

INTERVIEW WITH STEWART STEVENSON ON 25 JULY 2017

Q. Can you please explain your role and responsibilities in the Scottish Government between May 2007 and 2014? What was your role and responsibilities in relation to the Edinburgh tram project during that period? What was the role and responsibilities of the Cabinet Secretary, John Swinney, in relation to the tram project during that period?

1. I was Minister for Transport, Infrastructure and Climate Change from 17 May 2007 to 11 December 2010. I was Minister for Environment and Climate Change from 25 May 2011 to 6 September 2012. I was Parliamentary Liaison Officer to the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, from 13 September 2012 to 7 November 2013. Although I was Minister for Environment and Climate Change and was a Parliamentary Liaison Officer after 11 December 2011, I had no role or responsibility in relation to trams in the Scottish Government or, as it was formerly known, the Scottish Executive after that date. As Minister for Transport, Infrastructure and Climate Change I had the lead role in the Government's Ministerial relationship with the City of Edinburgh's Council's tram project. That was in the context of my appointment as a junior Scottish Minister under Section 49 of the Scotland Act 1998, which states that I was appointed "*to assist the Scottish Ministers in the exercise of their functions*", which meant, in my case, the Cabinet Secretary, John Swinney. As the City of Edinburgh Council's tram project represented a significant financial commitment by the Government, Mr Swinney took a particular interest in the expenditure attributable to the project and, as necessary, project detail, which he required to have in order to discharge his responsibilities for finance in the Government. This also implied his taking an interest in the people who were the project's decision-makers.
2. My primary role was to manage the political aspects of the tram project. I had to answer questions about the tram project in Parliament and at Parliamentary committees. Therefore, the purpose of my relationships with TIE, City of

Edinburgh Council, the contractors and Transport Scotland was to ensure that I had the information I needed to answer those questions. I was not greatly concerned about the financial side of the project that was Mr Swinney's responsibility. I was certainly not trying to manage the project because the Government was very clear that the tram project was the City of Edinburgh Council's project.

Q. Did your involvement, or the involvement of the Scottish Government generally, in the project change over the course of the project and, if so, why and in what way?

3. When the Government assumed office in 2007 it inherited, from the previous administration, a financial commitment to the City of Edinburgh Council's tram project and a project structure which saw Transport Scotland represented as part of the Tram Project Board overseeing the detail of project progress. I refer to Ainslie McLaughlin's email to David Middleton and Bill Reeve dated 5 October 2010 (**TRS00018055**) in which he wrote "*The decision on project governance was made some time ago and well before Transport Scotland's time*". The governance arrangements therefore pre-dated the setting up of Transport Scotland. I had not known that until I read that email provided to me by the Inquiry.

4. The Government won the election in May 2007 with a manifesto that stated on page 19 that "*We will seek national best value for our capital spending with £1.1 billion of current planned expenditure on EARL and Edinburgh trams redirected*". Accordingly, on 27 June 2007, I made a statement to Parliament announcing the Government's intention to withdraw its support from the City of Edinburgh Council's tram project. That statement was followed by a debate on a motion in John Swinney's name, which read "*that the Parliament endorses the Government's transport priorities and notes that the Government party proposed during the election campaign not to proceed with the Edinburgh trams and the current EARL projects, but planned an additional crossing for the River Forth*". After successful amendment by the opposition the motion passed stated that "*The Parliament notes that the Edinburgh trams*

project and EARL were approved by the Parliament after detailed scrutiny; further notes the report of the Auditor General for Scotland on these projects and, in light thereof, (a) calls on the Scottish Government to proceed with the Edinburgh trams project, within the budget limit set by the previous administration, noting it is the responsibility of Transport Initiatives Edinburgh and the City of Edinburgh Council to meet the balance of the funding costs". Part (b) of that motion related to EARL. By a point of order immediately after the vote, John Swinney made the following commitment to Parliament; *"There has been extensive debate on the Edinburgh trams and Edinburgh Airport rail link projects, to which the Government has listened carefully. Mindful of the extent to which those projects are committed and of the level of public expenditure that has already been committed to the trams project, I confirm to Parliament that the Government will accept and implement the provisions in the resolution that has been agreed by Parliament in relation to the Edinburgh trams project. We welcome the fact that Parliament has agreed to a commitment that the project must be delivered within the budget limit set by the previous administration, noting that it is the responsibility of Transport Initiatives Edinburgh and the City of Edinburgh Council to meet the balance of the funding costs".* Mr Swinney and I previously agreed that commitment in expectation of the outcome of parliamentary vote.

5. The budget limit of £500m was, therefore, set by Parliament and agreed by the Government. There is a more complicated story around the £500m figure because it was the result of inflation from the original estimate. In line with our desire to improve clarity of responsibility for delivery of the project, we withdrew Transport Scotland from the Tram Project Board as their presence may have given the appearance of Transport Scotland bearing some responsibility for delivery of the project. We were clear that we were funders and funders only.
6. It had always been the Government's intention to put its transport plans to Parliament because transport was a very big part of the Scottish Government's budget. I was responsible for a budget allocation of about £3.4 billion, which represents about 10% of the overall expenditure of the Scottish

Government. It was therefore quite reasonable that the Government put its plans for transport policy before Parliament. The SNP Government had 47 seats while the opposition parties had 82 seats (includes non-party Presiding Officer who was elected as a Labour Member). We recognised the need seek the co-operation of Parliament where we could and, in particular, on the issue of spending £1.1 billion on EARL and the trams. We would encounter significant difficulties if we did not involve Parliament in that decision. However, given the polarisation of views on the project in Parliament the outcome of the vote was not unexpected.

Q. What were your initial views, and the views of the SNP, on the Edinburgh tram project when it was first proposed? Did those views change over time and, if so, how did they change?

7. In 2007 the Scottish Government, initially known as the Scottish Executive, inherited a funding responsibility for a tram project initiated by two Acts of the Scottish Parliament. They were Private Bills sponsored and paid for by the City of Edinburgh Council. Parliament established two special committees, one for each of the two tram Bills, to scrutinise and progress the tram Bills. The composition of each committee was determined by the D'Hondt system. The SNP's involvement in the Bill process commenced with the appointment of a single SNP MSP to each of the two committees. I was the initial appointment to the Edinburgh Tram (Line Two) Bill Committee. The substantial deliberations of these committees are available in the Official Report on the Scottish Parliament's website. No particular guidance was given to me from the SNP as to how I should discharge my responsibilities as a committee member.
8. My first material contribution in committee, which was on 22 September 2004, was in relation to two matters. I queried whose project it was and whether there was a good financial case for the project. I was highly sceptical of the financial case for the trams project at that stage. At a joint meeting of the Edinburgh Tram (Line One) Bill Committee and the Edinburgh Tram (Line Two) Bill Committee on the following day, 23 September 2004, I questioned

Keith Holden, the National Audit Office Director responsible for transport value-for-money studies. The National Audit Office had produced a report in April 2004 on the provision of light rail services in England. I asked him *"In this study or in other studies, have you been able to tease out the particular benefits that light rail systems can or should contribute? For example, is their value in the use of dedicated track or in customer acceptance of this form of transport over others? Where does their value lie? Secondly, have you considered the financial and societal benefits that might derive from using the money that could be spent on light rail systems in other ways?"* His reply was *"The work that we did was not a comparative value-for-money study; we did not compare light rail with alternative systems. We did not ask whether, if you had £400 million to spend, you would get a greater return—more bangs for your buck—by investing in light rail rather than in other modes of transport, such as trolleybuses".* I provide these extracts from my participation in committee to indicate that, from the outset of Parliamentary consideration of the City of Edinburgh's trams project, I had considerable doubts about whether the proposals would deliver the best transport benefits for the considerable expenditure being contemplated. The reply I received from the National Audit Office reinforced my scepticism. While the Preliminary Stage Report on the Edinburgh Tram (Line Two) Bill was positive overall, it stated at paragraph 62 that *"the promoter's own documentation confirms a limited direct contribution to the stimulation of economic growth"*. Paragraph 70 of the report states that the improvements in congestion *"directly attributable to the tram will be difficult to quantify"*.

9. The SNP's doubts about the project crystalized into opposition to the two tram Bills. The final vote on the Tram Line Two Bill took place on 22 March 2005. The vote for the Tram Line One Bill took place on 29 March 2005. In opening the debate for the SNP on 22 March 2005, Kenny MacAskill said *"We are asked to support a scheme for which there is no business plan... the tramline 2 is not one we can support. We do not, of course, object to trams in principle and we can aspire to have a tramline. However, tramline 2 is certainly not the more pressing requirement for Edinburgh and nor is it a priority for Scotland. Tramline 2 is the wrong scheme at the wrong time"*. I provide these examples

to show the evolution of the SNP's opposition to the particular proposals that were brought forward for trams in Edinburgh. Ultimately, the proposal for the tram project that was taken forward was a hybrid of the schemes proposed in the two tram Bills. But that change did not address the concerns of the SNP as expressed throughout the Parliamentary process and in its 2007 manifesto.

10. The SNP's views on the tram project did not change after the party was elected to Government in May 2007. We had always felt that the particular proposals for tram lines would not be useful. In particular, Tram Line Two, which went from central Edinburgh to the airport, would compete with the 100 bus service, which took less time than the tram to get to the airport at a cheaper price, and the 22 bus service which was one of the most successful routes in Edinburgh. An expensive tram system would damage both bus services and deliver a transport system that, in certain respects, would not deliver anything better than the bus services. Therefore the SNP remained sceptical of the tram project. We heard nothing in the Parliamentary process to change our minds and therefore made a manifesto commitment to abandon the tram project, which we acted on after we were elected to Government.

THE TRAM PROJECT – OVERVIEW

PROCUREMENT

Q. In relation to the procurement strategy for the tram project, what was your understanding of the main elements and objectives of the procurement strategy for the tram project?

11. The procurement strategy was determined by TIE and City of Edinburgh Council prior to the SNP being elected to Government in May 2007. I did not have any knowledge of the main elements and objectives of the procurement strategy for the tram project. I cannot recall having seen a document which was, or which described, the procurement strategy. I cannot comment on the details of the procurement strategy.

12. The tram project was the City of Edinburgh Council's project, not the Scottish Government's. Ministers would not get overly involved in the detail of a procurement strategy even if it was a Government project. If it was a Government project, Ministers would certainly want to know the objectives and desired outcomes of a procurement strategy, the upper and lower bounds for cost estimates and take a close interest in the submission to the Official Journal of the European Union. These are matters for which Ministers are responsible.

Q. How important was it to obtain a fixed price for the Infraco contract?

13. It seems to me that it have been proper to seek a fixed price for the Infraco contract because it fixes the risk borne by the client and insulates the client from the contractor's shortcomings.

Q. When the decision was made to continue to fund the project did you ask for a briefing or receive a briefing on the fixed price model that the Council and TIE were going to use?

14. Ministers were not briefed on the fixed price model that TIE was using for the contract. The Government had capped its financial contribution to the project, so the contract was fixed price from the Government's perspective.

Q. What was your understanding of what was meant by a fixed price contract?

15. I did not read the contract at the time, but even if it was a fixed price contract I would be very surprised if it did not contain a provision for price changes because all these big contracts, of necessity, have to have such a provision. I think the outcomes that we experienced demonstrate that such change provisions did exist in the contract because the project ended up with hundreds of changes in scope.

Q. You knew then, given your previous experience, that there would probably be some deviation from the price given the size of the project?

16. I knew that there would be some change to the fixed price being reported by TIE given the size and scope of the project. In my experience, changes are always made to a project. Sometimes changes increase the cost of a project and sometimes they reduce the cost of a project. Therefore it would be almost inconceivable that the tram project would be delivered for the exact price proposed at the beginning of the project.

Q. Were you or Ministers briefed by officials on the terms of the contract?

17. Ministers and I were not briefed by TS officials on the terms of the Infraco contract before it was signed. Ministers never read the contract because it was not the Government's project and because civil servants would tell us what we needed to know.

Q. What was your understanding of the extent to which the procurement strategy envisaged that the design and utilities diversion would be completed before the Infraco contract was entered into and before the Infraco works commenced? How important was the prior completion of these works to the procurement strategy?

