I do not remember

I confirm that the facts to which I attest in the answers contained within this document, consisting of this and the preceding 25 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 

DATE 26 April 2017