18. I really cannot comment. I do not recall having a view is the best I can say.

DESIGN

Q. We understand that there were difficulties and delays in progressing and completing the design for the tram project. What was your understanding of the main difficulties in carrying out the design work and the main reasons for these difficulties?

19. I was not aware of difficulties in design or the design process; I was not involved at that level. I recall that there was discussion about whose responsibility it was to do the design. TIE appeared to employ a very large number of people to do detailed design and there was a view that that was a very unusual way to progress this kind of project. Normally, the expectation is that the client would specify the outcome and the contractor would do the design. Different projects have got different needs but over time it appeared that the responsibility for design moved to the contractor and that appears to be one reason for the change in cost.

Q. Did you know of any specific problems with the design?

20. An example of the specific problems regarding design was the embankment next to Murrayfield Stadium, which was to be designed to deal with flooding. The paperwork now provided by the Inquiry to me shows that the Government provided money for flood prevention works which relieved some of the design issues. The embankment issue was therefore dealt with outside the project. Another example of a design problem was the uncertainty as to what the depth of the slab under the rail should be at different points in the route.

Q. Do you know if any steps were taken to address difficulties in design or the provision of design and whether these steps successful?

21. It can be concluded that the steps taken to resolve any difficulties in design or the provision of design were successful in that we now have a functioning tram system from York Place to Edinburgh Airport. I am not suggesting that design issues in the uncompleted parts were resolved, they may not have been but I do not know.

Q. A decision was eventually made to continue with the procurement process for the Infraco contract 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?

22. I cannot comment on that decision. All I would say is that design cannot be wholly complete before construction starts because the moment construction commences you will discover things that you have to change, that is just the nature of engineering. For example, you might discover during procurement that you cannot buy something that you would have expected to be able to buy because the manufacturer had stopped making it.

Q. In relation to this project, there seems to be evidence that design was very far behind at the point the Infracore contract was signed. Did you receive any briefing in relation to that? Were there any warning signs, given the funding that the Government was to provide?

23. I do not recall there being any briefings to Ministers about the state of design prior to financial close. I would make the general observation that having incomplete design at financial close is a pretty standard characteristic of projects in trouble. I have looked at projects and Government projects going quite a long way back and in each case the same problem of incomplete design emerges. For example, in 2000 the SQA had problems integrating its computer systems because it did not complete the design before it got the programmers working on it. In the early 1990s the London Ambulance Service tried to implement a system that would use radio signals to give the location of all its ambulances at any given time. The system lasted three days before it was cancelled because the design for the system had not been completed. The London Ambulance Service thought they would work out the problems once they got the system running but they never did. It took another 20 years before they got themselves into a position of delivering what they thought they were trying to do. Incomplete design is a warning sign that a project is in trouble. I do not recall having design issues brought to my attention in any meaningful way. What was more visible to us was the breakdown of relationships between contractor and purchaser. That exercised our interest more because that, more than issues of design, was directly affecting whether we would end up with a successful project.

UTILITIES

Q. 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. What was your understanding of the main difficulties in carrying out the utilities works and the main reasons for these difficulties?

24. I was aware of difficulties and delays in progressing and completing the utilities diversion works at a relatively high level. I knew simply that when the roads had been dug up lots of things were found under the roads that they did not know about. There appeared to be a general understanding that there was incomplete record keeping by the utilities companies and their predecessors back to Victorian times.

Q. Can anything be done to address that problem and, in this case, was anything done to address that problem?

25. Unknown utilities are a common problem. In an ideal world a project would survey and document every asset that would interact with the project. However, a project would then spend a huge amount of money documenting utilities and use only a small part of the resulting documentation. So it is not always economical to undertake complete surveys in an attempt to obtain total knowledge of the utilities. A decision as to the extent of surveys required in a project has to be taken on a project by project basis. There were utilities under Leith Walk that were over 100 years old and the only way you could ever discover what was under Leith Walk was by digging it up and having a look. What they discovered appears to have been more substantial than what they thought they were going to discover. That is a normal outcome.

Q. Do you know what role the provision of design played in the utilities works?

I do not know what role was played by the provision of design for the utilities works.

REPORTING, PROJECT MANAGEMENT AND GOVERNANCE

Q. In relation to reporting, how did you receive information relation to the tram project? Who provided information to you?

1. I received information regarding the tram project mostly through meetings with Transport Scotland officials. I also had a number of meetings with officials from the City of Edinburgh Council, TIE and Tram Project Board members. From time to time I would meet Willie Gallagher for dinner. I wanted to develop my understanding of the project and not simply rely on Transport Scotland officials acting as an intermediary. However, I do not think that my meetings with Willie Gallagher made very much difference to my ability to make intelligent decisions about the project.
2. I met Council officials on couple of occasions. I met TIE officials who were on the Tram Project Board from time to time. I did not meet the members of the Tram Project Board on a regular basis. We met the Chair of the Project Board on a more regular basis particularly when the difficulties in the project emerged. Ministers were simply interested in encouraging the Tram Project Board to protect the Government's interest and the grant money. Ministers wanted to see something delivered for their money.

Q. What information was you looking for, or would have been given to you, at the meetings with Transport Scotland officials? What would they tell you?

3. At my meetings with Transport Scotland I would be told how much money was being spent. Transport Scotland officials would provide me with reports from meetings they were having with TIE and City of Edinburgh Council and with their views on the performance of the contractors. Transport Scotland's primary task was to make sure I was able to deal with the political management of the project. Transport Scotland was not trying to enable the

Minister to be part of the management team on the project; that was entirely a matter for the City of Edinburgh Council, TIE and the Tram Project Board.

Q. How did that differ from the information you were receiving from TIE or the Council? What information were you getting from them?

4. I did not get formal reports from TIE or the City of Edinburgh Council; for example, I did not receive the Tram Project Board papers and minutes.

Q. The Council provided monthly project progress reports to John Ramsay at Transport Scotland, did you ever see those reports?

5. I do not recall receiving the monthly progress reports submitted by the City of Edinburgh Council to Transport Scotland. I may on occasion have seen one or two monthly progress reports but I did not receive them on a regular basis.

Q. Were you briefed on a monthly basis by Transport Scotland?

6. There was no regular cycle of meetings on this subject with Transport Scotland.

Q. Quarterly reviews took place in relation to the project. These were meetings between senior officials from the Council and Transport Scotland, did you attend them or did you receive reports from them?

7. I will explain how Ministers are briefed; at 8 am on a Tuesday morning every week John Swinney, Jim Mather and I would meet with senior officials from across the whole finance portfolio to consider everything that was going on, so that would be the main opportunity for officials to raise concerns with Ministers and for Ministers to ask questions of officials. It was an opportunity to arrange further meetings in respect of a particular issue if required. Those meetings were the most regular structured interaction between Ministers and Transport Scotland. Malcolm Reed and, latterly, David Middleton, both Chief Executives of Transport Scotland, would attend those meetings, sometimes

along with other Transport Scotland officials such as Bill Reeve. Officials from other parts of John Swinney's portfolio would also be present. They were portfolio meetings not transport only meetings. John Swinney, Jim Mather and I did not like regular scheduled meetings apart from this weekly meeting. We would rather have meetings as and when required for a specific purpose.

Q. How did you report information relating to the tram project to other Ministers, including the Cabinet Secretary, Mr Swinney or the First Minister?

8. I do not recall having very much to do with the First Minister on the subject of the tram project. Ministers are expected to do their jobs. It really was down to John Swinney and me to deal with the details of the project and to advise the First Minister of issues of importance where necessary. If, for example, the £500m funding limit had changed then that would have been reported to the First Minister. There would perhaps be discussions with the First Minister about whether the tram project would be delivered but there would be no detailed discussions about the project. Other Ministers, outside the transport portfolio, would not have much interest in the tram project. Their interest would only be to the extent of being aware of political sensitivities in relation to upcoming parliamentary activities regarding the tram project.

9. I was not a member of Cabinet, although I was present on a significant number of occasions and for a variety of purposes, so I cannot confirm whether there were discussions about the tram project at Cabinet level. We had sorted out the governance issues by August 2007 and after that I would be surprised if Cabinet had any substantial discussion about the tram project.

Q. Generally, did you have any concerns in relation to the reporting of information relating to the tram project to you?

10. I am confident that I got all the information I needed about the tram project. I also had confidence in the officials who were dealing with the project, such as Bill Reeve and Ainslie McLaughlin.

Q. Did Transport Scotland officials have any concerns about information being reported to them by the Council or TIE?

11. Transport Scotland did from time to time have some concerns about information being provided to them by the City of Edinburgh Council and TIE. From time to time Transport Scotland thought there was a bit of complacency in the reporting and that there was a lack of appreciation about the scale of some of the issues that the project was facing. Transport Scotland tried to encourage TIE and the Council to appreciate and resolve the issues, but that was a secondary role to its primary responsibility.
12. Transport Scotland were particularly concerned about the different interpretations of the contract terms and the huge amount, 400 I think, of variations to the contract. By that point that officials from Transport Scotland were taking a very keen interest and trying to encourage TIE and the Council to resolve the issues in order to protect the Government's £500m investment.
13. I never heard of any suggestion that TIE or the Council were deliberately attempting to conceal information. People are naturally optimistic and Transport Scotland felt that such optimism may have been reflected in reports from TIE and the Council. Transport Scotland would then point out issues that TIE and the Council should take seriously.

Q. 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?

14. The works were entirely the responsibility of the contractor. TIE was undertaking some of the design work. That was work done outside the Infraco contract that the contract depended on. It seemed to create some confusion and allow the contractor to blame TIE for a lack of progress on the works.

15. The Tram Project Board carried the responsibility for delivering the project. It was composed of executive members, the experts who managed the project, and non-executive members, such as city Councillors, who represented the interests of the Council. The Tram Project Board was ultimately responsible for ensuring that the tram project was delivered on time and within budget.

Q. What did you consider to be the role and responsibility of Transport Scotland and the Scottish Government in relation to the project?

16. The primary role and responsibility of Transport Scotland and the Scottish Government was to ensure that the £500m grant was paid to the Council at agreed milestones. I did not see the detail of the payment plan but I understand the payments were made monthly for work that was completed. It was not Transport Scotland's responsibility to assess whether that work was contributing to the success of the project. Transport Scotland had a small secondary interest in the project with respect to our plans for a new railway station out at Gogar, known as the Edinburgh Gateway station. If there was no tram system then we could not build the station.
17. Transport Scotland was concerned about building the Gogar heavy rail station in a way that did not affect the development of the tram system. In an ideal world we might have slightly re-routed the tram line to accommodate the station but we concluded that we could not do that because we did not want to create any further issues for the tram project.

Q. What was the role of TIE in the project?

18. TIE was the promoter of the tram project. I cannot remember whether or not the creation of TIE preceded the introduction of the tram Bills to parliament, but TIE was essentially created to make the tram project happen.

Q. What did you think of TIE personnel or management? Did you have any concerns in relation to them?

19. I had contact with only a few of the staff at TIE. The two people I met most often were Willie Gallagher and, subsequently, Richard Jeffrey. I had a good relationship with both these individuals. Richard Jeffrey was the Chief Executive of TIE when the project got really difficult. I always felt Richard Jeffrey did feel that it was tough; he did not strike me as somebody who was trying to minimise or pass off the difficulties the project was facing. He was somebody who wanted to confront and encourage the executives to deal with the issues the project was facing.

Q. Did you have any concerns at any stage in relation to TIE's reporting?

20. TIE's reporting to Transport Scotland was filtered through Transport Scotland to me. So I did not receive reports directly from TIE. I do not have a recollection of Transport Scotland expressing concerns about TIE's reporting to me, they may have had concerns but I do not recall them bringing them to me. Transport Scotland reported to me their concerns about the substantial issues facing the project rather than about how TIE was reporting them. Transport Scotland did express concerns to me about TIE not taking the problems they had seriously enough.

Q. Did you feel that they were open with you and cooperating in terms of the information you received?

21. I thought that TIE did provide honest reports to me and Transport Scotland, but that is in the context of the limited contact I had with TIE. My contact with TIE was primarily with its Chief Executive.

Q. What was your understanding of Council's roles and responsibilities in relation to the project?

22. The tram project was the City of Edinburgh Council's project and it was for the Council to ensure that they could fund the project cost beyond the £500m grant. I did not deal with the Council very much in relation to the tram project. I had dealings with the Council on a range of subjects because I was Planning

Minister, for example, in relation to Scottish Water and the Forth Estuary Transport Authority. Therefore, there were a lot of ways in which I interacted with the Council quite separately from the tram. I do not recall having ever met the Chief Executive of the Council about the tram project. I cannot think who the Council's Chief Executive would have been during the construction of the tram project.

Q. What was your understanding of the role and responsibilities of the Tram Project Board in the project?

23. The Tram Project Board was like any project board; its purpose was to deliver the project within time and budget. The Board was primarily the forum for listening to and challenging those who were managing the project on a daily basis. The Board largely endorsed the decisions of others rather than made decisions itself. I make the distinction because there were members of the Tram Project Board who were not engineers and could not make engineering decisions. Such decisions had to be made by engineers employed by TIE. However, from time to time, a project board, any project board, will take stock of the situation and propose policy and strategic outcomes, which can be very significant, but you do not want a board making decisions it is not capable making.

Q. Did you have concerns about the performance of the Tram Project Board or any members of the Board?

24. I do not think I ever met the Tram Project Board as a board, so I cannot comment on the performance of the Tram Project Board or its members. Transport Scotland were quite supportive of the members of the Tram Project Board. I was not aware of any concerns about the performance of the Tram Project Board. As the project progressed and I became aware of the number of changes to the fixed price contract, I became more concerned about the performance of the contractor than the performance of the Tram Project Board. While a project board carries a responsibility for delivering a project that does not mean that under all circumstances that the project board can

deliver the project. The project board is not a miracle worker, there are circumstances in which a project board is unable to determine the outcome of the project.

25. Transport Scotland were supportive of the Tram Project Board in the sense of being a critical friend. When confronted with a problem it is easy for a project board to become engaged and pursue a solution against all the evidence that the solution is not going to work. A project board can cease to see another way of doing things and therefore requires an external person to encourage a different approach. That was what Transport Scotland tried to do for the Tram Project Board.

Q. What was your understanding of the role and responsibilities of TEL in the tram project?

26. TEL was invisible to me and I could not comment on its role and responsibilities.

Q. What was your understanding of the role and responsibilities of Scottish Government and Transport Scotland in relation to the tram project?

27. The Scottish Government, through Transport Scotland, was the major funder of the tram project. Under the arrangements put in place by the previous administration, Transport Scotland had two members on the Tram Project Board. I cannot really comment on how they discharged their responsibilities or, indeed, what they were. I have no knowledge of the governance arrangements or how Transport Scotland influenced or supervised or monitored the tram project before Transport Scotland withdrew from the governance arrangements for the project. I do not recall the previous governance arrangements ever being discussed in any substantial detail because the SNP were elected with a manifesto that was quite clear; we were going to pull the funding for the project so that was what we progressed and, therefore, our interest in what had gone before was minimal to non-existent. Once we had changed the governance arrangements for the project and

removed Transport Scotland members from the project board, the Scottish Government's sole role was as funders of the project responsible for managing the funds. Our experience with the Stirling/Alloa/Kincardine rail project informed our decision to withdraw from the governance arrangements to some extent.

Q. What role did Transport Scotland have in the tram project after it withdrew from the Tram Project Board?

28. The responsibility Transport Scotland had in the tram project after it withdrew from the Tram Project Board was to provide the grant money against the programme of works being undertaken up to the limit of £500m. The grant payments were made by Transport Scotland on a monthly basis. I could not compare the new governance arrangements with the previous arrangements because I knew nothing of the previous governance arrangements.

29. We were quite clear that Transport Scotland should withdraw from its participation in the project. The Stirling/Alloa/Kincardine rail project was quite a simple project which ended up costing three times its original budget. It was obvious that there were too many parties involved. In relation to SAK, the Council was involved, the Government was involved, Network Rail was involved, the train franchisee was involved and there was no coherence or focus in the governance arrangements. We concluded that we needed an unambiguous line of responsibility for the tram project. Ministers made it clear that the tram project was for the City of Edinburgh Council to deliver. Putting Transport Scotland officials on the Tram Project Board carried with it the risk of making us responsible for delivering the project, because the board was responsible for delivering the project. That was not our role, we were the funders only. The Government did not want to progress the tram project but accepted the will of Parliament to provide financial support to the project.

Q. Did you have any concerns about the tram project, or bodies or organisations responsible for delivering the project, around the time of Transport Scotland's withdrawal from the project?

30. I did not have any concerns about the tram project or bodies or organisations responsible for delivering the project around the time of Transport Scotland's withdrawal from the project governance arrangements in summer 2007. The problems with the tram project had not emerged at that stage. Contract negotiations were still underway so it was not obvious it was going turn into a project that required investigation by a public inquiry.

PARLIAMENTARY DEBATE ON THE TRAM PROJECT – JUNE 2007

Q. On 29 May 2007 Willie Gallagher and David Mackay sent you a letter (TRS00004406) regarding the First Minister's concerns about costs. The letter seeks to reassure you that the project remained within budget and had made significant progress to date. Why did TIE feel the need to send you that letter?

TRS00004406
should be
TRS00004407

31. Only TIE staff could answer that. The previous week at First Minister's Questions the subject of the Auditor General looking at the project was raised. I presume that is what Mr Gallagher is referring to in his letter.
32. On 4 June 2007, John Swinney requested, but did not instruct, the Auditor General to review the tram project and EARL project. The Auditor General is independent and it would have been perfectly proper for the Auditor General to say no, but it emerged that the Auditor General had the intention of reviewing the projects and therefore he simply brought the review forward.

Q. What was the purpose of the Audit Scotland Review in June 2007 (CEC00785541)?

33. The purpose of the review was to get a sense of where the tram project was from an independent source. We wanted to get a sense of how it was being managed and how the governance arrangements were working. The review covered the EARL project as well as the tram project, as the two related to each other. We probably had more substantial concerns, at that stage, about the EARL project than we had about the tram project. EARL was a much riskier project altogether. It was issues relating to EARL in particular that led us to get the Auditor General involved.

Q. Who determined the scope of the Audit Scotland Review?

34. The Auditor General, through Audit Scotland, determined the scope of the review but I am not saying there would not have been discussions between Ministers and the Auditor General about the scope of the review.

Q. Is it usual for Ministers to request an Auditor General to undertake a review?

35. I do not know whether it is usual for Ministers to request an Auditor General to undertake a review. I am not sure whether it has happened before or since that request. I do not think it would be normal practice but it did not surprise me that the Auditor General thought it was the proper thing to do.

Q. Did you think that the three week period in which the report was to be produced was an appropriate timescale for such a report?

36. The timescale for the report was helpful because it meant that the report would be published in time for the Audit Committee meeting on the morning of 27 June and before the parliamentary debate in the afternoon. A report can be produced on any timescale as the scope is then fitted to the timescale that is available. I do not know what discussions about the timescale took place with the Auditor General.

Q. Were there any previous discussions, whether between Ministers, with Transport Scotland officials and/or with Audit Scotland, about such a review being carried out?

37. I am not aware of any previous discussions whether between Ministers, Transport Scotland officials and/or with Audit Scotland about such a review being carried out. I cannot speak to what happened before we became Government and we are talking about something that happened in the very early weeks of the Government. There may have been discussion with the previous Government given that it was on the schedule of things that the

Auditor General was planning to do. I do not know whether the Auditor General had previously appeared before the Audit Committee to discuss his plans, but that would be a matter of public record.

Q. What were your views on the report produced by Audit Scotland in June 2007?

38. The Audit Scotland report published in June 2007 was helpful as it provided the necessary objective view of the projects. It essentially confirmed our considerable doubts about EARL, which was the more expensive project and was more at the front of our minds than the tram project. The Audit Scotland review stated that there was no clear governance framework in place for the EARL project. It said more encouraging things about the Edinburgh tram project. The report describes a project with the right characteristics for success. It did not point directly to any difficulties with the project. However, the report does point to a £40m discrepancy in the tram project funding before any work was done. Therefore the report did provide an early indication of a need to keep an eye on the project's finances.

Q. Did the report, in relation to the tram project, have any bearing on the Government's view of the project? Did it persuade the Government that it might be a good project to take forward?

39. Despite the Auditor General's report the tram project had no clear benefits, particularly when compared to other transport options, and it was still not clear how the project was to be managed. We never discussed it in any detail, as a Government, but I know that before we became the Government, we discussed informally that the best route for a tram system would be circular route instead of a route across the city. We recognised the value of taking a tram line down to Leith and Granton because of the economic development happening there, but we did not see the point of taking the tram line out to Edinburgh Airport, especially if EARL went ahead.

40. The SNP government wanted to withdraw the funding from the project because it was not the right project on which to spend £500m. While the tram project provided a convenient link to the airport I still think that Edinburgh could have got more for spending that amount money on something else.

Q. The Government lost the vote on 27 June and decided to proceed with the tram project. Ministers decided to cap expenditure at £500m or thereabouts and to withdraw Transport Scotland from the project's governance arrangements and, in particular, Transport Scotland relinquished its seat on the Tram Project Board and would not receive Tram Project Board papers. Why did Ministers decide to proceed with the tram project?

41. The decision to proceed was a political decision but it was also a decision based on the fact that the project was in progress and the cancellation of the project at that stage would not have immediately released the government from all financial liabilities. We were a new minority government, with only one more seat than the next biggest party. As a government we could not fight on every front and we accepted defeat on the tram project on the basis that we were very confident we would be able to cancel EARL, which had the bigger budget. The idea was that if we supported the tram project we could withdraw support for the EARL project, to release that money for other priorities.

Q. Why did Ministers decide to cap expenditure at £500m?

42. The resolution that Parliament passed on 27 June 2007, amended and supported by opposition parties, referred to the need to cap expenditure on the tram project. Therefore Parliament concluded that the Scottish Government's contribution to the tram project should be capped. It was not simply a decision made by Ministers.

Q. Why did Ministers decide to withdraw Transport Scotland from involvement in the project particularly in view of Ministers' role as principal funders?

43. The Scottish Ministers withdrew Transport Scotland members from the Tram Project Board because we saw the potential for a conflict of interest and a blurring of the lines of responsibility for the project. The tram project was the City of Edinburgh Council's project. We were the funders and we were clear that we should preserve that distinction and that is why we withdrew members from the Tram Project Board.

Q. Did you have concerns then that the previous administration had set up a system with the principal funders, the Scottish Executive as it was, on the board?

44. We did not focus on why the previous Government had decided to include Transport Scotland in the governance arrangements for the tram project. That was a decision they had made. We simply held the view that complex projects work best when responsibility for the project is simplified. It was no more and no less than that. It was a view informed by what we had experienced with the Stirling/Alloa/Kincardine rail project, which was not a big project, yet we saw what problems arose when there were too many hands on the tiller.

Q. Transport Scotland could have brought to the project a significant amount of expertise of large projects. Did you feel at the time that such expertise was not required?

45. We did not have a discussion about whether Transport Scotland expertise was required or not at the time of withdrawing Transport Scotland from the governance arrangements. The City of Edinburgh Council was, and is, quite a large and substantial council, it does manage big projects. In terms of project management expertise the Council was used to managing big projects. There were not many tram projects in the UK. Transport Scotland therefore had never managed a tram project either and there are significant differences between heavy rail and light rail projects; the engineering is different and trams run on-street in a mixed traffic environment. A tram

project was quite different from anything that Transport Scotland had been involved with previously.

Q. To what extent were any of these issues discussed with other Ministers, including the First Minister? Did any Minister express any concerns about any of these matters, including in particular the decision to remove Transport Scotland?

46. I have no recollection of any Minister other than John Swinney and myself being involved in the decision to withdraw Transport Scotland from the governance arrangements or expressing any concerns about it. The First Minister would have been aware of the proposal but he made no contribution to the decision-making process and it would have been surprising if he did. Cabinet Secretaries are responsible for their portfolios and they are expected to get on with the job of managing their portfolios. That was what John Swinney did, working with me.

Q. How did you envisage how Transport Scotland would influence, supervise or monitor the tram project if it was not represented in the Tram Project Board?

47. It is important to note that after Transport Scotland withdrew from the governance arrangements it was not supervising the tram project. Instead Transport Scotland would monitor the project for the relatively narrow purpose of ensuring that grant money was being paid out for works that were done. We did not want Transport Scotland to supervise or influence the project. We had a very substantial interest in seeing that a tram project was delivered and a very substantial interest in seeing that our money was properly spent and that was it. Transport Scotland were expected to ensure the grant money was properly spent and that is what they did.

48. It is not unusual for the Scottish Government not to sit on the boards of projects which it funds. For example, the Scottish Government's Climate Challenge Fund has funded hundreds of climate projects, but there is not a

single project board that I am aware of on which the Government sits as the funder. I choose that as only one example. When the Government provides funding to projects across a wide range of policy interests, it is almost never a part of the project board. It is not usual to be part of the board.

49. Transport Scotland was responsible for making sure that the funding was properly spent, that was the specific responsibility that officials in Transport Scotland were seeking to discharge. But, equally, officials had an interest, as Ministers did, in seeing that the tram project was delivered, because the worst of all possible outcomes would be to spend £500m and have nothing to show for it. Even if we had doubts about the project and whether it was the best way to spend £500m, we nonetheless certainly wanted to see something for the money, but it was the responsibility of the Tram Project Board to deliver the project.

Q. So how could Transport Scotland, under the new governance arrangements, make sure that a tram project was delivered?

50. Only the Tram Project Board could make sure the project was delivered.

Q. Are you aware of whether any Transport Scotland officials had any concerns about withdrawal of Transport Scotland from the Tram Project Board?

51. I was not aware of any concerns that Transport Scotland officials had about the withdrawal of Transport Scotland from the Tram Project Board. I see from the papers provided to me by the Inquiry that there were discussions between officials about the Scottish Public Finance Manual. I was not aware of those discussions at the time; what came to Ministers was a clear view that Transport Scotland should withdraw from participation in the project. I can see that there were a number of officials engaged in that debate, particularly Bill Reeve, who asked whether the best way to fulfil the requirements of the Scottish Public Finance Manual was to pay the grant in one payment rather than to pay it against delivery. Malcolm Reed, who was Chief Executive at

Transport Scotland, certainly did not reflect to Ministers any of the discussions that I can now see took place. I am relaxed about that because that is entirely proper. Civil servants should explore the boundaries and parameters that might affect decisions and recommendations they make to Ministers. I welcome the fact they had that discussion and protected their interests, because they have professional interests, and our interests, by giving us the clear and robust recommendation that Malcolm Reed provided to us.

Q. In a letter from Willie Gallagher to you dated 28 June 2007 he mentions that John Swinney rang him the previous night to advise him about the decisions Ministers had reached on tram and EARL (CEC01583422). What decisions had been reached on the tram project on 27 June 2007?

52. We had expected the outcome of the parliamentary debate on 27 June 2007. It did not require great insight to predict the outcome and, of course, we could see the amendment that was put forward by the opposition the preceding day on 26 June 2007. I do not think we made any decisions after the debate that we had not already made before it. I cannot remember whether we made the decision to withdraw Transport Scotland from the governance arrangements before or after the debate.

PROJECT GOVERNANCE – WITHDRAWAL OF TRANSPORT SCOTLAND

There is an email from John Ramsay to others in Transport Scotland dated 28 June 2007, the day after the parliamentary vote (TRS00004489). John Ramsay mentions that Bill Reeve had said Transport Scotland's new role is to be that of "bankers rather than facilitators". There was a further meeting between Transport Scotland staff following which a paper was produced by John Ramsay, dated 4 July 2007, (TRS00004511) which stated:

"Parliament successfully opposed ministers' expressed wish regarding the cancellation of the Edinburgh tram project. This ensured that the Executive continued to support the project "to the limit of the previous administration's

funding limit". 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."

John Ramsay went on to write "following the Parliamentary decision and ministers' statement, neither the future funding nor the level and style of project management are clear to the project management team".

Furthermore he wrote "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 a major funder or banker. Given minister's strength of opinion on the project and accompany comments on capped funding, this has implications for the style and level of management that we see Transport Scotland assuming responsibility for".

Q. Why were Ministers keen to emphasise that the project was CEC's and not the Executive's?

53. Ministers were keen to emphasise the project was the Council's project because it was the Council that brought the tram Bills forward, paid for the Bills, promoted the project and made it clear that it was their project. There was no division between Government and Council on that matter.

Q. What discussions had taken place between Transport Scotland and Scottish Ministers about the future role of Transport Scotland before the parliamentary vote?

54. I have no recollection of any debate between Transport Scotland and Scottish Ministers about the future role of Transport Scotland before the parliamentary vote. At section 4 on page 2 of John Ramsay's paper (TRS00004511) he sets out three options for future involvement. *"Continue as before but as banker with engagement only on financial aspects"* but of course that was refined. The Government chose a refined version of option (a) *"Continue as before but as "banker" with engagement only on financial aspects but without any promotional support."* It is clear that Transport Scotland was progressing towards implementing the Government's decision. This paper was an attempt to obtain certainty as to what Ministers wanted.

Q. You say very firmly that the project was the City of Edinburgh Council's but Transport Scotland officials seem to have a slightly different view. Is it really just that the politics had changed and that the new Government had decided it would not support the project?

55. Even when Transport Scotland officials were sitting on the Tram Project Board, there was no evidence to suggest that they had any other view other than the tram project was the City of Edinburgh Council's project. Transport Scotland officials sat on the Board to support and assist the project and to protect the Government's interests. However, Ministers were concerned that having Transport Scotland sitting on the board might cause others to see ambiguity in the responsibility for the project. With the major funder on the project board there was a danger that, in certain circumstances, the City of Edinburgh Council would argue that it was not just its project, or not even its project.

Q. It seems to be that the role of Transport Scotland, or its future role, is not clear to Transport Scotland officials at this stage, why was that?

56. When a clear policy position is taken by Ministers and, in this case, it was that we were moving the position of bankers for the project, as explained at paragraph 4 in John Ramsay's note (TRS00004511), there are options as to how that policy decision is implemented. That is perfectly proper, there are

always options, and you can see civil servants debating which of these options should be provided to Ministers to confirm which way to proceed. A policy decision always needs to be analysed to determine the best way to deliver it.

57. What you can see from these documents is civil servants looking at how a Ministerial decision can be applied in practice. Ministers set policy, Ministers challenge, Ministers review, Ministers carry responsibility, but Ministers do not manage the task of implementing public policy. Transport Scotland are delegated to do that on behalf of Ministers.

Q. Was the decision to withdraw Transport Scotland from the formal governance structure, a decision based on advice from Transport Scotland officials?

58. I cannot give you an unambiguous answer as to whether the decision to withdraw Transport Scotland from the governance arrangements was a decision based on advice from Transport Scotland officials. My recollection does not enable me to do that but it is clear, from the papers provided by the Inquiry, that there was interaction between John Swinney and Transport Scotland that led to the particular implementation that we ended up with. The papers show Transport Scotland officials trying to be sure that what they do is actually what Ministers wanted. It would be virtually inconceivable that officials would not go back to Ministers and check the proposed course of action with Ministers. That is the way the relationship between officials and Ministers would normally work and I am pretty convinced that would be the case here.

Q. Was the decision to withdraw Transport Scotland discussed and agreed at Cabinet?

59. Not being a member of Cabinet I cannot confirm whether the decision to withdraw Transport Scotland was discussed and agreed at Cabinet. I would be slightly surprised if it was discussed and agreed at Cabinet.

Q. Would it be fair to say that the decision to withdraw Transport Scotland from the governance structure was a Ministerial one, and not one supported by Parliament?

60. Parliament was silent on the position of Transport Scotland in the project's governance structure. The matter never arose in a Parliamentary debate. You can see from the motion passed by parliament on 27 June 2007 that it was only interested in the financial aspects of the tram project.

61. Governance of the project was never an issue for Parliament. My parliamentary speeches and answers then and over the next nearly four years are about project cost, the project timetable, project contractors, but do not address the issue of governance. The Audit Committee might be the one place where issues of governance would arise but I was never called before the Audit Committee on the subject of the tram project.

Q. John Ramsay, in his paper of 4 July (TRS00004511) mentions "minister's strength of opinion on the project". Can you comment on that?

62. I do not know what John Ramsay meant when he referred to 'minister's strength of opinion on the project'. I assume that that is his noting that we did not think this project was the best way of spending this amount of money and that we believed we should firmly be in the position of funders, managing the funding, while the responsibility for project was the City of Edinburgh Council's.

Q. At paragraph 8(b) of his paper, John Ramsay wrote *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. we recommend that ministers are advised accordingly". Were you ever advised of this? Did you know that the governance arrangements had been approved by Audit Scotland in its June 2007 report?

63. I cannot remember whether I was briefed about this discussion. We knew that Audit Scotland had approved the governance arrangements in its report of June 2007. In withdrawing Transport Scotland from the governance arrangements it was not an attempt to remedy any perceived defect in the governance arrangements, it was much more straightforwardly about clarifying the lines of accountability. There was the prospect of the Tram Project Board, with Transport Scotland members sitting on it, making recommendations to Transport Scotland, so there was a potential conflict of interest for the Transport Scotland member sitting on the Board. For example, if Bill Reeve sat on the Board then he might have to make recommendations to himself in his capacity as a director at Transport Scotland.

Q. Did you think that the new governance arrangements did provide sound financial control for the Scottish Government?

64. I never saw any evidence that the new governance arrangements had an adverse effect on financial control; it certainly enabled that clarity of responsibility. Ministers did challenge Transport Scotland on the issue of whether we were getting what we were paying for and the answer was always yes.

65. Transport Scotland knew that because it regularly had reviews to ensure the grant money was being spent on work that was a proper part of the project. Transport Scotland have experts who have a lot of experience, they are in a good position to understand if the money is being properly spent on the project.

Q. Did you get a sense from Transport Scotland officials that they were uncomfortable removing Transport Scotland from the governance structure?

66. I never had a sense that Transport Scotland officials might be uncomfortable removing Transport Scotland from the governance structure. We got a clear steer from Malcolm Reed implementing it. I never got any sense of the discussions within Transport Scotland on the matter of withdrawing Transport Scotland from the governance arrangements. Ministers did not go against the advice of Transport Scotland officials in respect of the withdrawal of Transport Scotland from the governance arrangements.

Q. On 9 July 2007 Malcolm Reed sent a memo, dated 6 July, to John Swinney recommending that action was taken to implement Parliament's decision and to restate the funding cap of £500m (TRS00004523). It stated that Transport Scotland should "*scale back its direct involvement*" with the tram project. The conclusion in Annex C of the memo was:

"1. The Parliament's decision places the risk of any cost overruns on the Tram Scheme with the City of Edinburgh Council, and makes it clear that responsibility for managing and delivering the scheme rests with the promoter.

2. 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."

To what extent was Mr Reed's memo sent in response to Ministers' wishes and to what extent was it unprompted?

67. I cannot give you a complete answer as to whether Mr Reed's memo was sent in response to Ministers' wishes or was unprompted. Transport Scotland initially recommended providing a grant of £490m but we decided to choose the higher figure of £500m. We were not going to have an argument with the Council for the sake of £10m, so that was how the £500m figure was chosen. Advice of the character in Mr Reed's memo would likely have been discussed with Ministers prior to the memo being submitted to them. This is a memo that was sent within two weeks after the decision of Parliament, so there would not have been a much opportunity for a lot of discussion about the advice. I did not have any formal meetings with Transport Scotland prior to this advice being submitted.

Q. The main concern appeared to be that there would be a call for more funding from Transport Scotland and that this was a reason for withdrawing from the governance arrangements. Was consideration given to Transport Scotland continuing with the existing governance arrangements and simply making it clear that there would be no extra funding? Why was that option discounted?

68. In his memo Malcolm Reed notes the concern that there may be a call for more funding from Transport Scotland. That was not a reason for withdrawing Transport Scotland from the Tram Project Board. The reason for Transport Scotland withdrawing from the Tram Project Board was to ensure clarity of responsibility.

Q. Jerry Morrissey sent an email dated 9 July 2007 in respect of Malcolm Reed's memo (TRS00004522). In that email he wrote "*We need to define and discuss our level of involvement in trams. It may be slightly different to what we proposed*".

69. Jerry Morrissey seems to have written that because Mr Reed's memo of 6 July (TRS00004523) does not explicitly spell out withdrawing Transport Scotland from the Project Board. It uses the phrase, "withdraw from active participation in the governance". I could not tell you exactly what Jerry

Morrissey was referring to in that email. In the absence of a specific reference to withdrawing from the Project Board in Malcolm Reed's memo of 6 July, I think we are probably looking at a situation where scaling back had not yet been bottomed out and discussion continued about what that would mean.

Q. On 11 July 2007, in response to Malcolm Reed's memo, John Swinney agreed that Transport Scotland should scale back its direct involvement with this project (TRS00004536). A subsequent email from Jerry Morrissey dated 11 July 2007 said, "*we need to define and agree "scale back" for the tram project*". Jerry Morrissey mentions that Matthew Spence was to produce a one page definition of 'scale back' (TRS00004540).

It is interesting that a decision has been made to withdraw Transport Scotland from the project yet there seems to be a lack of clarity about the future role of Transport Scotland. Why was there a lack of clarity?

70. I cannot comment on why there appears to be a lack of clarity about the future of Transport Scotland. I suspect that Jerry Morrissey just wanted to be clear about what Ministers actually wanted to be done. I would be disappointed if there was no active discussion and debate in places like Transport Scotland to make sure every eventuality is considered.

Q. In an email from James Papps, of Partnerships UK, to staff at Transport Scotland, dated 21 July 2006, he wrote that the key factor to success was a small project board, which provided the forum in which Transport Scotland participated in all key decisions (TRS00002657). Following the parliamentary debate in 2007 there was an email from David Mackay of TIE to Malcolm Reed dated 12 July 2007 (TRS00004541) in which he suggested continued attendance by senior Transport Scotland officials at the Tram Project Board meetings. At a Tram Project Board meeting on 12 July, James Stewart of Partnerships UK stated that it was necessary for Transport Scotland to remain on the Tram Project Board to ensure the prudent spending of taxpayers' money (para 5.4, CEC01566662). Damian Sharp reported on that same Tram

Project Board meeting and advised that the number of members of the Board strongly supported Bill Reeve remaining a member of the Tram Project Board and Transport Scotland being actively engaged in the project (TRS00004547).

Before June/July 2007 there appeared to be an intention that Transport Scotland would remain on the Tram Project Board and part of the governance structures to ensure prudent spending of taxpayers' money. What changed?

71. In respect of James Stewart's comments, it was the Ministers' view that Transport Scotland was not responsible for project spending. The responsibility for controlling the budget for the project was the City of Edinburgh Council's responsibility. The Auditor General had reported a £46m gap in funding. People seemed to be trying to manipulate Transport Scotland into dealing with the potential prospect of the project going beyond its budget, which had nothing to do with Transport Scotland and everything to do with the Project Board and with the City of Edinburgh Council. I can understand that they wanted people like Bill Reeve, who has considerable knowledge and experience, to remain on the Board. James Stewart's comments highlights the danger of a blurring of responsibilities that was in Ministers' minds when they wanted to a clean boundary between Transport Scotland and the Tram Project Board. Given our previous professional experience, John Swinney and I were clear that we needed clarity and simplicity in responsibility for the project.

Q. James Stewart, in the Tram Project Board minutes of 12 July (para 5.4, CEC01566662), is noted as saying *"despite the recent funding announcement Transport Scotland would remain responsible to assure prudent spending of taxpayers' money. This should require continued attendance at the Tram Project Board"*. Would that not be the way of ensuring prudent spending of tax payers' money?

72. Transport Scotland was responsible for monitoring its portion of the grant funding. That is distinct from the responsibility for monitoring total expenditure on the tram project, which was the responsibility of the Tram Project Board.

The project board would not be interested in discharging Transport Scotland's responsibility for how Transport Scotland's money is spent. The Board would be interested in, and responsible for, spending the money that was the budget for the tram project. Therefore while it might be possible for Transport Scotland to discharge that responsibility being on the project board, I do not think being on the board was necessary, or helpful, to allow Transport Scotland to do that.

73. We had a very robust system of paying out the £500m in instalments. We did not simply hand over £500m and walk away from the project, we paid out money as work was done. It seems clear to me that Transport Scotland had a robust system of protecting the grant money.

Q. Were you aware of advice from Partnerships UK that recommended Transport Scotland stay on the Tram Project Board? Did you take those views in to account?

74. I was not aware of advice from Partnerships UK that Transport Scotland should stay on the Tram Project Board. I do not think I ever knew of anything coming from Partnerships UK. As it pre-dated our coming into office, it was commenting on the situation that prevailed under the previous administration.

Q. In response to Damian Sharp's report of the TPB meeting on 12 July 2007 Malcolm Reed wrote "*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*" (TRS00004547)

Following that email Bill Reeve wrote "*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". Mr Reeve considered obtaining a direction from Ministers that the normal governance process should not be followed in this instance (TRS00004547).

Were you aware of the views of Bill Reeve, or any others in Transport Scotland, about the withdrawal of Transport Scotland from the governance structure?

75. I was not aware of Bill Reeve's views at the time. This was an interaction between Mr Swinney and Transport Scotland that is something within his purview rather than perhaps mine.

Q. Do you know if Bill Reeve sought or obtained the Ministerial direction?

76. I am quite confident that no direction was issued. If a Minister wants to act against official advice then the Minister must formally give a direction, which means they take responsibility for everything that goes wrong, so it is very much the nuclear option. Putting a direction on the table might seem to be an attempt by officials to negotiate a better position. It is entirely proper for them to ensure their professional positions are protected.

Q. On 20 July 2007 Matthew Spence produced a paper to define the revised scaled back role of TS (TRS00004559, attached to TRS00004558) that was sent to Malcolm Reed for comment/approval. On 25/26 July 2007 Matthew Spence's memo informed you of the proposed redefined role of TS in relation to the tram project (TRS00004581, attached to TRS00004580). It stated that TS was to surrender its seat on the TPB. On 30 July 2007 Mr Swinney noted that he was content with the proposed redefined role (TRS00004595). You noted the paper on 8 August 2007 (TRS00004651).

Was there any assessment of risk made before deciding to remove Transport Scotland officials from the Tram Project Board?

77. I was not aware of a formal risk assessment of the proposed withdrawal of Transport Scotland from the governance arrangements. But this whole

discussion was about risk, but the risk that won out in the argument was the risk of a lack of clarity of responsibility, that was the risk we were seeking to address in the actions that we took. We felt we had to ensure that the Tram Project Board was clear that the project was their responsibility and that they could not offload it onto Transport Scotland or anyone else.

Q. After Transport Scotland withdrew from the governance arrangements what control or oversight did it have over the spending of £500m of government money and in your view was that oversight effective?

78. The oversight Transport Scotland had over the spending of £500m after it withdrew from the Tram Project Board was effective in the sense that the Government did not spend more than £500m. So we achieved the financial objective set by Parliament on 27 June 2007. I hold the opinion that our unambiguously constraining our financial commitment to the trams project limited the ultimate overspend.

79. I have no reason to believe that the management of the grant payments was not effective. I do not recall discussions on that subject and I certainly do not recall getting involved in detail of what the grant money was paying for. We were assured by officials at Transport Scotland that they were ensuring that grant money was being paid out for work that was actually done. I see from the papers now provided to me by the Inquiry, which I did not see at the time, that there was a debate about the grant payments and whether it was proper to be paying out when it was clear that the project itself was making less progress towards its ultimate goal. But I think the conclusion that everybody seems to have reached, including ourselves, was that the payments were properly made. I have never heard a suggestion otherwise and the Auditor General, who after all had oversight of the project, has never made any adverse comment about the payment of the grant money.

Q. Did you find it unsatisfactory that Transport Scotland was having to pay out money in relation to a project that had not progressed as far as it should

have by that point, and do you think greater oversight at the time of Infraco contract close would have made any difference to that position?

- 80.** I did not see the Infraco contract and I was not party to the negotiation of the contract, so I cannot say whether greater Transport Scotland oversight at the time of contract close would have made any difference to the project. It may well be that the Infraco contract that we had was the best contract that was available at the time, I have nothing to tell me otherwise. I think the difficulties the project faced were more the result of the behaviour of the contractor and the fact that the project was more difficult and complex than the contractors had expected. The contractors almost certainly got their pricing wrong and you are always in difficult territory when you are in that position. I was disappointed that the project was not making the progress that we had hoped for both in terms of timescale and scope. Our narrow interest in connecting the heavy rail system to the airport was almost always going to be protected because the tram depot was where we were connecting to the tram system. It was clear if there was anything delivered it would be that bit. There was a debate around whether it should terminate at St Andrew Square, there was a debate about whether it should go all the way down Leith Walk, and we watched that with interest is all I can say.

Q. At the Tram Project Board on 9 August 2007 it was noted at item 3.9.2 that the Board considered whether the decision to withdraw from the TPB was politically motivated (CEC01561047). Do you know what was meant by this comment?

- 81.** It is certainly correct to say that the decision to withdraw Transport Scotland from the Tram Project Board was led by politicians but I think the phrase “politically motivated” has a pejorative overtone. It was not a decision that was designed to disadvantage anybody, which I think is being implied by that comment. On the contrary we thought we were making decisions that would help everybody.

Q. On 23 August 2007 Damian Sharp sent an email to Malcolm Reed and Bill Reeve to update them on progress. He wrote that he had made it clear that all discussions should now be between CEC and Transport Scotland (TRS00004742). In the attached paper (TRS00004745) Damian Sharp wrote that *"We will have access to a significant amount of information about the tram project and will be able to spot issues that are important to tram success. However, the role instructed by Ministers suggests we should not be acting on some of this information. On the other hand we very clearly remain interested in information about the financial profile to manage our overall budget"*.

What did he mean by this?

82. Damian Sharp should be asked what he meant by that. I will make the observation that I am slightly surprised to read *"However, the role instructed by Ministers suggests we should not be acting on some of this information"*. While I would certainly think in the context of directly intervening in the responsibilities of the Tram Project Board, that is correct, I would be surprised if they were excluding themselves from acting upon relevant information.

Q. Can you recall what information Transport Scotland should not act upon?

83. I have no recollection of any instruction, or suggestion that if officials in Transport Scotland became aware of something that is outside their area of responsibility that they should ignore it. I would be very surprised if that was the case. If a senior official in Transport Scotland became aware of a material matter they would seek to alert somebody about the need to take action. In my professional life I have done that and I would expect anybody in Transport Scotland to be in that same position. I would hope Damian Sharp is simply reiterating that they are clear about what their responsibilities are.

Q. Even if Transport Scotland did receive information that something was going awry, what action could it have taken in relation to that information under the new governance arrangements?

84. Transport Scotland was not sitting on the Project Board, which demonstrated that we were not carrying the responsibility for progressing of the project. But if any person became aware of a matter that is material to a matter of public interest, you would expect that person to draw it to the attention of the people who are responsible and can act on it. Just because Transport Scotland was not sitting on the project board does not mean that they should not be acting on relevant information.

Q. In your view, did the new governance arrangements allow Transport Scotland to exercise ‘soft power’, in that it could advise and assist the project, but that Transport Scotland could not take any formal action in relation to information it was receiving?

85. It was not written into their formal responsibilities. However, as I say, writing down a set of formal responsibilities is not to write down a list of things that should or could not be done. The people at Transport Scotland are professionals, they want everyone else in the business to succeed just as they want to succeed themselves and I would be surprised if they had concerns and did not properly feed that back.

Q. In an email chain from October 2010 (TRS00018055) Ainslie McLaughlin said *“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”*.

In response Bill Reeve said that the decision to distance Transport Scotland 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 Tram Project Board. Alterations to the contract regarding risk transfer were made after the new governance arrangements were put in place and were not approved by Transport Scotland.

Can you comment on Bill Reeve’s statement that the decision to distance Transport Scotland from active governance was taken by current Ministers?

86. The decision to distance Transport Scotland from active governance was taken by Ministers. Although, of course, Transport Scotland worked up the details and we agreed to them. However, I think it is important that Bill Reeve also wrote in the very first sentence of his response to Ainslie McLaughlin that *"We do check CEC's claims for payment for consistency with the grant terms. We did decline to pay an amount claimed recently since it related to bonus payments for TIE staff – we didn't consider this appropriate!"* It is very clear that the team at Transport Scotland were properly exercising their duties in relation to the expenditure of money. There are actually a couple of interesting things in what Ainslie McLaughlin says in his minute. It is the only time I have actually seen a reference to this. He wrote *"The fact that those may have cost more than was originally envisaged is to do with flaws in the contract rather than as you say the consortium deciding to go off on their own tack"*. The key thing is that Bill Reeve talks about how they are exercising control over the grant and identifies a case where they declined to provide funding, which I think sounds perfectly proper.

Q. Do you know if there were other examples of where grant payments were not paid out?

87. I cannot recall whether there were other instances where Transport Scotland refused to make grant payments. None were brought to my attention is all I can say.

Q. In evidence to the Public Audit Committee of the Parliament in 2011 (SCP00000028) David Middleton said that Transport Scotland stepped down "with the agreement of Ministers". Can you explain what that comment means?

88. That is factually correct. It sounds like David Middleton was saying that Ministers took the initiative but Transport Scotland was very unambiguous in clearing the advice provided to Ministers in this regard so he is properly saying that Transport Scotland a key party to the decision.

Q. In hindsight, do you consider that removing Transport Scotland from its involvement in the tram project was a good decision?

89. I absolutely continue to believe that removing Transport Scotland from its involvement in the tram project was a good decision because of the risks of having an individual sitting on the project board having to criticise and challenge themselves as the responsible official at Transport Scotland. Removing Transport Scotland from the project board in order to achieve the required clarity of responsibility was entirely proper. I continue to believe that and, if I was in a position of influence, I would make a similar decision in future.

REPORTING TO MINISTERS

Q. In an email from Willie Gallagher to Bill Reeve dated 24 July 2007 Willie Gallagher outlines Transport Scotland's 'light touch' approach to project monitoring (CEC01566648) and sets out what the new approach would be. There would be a submission of the normal four-weekly report, a monthly meeting with the Council and a quarterly meeting with the Council. There is a document (TRS00013618) that sets out those arrangements.

What was the purpose of this reporting system?

90. Willie Gallagher was presumably checking with Transport Scotland his understanding of the new arrangements that he discussed with Bill Reeve that same day. It is a useful summary of the reporting arrangements. Bill Reeve wrote that the reports need to be completed in full and on time and that this would be a condition of grant. He was making it very clear to Willie Gallagher that it was the duty of the City of Edinburgh Council along with the Tram Project Board to obtain money from the Government. The purpose of this reporting system was to ensure that the grant was paid out against proper expenditure and, as we have just recently discussed, we have seen one example where the grant was not paid out.

Q. If information was coming back to Transport Scotland that this project was going wrong, what could Transport Scotland and Scottish Ministers do in relation to the information it was receiving?

91. We are looking at a project which was experiencing engineering difficulties and that was a matter of public record and public debate. Anybody could look at the holes in Leith Walk and see that there were problems and know that the project was deviating from the timetable. It was up to the City of Edinburgh Council, whose citizens were being inconvenienced and short-changed by the late delivery of the project, and the restricted nature of what was implemented, to deal with that situation and that is what the Tram Project Board was about. It was not the responsibility of Ministers. Ministers, of course, had an interest in a tram being delivered, an interest in how it interfaced with our heavy rail interests at Gogar, but it was entirely for the Project Board and the City of Edinburgh Council to deal with problems facing the tram project.

Q. Do you consider that Transport Scotland's involvement in, and oversight of, the tram project was greater or lesser under the new arrangements?

92. If you are using the word 'oversight' in the sense of exercising responsibility then Transport Scotland are not exercising responsibility for the project because it was not their project. If, on the other hand, you mean oversight in the sense of whether they had as much knowledge about what was going on as they previously did, I cannot directly answer that. Transport Scotland would have to answer that. I suspect they probably had not dissimilar knowledge of what was going on to that which they would have had before, because in seeing what they were paying for, month by month, they would naturally see what was going on with the project but only they can really answer that question.

AWARENESS OF PROBLEMS WITH THE PROJECT

Q. Documents TRS00017790 and TRS00017791 lists the dates of some of the meetings between TIE and the Ministers. Did you attend the meeting on 28 March 2008?

93. Looking at my personal diary, it is clear that I did not attend the meeting on 28 March. My diary shows my departing Linlithgow by train at 0653 and arriving at Keith at 1152 and thereafter being engaged in activities in my constituency.

Q. Did you have regular meetings with CEC/TIE or the contractors on the project?

94. No I did not have regular meetings with CEC/TIE or the contractors on the project. That is not to say I did not have meetings but there was not a regular schedule of meetings.

Q. What would be the general purpose of those meetings?

95. With the passage of time I can only give you a bit of a speculative answer. It would certainly be quite routine for the City of Edinburgh Council to ask for a meeting because they might have felt the need to explain what was happening and make sure that I was better informed, so that if I was held to account in Parliament or in Committee I would have their side of the story. I cannot think that I would have initiated a meeting with the City of Edinburgh Council. In relation to TIE, I kept in contact informally with the Chief Executive of TIE on an ad hoc basis, perhaps meeting with him every couple of months. That was to develop my understanding of what was happening in the project. It was helpful to understand the dynamic between the parties and what had contributed to a particular decision being made. That is what I wanted to understand from the Chief Executive. I spoke more to Willie Gallagher than Richard Jeffrey.

Q. What did you do with the information you obtained from these meetings?

96. I did not do anything with the information I was receiving from the meetings, it was more to get an in-depth understanding of the background, so that I had a better understanding of what questions I might ask at the briefings, for example. These relatively informal contacts with a variety of people is very helpful. It allows a Minister to question and challenge officials.

Q. Who would normally attend the meetings with the Council? Would it just be you?

97. I do not think I met the Council very often, but at that sort of meeting I would be accompanied by officials, but I cannot remember who accompanied me to the meetings. I do not recall seeing any minutes for the meetings with the Council. Ministers would not normally see the notes taken by officials but they may see a paper recording decisions made at the meeting.

Q. Did you attend meetings with contractors? Bilfinger Berger and/or Siemens?

98. I certainly met Bilfinger Berger at some point, although I am a bit uncertain about when. It would have been to encourage the contractors to settle the disputes.

99. In relation to the other meetings listed in **TRS00017791**, and looking at my personal diary, I can see a one hour gap in my diary with travel to and from St Andrews House either side of that on 4 June 2007. I see nothing on 14 June 2007. Both were days filled with other activities. I don't see a meeting with Willie Gallagher on those dates.

Q. There are a couple of emails that suggest that John Swinney was concerned about the slippage in financial close (TRS00005076 and CEC01222014). Prior to that, on 10 March 2008, Stewart McGarrity (TIE finance) was asked by Rebecca Andrew (CEC finance) for a note on the risks of delaying contract signature versus the risks of signing the contracts if

issues in the risk matrix were not resolved. His reply was to the effect that it would take until September 2008 to complete the design, that 6 months inflation would cost £15m to £20m, and that *"More likely is that either BBS or the TS funding or both would walk away and we'd have no project."* (CEC01506128)

Mr McGarrity had it in mind that by March 2008 there was a significant risk that further delay in financial close could jeopardise funding support from the Scottish Government. Was Mr McGarrity right to be concerned about that?

100. I have no idea. This is something of which I was entirely unaware.

Q. Did the Scottish Government give any consideration to not providing any further funding to the tram project as a result of the delays in achieving financial close between January and May 2008?

101. I have no recollection of ever having a discussion of that nature. However, I would say that the financial aspects of the project were the responsibility of the Cabinet Secretary. I am not saying I was unaware of the financial issues but the primary responsibility was not carried by me.

Q. In an email from Stewart McGarrity to Graeme Bissett dated 24 May 2008 it is stated that Ministers have asked Transport Scotland to be *"more involved/informed re what's going on in the tram project"* (CEC01342332). Why did Ministers ask Transport Scotland to be more involved/informed at that stage?

102. I do not know. This statement was made in the context of financial close. I can only imagine that this was in relation to ensuring that the grant money was spent properly. Transport Scotland had to discharge their responsibilities to pay out money against progress made and I would expect them to be engaged in a way that would enable them to do that.

Q. Generally, what involvement did Scottish Ministers and Transport Scotland continue to have in the project after they withdrew from the governance arrangements?

103. In the project itself, none. That was a matter for the Project Board.

Q. There was a meeting between you, and I think Willie Gallagher, on 20 May 2008, according John Ramsay's timeline of meetings (TRS00017791). Can you recall having that meeting? Do you know what that meeting was about?

104. My personal diary for 20 May 2008 does not have that meeting or much time during which it could have occurred. I do not recall meeting Willie Gallagher after contract close. I was not particularly interested in financial close as such. I am a bit mystified as to why I keep seeing meetings that I do not see in my diary.

Q. On 28 May 2008 John Ramsay sent a memo to you to update you on financial close on 14 May (TRS00005078). There had been substantial slippage to the completion date. Transport Scotland were going to continue to apply pressure to the Council and TIE. How, and in relation to what, was Transport Scotland to apply pressure to the Council and TIE?

105. One of the very important things that John Ramsay has pointed to is in paragraph 6; *"However, very late issues raised by one of the main contractors just before financial close required last minute re-negotiations which resulted in an increase to £512m ..."* I have a recollection, which I cannot evidence, that those very last minute renegotiations were one of the sources of subsequent disagreement about what the contract meant because they were done so quickly that they may not have been subject to the same scrutiny as the main Infracore contract.

106. I have no idea what the specific changes made to the Infracore contract were. However, at a much later date, I was made aware that the apparently limited

late changes in the contract led to a difference of view of the terms of the contract, or was used as a justification for the difference of view. John Ramsay wrote in paragraph 8 *“Transport Scotland has not yet had an opportunity to scrutinise in depth any substantive programme information associated with this revised forecast but discussions on the revised programme are imminent”*. Transport Scotland would be interested in the programme so that they could see against what it was they were going to be paying.

Q. John Ramsay states that *“Transport Scotland will ensure that pressure is maintained on both the Council and TIE to continue to reduce critical path tasks”*; what is he talking about there? How, and in relation to what, are Transport Scotland going to apply pressure?

107. John Ramsay begins paragraph 8 by saying that there is no float in the project programme. If there is no float then almost everything is on the critical path; nothing can move without it disrupting something else elsewhere. He was quite right to flag up the absence of float because the project was at an early stage. Barely any engineering work had started yet we had a project with no float, there was no contingency in the project's programme. John Ramsay was saying that Transport Scotland would encourage TIE to proceed in a more cautious way that gave the programme a little bit of float. Transport Scotland wanted to know what its future cash flow would be and therefore required a predictable programme of payments.

Q. Does that form of language and involvement. Scrutinising the programme in-depth, seem compatible with a ‘light touch’ approach?

108. Transport Scotland were not running the project but what they did need to do was determine what the schedule of payments would be. To do that they needed to see the project programme. That is what John Ramsay is referring to in paragraph 8.

Q. At this stage financial close had slipped and there was no float in the programme. Did these developments cause Ministers or Transport Scotland to review the decision to adopt a light touch approach to the project?

109. It was still quite clear that it was the City of Edinburgh's project. However, of course, we were wishing that City of Edinburgh made a success of the project, we were putting £500m into it.

Q. We are not asking whether you changed your view in terms of whether or not it was City of Edinburgh Council's project, but did you stop to review whether you still wanted to proceed with the decision you had made, given the issues that were emerging?

110. With hindsight, I still believe we made the right decision.

Q. Following contract close in May 2008 the Bilfinger Berger Siemens consortium issued a number of INTCs to TIE. A dispute arose in relation to the correct interpretation of the Infracore contract including, in particular, clause 80 (change provisions) and Schedule part 4 (pricing provisions). Much of the dispute centred on whether changes to the Pricing Assumptions set out in Schedule part 4 had occurred and, if so, whether, under clause 80, BSC were entitled or, indeed, required to refrain from undertaking the works which constituted a Notified Departure until an estimate for the cost of these works had been agreed between TIE and BSC.

Were you aware of this dispute as soon as contract close was reached?

111. I was not aware of this dispute. Even if I was aware of the existence of the dispute I certainly was not aware of the detail of the dispute, not least, because I had never seen the contract or the schedules to the contract. This dispute seems to have arisen as a result of the late changes made to the contract before it was signed.

Q. John Ramsay's memo (TRS00017791), referred to above, notes that another meeting took place on 24 September 2008 between you, John Swinney, Willie Gallagher, and David Mackay. Does that appear in your diary?

112. It does not actually. I was clearly in Parliament all day and there is a morning gap in my diary during which such a meeting may have taken place. As my office was next to John Swinney's I may have been called in on an ad hoc basis. My diary suggests I was in the Chamber in the afternoon and there is a reference to me in Parliament's Official Report to confirm that.

113. However I cannot recollect a meeting on that date, but I had nearly 3,000 meetings as a Minister. Attempting, from memory, to pin one down simply is not going to get us anywhere.

Q. On 31 December 2008 John Ramsay sent a memo to you setting out progress on the Edinburgh Tram Project since financial close on 14 May 2008 (TRS00016711, attached to TRS00016710). The memo reported a number of problems facing the project and that the project end date was slipping. This was due to late financial close, design differences between TIE and its contractors, design slippage, slow construction mobilisation and utilities diversion. It was noted that Mr Swinney said that this was not welcome news (TRS00016723).

Presumably you received quite a few of these memos reporting progress on the project? What happens in response to these memos? What would happen in response to a memo like that, for example?

114. If you look at the end of the memo you will see what the official is asking the Minister to do. In this case, he is asking the Minister to note so he is not directly asking for action or a decision. The memo is informing me that the opening date has gone back six months, it is talking about phase 1b; I do not think by this time that was news. The Government had always said that we were not funding phase 1b. We were funding 1a, but we had agreed, and this is a generous offer by us one might say, that if they could bring phase 1a

under £500m they could keep the change and spend it on phase 1b. It was partly an incentive on our part but it ultimately delivered nothing. Therefore, phase 1b was not of huge interest to us in the sense that we were not funding it because, by this time, the £500m was fully committed so we were not going to be funding phase 1b. The memo also mentions tram line 3, nothing ever happened on that. Of course there was no Parliamentary process in respect of line 3 so, again, it would just go straight over the top of my head.

115. This memo is merely formally notifying us of things which we had all been aware for some considerable time. I suspect that putting a specific date on the slippage might have been just confirmation but, of course, it was only confirmation of what they then thought rather than what was happening. That looks like something I would just note and that is all I am asked to do and I cannot see that there would be an action arising from it. I would certainly note the second bullet point of the recommendations.

Q. In February 2009 contractors refused to start work on Princes Street, this became known as the 'Princes Street Dispute'. You sent a letter to Jenny Dawe on 26 February 2009 seeking reassurance that there would be an early settlement of the dispute (appended to CEC status report CEC01891494). What was your understanding of the reasons for the Princes Street Dispute?

116. I think this would be the point at which there were hundreds of contract change requests. My recollection is that Bilfinger Berger were simply not going to proceed until they got some progress on their change requests, rather than it being about Princes Street as such, although I think some of the change requests were also to do with Princes Street. In writing to Jenny Dawe, who of course was the political leader of the City of Edinburgh Council, I am simply trying to make sure my political opposite numbers, in the Council, remembered the nature of the commitment we had made to the project. I think that is what I read when I read my letter of 26 February 2009.

Q. What was the basis of your understanding? How did you know what was going on?

117. I do not think I can answer that. I have quickly skim read everything the Inquiry has provided me with but, obviously, I have not read every single word of everything in absolute detail. I cannot see a report that tells me the answer to that question. I think by this stage it was a matter of public comment that we were at that point, and I think there was also public comment about the hundreds of outstanding issues. I may have known informally, even if I had not been told formally, but I would expect that it would be one of these things that I would simply be told, perhaps orally, that there was an issue.

118. I am sure it would be Transport Scotland who would advise me of issues, but I am speculating here, I am imagining that that would be the case. This letter here that I have sent to Jenny Dawe is drafted by an official and I agreed it and signed it.

Q. Does the fact that you had to write to Jenny Dawe mean there was a breakdown in communication between Transport Scotland and the City of Edinburgh Council officials? Was it something that required the intervention of a Minister?

119. We were at a critical point in the project at this stage. If work on Princes Street was not progressed we were not going to get a project that had much of a relationship to what was originally planned. We were in a position where we were potentially going to get a line from the airport to Haymarket only. If the tram was not going to be built along Princes Street, which was one of the main areas for picking up passengers, then the project would be in a pretty dodgy place. It is therefore quite reasonable that we should seek to make common cause with the City of Edinburgh Council against Bilfinger Berger who were just sitting on their hands not doing anything, because that was what the letter was about. The central part of the letter is an obvious concern about the clear difficulties that exist with Bilfinger Berger. The letter is simply to make sure that we do not, as politicians of different political parties, head off in different directions. I am communicating with Jenny Dawe on a matter in which we have a shared interest.

Q. At that stage, did the information you received from Transport Scotland indicate whether the main problems with the project lay with Bilfinger Berger as opposed to TIE?

120. From the information being provided to me by Transport Scotland at this stage it appeared to be that the main problem with the project was the behaviour of Bilfinger Berger. That was what was thought by everyone other than Bilfinger Berger, even, I think, by other contractors.

Q. Do you have anything to say about the relationship between the contractors in the project?

121. I do recall hearing that Siemens thought Bilfinger Berger were being unreasonable in relation to the Princes Street works. That does not, objectively, say they were being unreasonable. It was thought that Bilfinger Berger were overplaying their hand. These things are never black and white because, when you look at how the hundreds of issues that were dealt with, quite a lot of them went in favour of TIE, quite a lot of them went in favour of Bilfinger Berger. So Bilfinger Berger clearly were not in the wrong in total.

122. I do not know what Siemens were saying in relation to Bilfinger Berger. I am fairly certain that I heard about Siemens' views through a third party. I do not think I ever met or talked to people from Siemens directly as far as I recall. Transport Scotland was my primary source of information. Transport Scotland were the advisers to the Ministers and they basically had stewardship over the £500m that we were contributing to this project. That is where we would look to hear about what was going on; that is who we would expect to be telling us whether we can sleep at night or not.

Q. What would you do in with the information you were receiving about disputes in relation to Princes Street? What was the strategy of Ministers in relation to the dispute?

123. The strategy was to make sure that those who carried responsibility for delivering the project, that was the Tram Project Board and the City of Edinburgh Council, delivered on their responsibilities. If we saw an opportunity to intervene in a way that would help, like writing to Jenny Dawe, we would do it but we were not running the project.

Q. Did you have any meetings with the contractors at this stage?

124. As I said, my recollection is that I met a representative of Bilfinger Berger on one occasion around this kind of time to simply encourage them to get on with the project. I certainly would not have engaged with the contractor in detail, not least, because I had no locus to do so except as an interested party.

Q. Would you be receiving any reports or information from the Council or TIE directly?

125. I do not recall receiving reports or information directly from the Council or TIE, it was always provided through Transport Scotland. Even if I got a letter addressed to me, Transport Scotland would see it before I did, that is the way it works in Government.

Q. What were your views and the Ministers' views about the project at this time including the management of the project by TIE and the Council?

126. You did not need to be an expert to see the project was not going well, everybody, including the public, knew that the project was not going well.

Q. Did you have any concerns about the £500m grant at that stage? Did you take any steps in relation to protecting that money?

127. Ministers did not take any additional steps in relation to protecting the grant money. I reiterate that there was a structure within which Transport Scotland was paying the grant money for work that was done. If the work stopped so did the grant payments. Our concern about the £500m was that if it came to

pass that no tram system was delivered then all the money we had spent was down the plughole. However, that was just part of our general concern about the project.

Q. Was there any thought given to Transport Scotland or Scottish Ministers intervention?

128. I do not recall that being discussed and with hindsight I am not clear how it would have helped anyway. When you have negotiations, the simplest negotiation is where it is one person sitting across a table with another person. It rarely helps to add another party because that will complicate the negotiations and make the situation worse. Fred Brooks wrote the classic project management book for software developers called '*The Mythical Man-Month*'. In the book he wrote that adding staff would only make a late project later because you require the staff doing the project to deal with the new staff. When you have got a project management crisis, therefore, he wrote that you should take the people who are not making any significant contribution to the project away from the project, leaving only those who have that responsibility and ability to solve the problem, who are now no longer distracted by other people. I thoroughly agree with Fred Brooks.

Q. Did Scottish Government involvement change in any way from the Princes Street dispute onwards?

129. There was no change in the Scottish Government's involvement in the project as a result of the Princes Street dispute.

Q. John Ramsay drafted a memo to you (TRS00005092) dated 23 February 2009 (the date appears to be wrong) to advise on the current situation regarding the tram project. It is possible that the date of this memo should be 3 March because it refers to an upcoming meeting on 4 March. We only appear to have a draft copy of the memo. Can you remember receiving this memo? Do you have a record of it?

130. The memo is certainly in the proper form. I have no recollection of receiving it.

Q. The reason we are looking at this memo is that paragraph 5 notes that the Cabinet Secretary for Finance *“discussed this dispute with Transport Scotland on 27 February and requested that Transport Scotland take a very firm line with CEC regarding the serious concerns that Ministers have about the way in which the current dispute, unless settled soon, might impact on both cost and programme.”* This is a reference to the Princes Street dispute. What is meant by a taking a ‘very firm line’? What can Transport Scotland or the Government do in relation to the Council other than, perhaps, write to them?

131. If you go back to the letter I sent to Jenny Dawe, to which there is a reply the following day, 27 February 2009 (CEC01891494), which, in essence, makes common cause and states that *“I am sure that you recognise that we must not be held to ransom by Bilfinger Berger, or for that matter anyone else.”* We cannot be certain but I suspect the meeting referred to in John Ramsay’s meeting may have taken place before we got Jenny Dawe’s reply on 27 February 2009. That letter is helpful because it recognises the position that the Government was taking at that stage. You can see from the recommendations that Transport Scotland profiled cash flows for the forthcoming three years, which is a proper response to changes in the project programme, which was what Transport Scotland’s responsibility was.

Q. Again, in that memo, it mentions that you had agreed to meet David Mackay of TIE and Richard Walker of Bilfinger Berger on 11 March 2009. There was an email from TIE (CEC00869282) which talks about the dangers of meeting Richard Walker. We talked about it previously and it did not take place apparently because it is not in your diary?

132. On 17 March I have got a meeting with David Mackay over trams. It may have been one that involved the Cabinet Secretary but, yes, I have got a

meeting on 17 March. I have not found a meeting with Richard Walker around that time in the diary.

Q. Did you have a meeting with Richard Walker around that time, do you recall any warning about meeting him?

133. I am sure I would have been warned. I would expect to have been warned. I do recall having a meeting with Bilfinger Berger, I just cannot pin it down as to time. I am quite clear in my mind that the only reason I wanted to see Bilfinger Berger, at all, was to just say to encourage them to resolve the disputes and get on with the tram project. That was my sole interest in meeting Bilfinger Berger on trams. I was not going to get involved in the detail of the project or in the detail of any of the individual disputes. It was not my responsibility to provide a remedy anyway. I would not have been briefed on the detail of any dispute so I could not speak with any certainty. My sole interest was to tell Bilfinger Berger that their reputation was at stake and that they would be in danger of never getting a Government contract again. I think the meeting with Richard Walker would be initiated by me. I am pretty clear it was my initiative despite the reservations of some other people. From my business experience it is more difficult to have a dispute with somebody when you are sitting across the table from each other.

Q. CEC00966220 is a note of meeting between TIE, CEC and TS staff on 3 March 2009. At that meeting Bill Reeve stated that Ministers were very concerned about what the Princes Street situation meant for outturn costs and programme. Bill Reeve required confirmation that there were no contractual or other arrangements which might expose Scottish Ministers to a liability greater than £500m

Was the concern that Ministers should not be exposed to any liability in excess of the £500m grant the primary concern of Ministers in relation to the project?

134. We were the funders to the extent of £500m for the project, so if there were any contingent liabilities, of which we had previously been unaware, we needed to know about them. I cannot imagine what they would be and I suspect Bill Reeve probably could not imagine what they would be but he wanted to be told there were none, not least because in Parliamentary process terms, if we have got a certain level of contingent liability, we are required to inform the Audit Committee in the Parliament. We were particularly concerned about a contingent liability because if it had emerged, and we had not advised the Audit Committee about it at the earliest opportunity, then we would be politically exposed and the Auditor General might comment on the matter, which we would rather avoid.

Q. John Ramsay sent you a memo on 13 March to update you on the dispute between TIE and Bilfinger Berger (TRS00016902, attached to TRS00016901). The memo notes that Mr Swinney had requested that Transport Scotland maintain close contact with TIE and Council. Transport Scotland officials had been in daily contact with TIE and a weekly telephone conference took place between Transport Scotland, TIE and the Council.

What was the purpose of this involvement? What did you do in response to any information you received as a result of this involvement?

135. The recommendations in TRS00016902, which are for me to note and for John Swinney's general awareness, look like a confirmation of what we already knew. Given that this memo is dated 13 March, you might have reasonably expected if I had had a meeting on 11 March with Richard Walker this memo might have referred to it and it does not.

Q. Why were Transport Scotland so interested in the Princes Street dispute?

136. Because they had an interest in the success of the tram project, that is what we come back to.

Q. But what could Transport Scotland do with the information they were receiving?

137. Remember that Transport Scotland were trying to change their schedule of payments to fit with the changing project programme. That required an understanding of what was happening in the project. They were not receiving information because they were trying to manage the project. They needed to know what was going on because they were trying to manage the payment of the grant for which they were responsible.

Q. TRS00016931 is an email from David Middleton to others in Transport Scotland dated 17 March 2009. In that email it mentions that you and Mr Swinney met David Mackay of TIE that day. Mr Swinney felt that the project was in a bad place but was reassured by what Mr Mackay said, although he said that the Council or TIE had not been “whiter than white”. Mr Mackay had said that the project could still be brought in on time and on budget if there was a restart soon. Mr Swinney was worried that such a large portion of the budget had been spent so far. Ainslie McLaughlin’s response indicates that Transport Scotland were worried about time and costs.

Can you remember what the purpose of this meeting was and what was discussed at the meeting and who attended it?

138. I am absolutely going to have to pass on that kind of detail about a specific meeting. What I would say is that I think Ainslie McLaughlin’s reply to David Middleton’s comment is exactly what I would expect to read at that point. John Swinney certainly was concerned, we were paying out a lot of money and we did not know whether we would ever get anything worthwhile for it. Ainslie McLaughlin, who is probably one of our most experienced project managers in Transport Scotland and pretty successful at what he has done I understand. His viewpoint in all this was quite a valuable one, particularly as David Middleton is a career Civil Servant, so he is not somebody who would take a view except in broader governance terms. It is interesting Ainslie McLaughlin in his last paragraph is actually talking about the prospect of

abandoning the project. That tells you exactly how seriously everybody was thinking about what was going at this stage, where there appeared to be irreconcilable differences between Bilfinger Berger and the project and, as I have referred to previously, that Siemens were also worried about their interests. I do not know what Mr Swinney meant when he said that CEC/TIE had not been "whiter than white". I do not know what David Mackay said to Mr Swinney that reassured him.

139. I really do not know what was discussed at the meeting. All I have got are the papers I am looking at now. It is worth pointing out in David Middleton's email that he refers to a one-to-one chat that he has had with John Swinney so clearly I was not in the room for everything that is being referred to here and neither were other people. 'One-to-one' can sometimes mean two people are talking with each other but that there are others present taking notes, but it would not surprise me if this was genuinely a one-to-one conversation.

Q. That meeting took place on 17 March. After three days of negotiation, on 20 March, a supplemental agreement in relation to Princes Street was reached. To what extent, if at all, did you or Mr Swinney stress to Mr Mackay that there was a need to reach an agreement with Bilfinger at that stage? Was pressure being applied to get this resolved?

140. Yes. We were quite robust that this could not go on forever, it just had to be fixed.

Q. Do you think that had an effect on the negotiations?

141. Who knows? Remember, at some point, I had talked to Bilfinger Berger, I would like to think it was before this but I am not sure. We had been encouraging everyone else to get on with the project. We were outside of the project looking in. Those involved in the project, those in the clamour of battle, sometimes could lose their objectivity and their sense of perspective and so we were simply looking to make sure that everybody understood how important the project was to them. This project would be important to Bilfinger

Berger financially but was even more important to them in terms of reputation. When a big international company fails on a big prominent international project for a government that is not good news for the company and for their future prospects. It is perfectly proper under European rules, for any other government looking at contracting with Bilfinger Berger, to look beyond the nature of the bid to their track record in other projects.

Q. So was the focus of your pressure really on Bilfinger, rather than TIE, to get on with the project or would you say it was equally applied to both sides?

142. Progress needed an agreement between two parties so, therefore, both parties had to hear our message that we wanted an agreement urgently. That message was expressed quite concisely in the letter I wrote to Jenny Dawe on 26 February 2009. In her response the following day she acknowledged that message so I think it was understood. There was a difference between understanding and doing. I think Bilfinger Berger probably quite urgently wanted a resolution but the resolution they wanted was a different resolution from the one that City of Edinburgh Council wanted and that was always the difficulty. They needed to get in a room and come to an agreed position where nobody got everything they wanted but everybody got enough to take the project forward.

Q. Can you recall whether there were any sanctions that the Scottish Ministers were threatening to impose if TIE did not get an agreement in relation to this dispute?

143. I do not think it was done those terms. We were only paying money when the work was done. If the work stopped the money would have stopped, it was that simple. The money was not going to the City of Edinburgh Council, it was going to pay for work done on their project. In other words, payments did not result in any more money in the coffers of Edinburgh Council, because it was financing the project.

Q. Did the involvement of the Scottish Ministers or Transport Scotland change after this dispute or change after this meeting?

144. I cannot identify a change.

Q. David Mackay, in the notes in the email, admitted to problems on the TIE side. Would you know what problems he was referring to?

145. I think this is connected to something that I said earlier about TIE carrying a much bigger responsibility for design than perhaps would be normal in this case. I am speculating that that was what he was referring to because I think the burden of design responsibility was acknowledged and they changed their approach to design.

Q. On 19 March 2009 Bill Reeve sent an email to you informing you of the latest update from TIE on the Princes Street dispute. There was optimism that a deal could be reached. In response David Middleton said that such information enhanced David Mackay's credibility that matters appeared to be unfolding as he suggested (TRS00016936). Was there a problem with David Mackay's credibility? What was the problem?

146. I do not think there was a problem with David Mackay's credibility. I think actually the relationship with Mr Mackay was pretty good. I think all that is being said there is that David Mackay's prediction of future events materialised and, therefore, his star burned brighter.

Q. Was there an issue with information that he might have been providing or with his reporting?

147. I am not conscious of there being a problem with the information David Mackay was providing. At that stage we had two parties who had some pretty serious differences of view and if David Mackay, as he appears to have done, was a key part of getting the two parties to an agreed position, then well done David Mackay.

Q. On 23 March 2009 John Ramsay sent a daily bulletin to Jerry Morrissey and Bill Reeve. It explained that a supplementary agreement had been reached in relation to the Princes Street works on 20 March. TIE said this agreement would not lead to greater costs. The email mentions a Saturday conversation between Mr Swinney and David Mackay (TRS00016963). It appears that a telephone conversation took place between Mr Swinney and David Mackay on 21 or 22 March 2009 (TRS00016961). Do you know what was the purpose of the telephone conversation was?

148. No, I do not know what was discussed.

Q. In relation to the Princes Street Supplemental Agreement, what was your understanding at the time as to whether it would lead to an increase in costs?

149. It would not lead to an increase in costs for the Government because our costs were capped. The issue of increased costs was a matter for the City of Edinburgh Council because it was their extra cost not ours. I have no recollection of there being a particular discussion on the subject. There were some very fancy figures floating around in the early days when there were two fundamentally different positions, differences of hundreds of millions. I think these were just designed to get people to the negotiating table.

Q. Did you think the supplemental agreement would lead to an increase in costs?

150. I had no way of knowing. We have got the nub of what was going on. There were hundreds of issues that needed to be resolved and there were price tags on these issues. Everybody expected that if the adjudication decisions on these issues fell in a particular way then there would be extra costs. As these extra costs materialised the Council sought to keep the project within the original budget, which led to the truncation of the tram route.

Q. On 6 May 2009 John Ramsay sent a memo to Mr Swinney ahead of a meeting with Richard Jeffrey on Thursday 7 May 2009 (TRS00005109). That

meeting was to be attended by you. This was a meeting with Richard Jeffrey who had just been appointed to the Chief Executive post at TIE.

151. The meeting took place, according to my diary, at 10.30 in the morning in Mr Swinney's office in Parliament but I cannot remember the detail of what was discussed.

Q. Was it now normal for Ministers to meet senior TIE staff at this point in the project?

152. I have mentioned that Ministers did meet the Chairman and Chief Executive of TIE, not infrequently, but not on a regular scheduled basis. We met as and when required. Of course, the appointment of a new person would be precisely the trigger for a meeting because, in a project of this kind with the problems it had faced, we wanted to understand the calibre of the person who was taking up post. Richard Jeffrey took up post on 22 April, so we moved relatively rapidly to meet him, he was just into his third week.

Q. John Ramsay drafted a memo to you in July 2009 advising you that negotiations between BBS and TIE had failed (TRS00017078, attachments TRS00017076 and TRS00017077). This was after the Princes Street dispute, further negotiations had broken down and Bilfinger Berger were asking for up to £100m to settle matters. TIE and the Council were to change strategy and start putting disputes through the contractual dispute resolution procedure. That was the adjudication process. There was a meeting between Richard Jeffrey and Ministers on 8 May, but I think it is a reference to the meeting on 7 May that we have just discussed. Was this the first time that TIE had indicated the project could not be delivered within budget and timescale?

153. I think we already knew that there were difficulties with the project. However, I think the issue of £100m is an issue of a much different character. Let us go right back to the Auditor General's report of June 2007, when he said the project was £46m adrift. We have always had an overhanging scepticism

about the final price of the project and that continued even as it was reduced in scope by its termination at York Place.

Q. Do you know why Bilfinger were demanding £100m? Do you what their basis was?

154. I did not know why Bilfinger Berger were demanding £100m. I would not have been engaged in the detail of that. I have a vague memory that there were some issues about the line from Haymarket to Shandwick Place but I am not certain that is the case. I have also a vague memory that there was an issue at the end of Princes Street on to Shandwick Place. There was a re-design of something where it turns left at the COSLA building beyond Haymarket but I cannot remember when that was.

Q. At this point you are being told that Bilfinger Berger was demanding £100m and that the dispute resolution procedure had started. What was going on in Government? What concerns were there? What discussions were there? What consideration had been given to dealing with the problems that were arising?

155. The concerns, at a higher level, were the same concerns we had had from day one, which were about whether we were going to get a tram system in any form. Clearly nothing that is happening here would make us any more comfortable. The opening date continued to be imprecise and moving backwards. I cannot pinpoint any particular new action that we took at this stage.

Q. Eventually a couple of months later it is evident that nobody knew how much the project was going to cost. At that point what was being discussed?

156. The City of Edinburgh Council would have been discussing the matter and making decisions, because it was the City of Edinburgh Council's project. We were not attempting to manage the project but, clearly, we had an interest in its success.

Q. Did there not come a point when there was a real danger that the tram project would not be delivered?

157. There was a danger at many points; when we had the dispute in Princes Street and the problems with the utilities diversions down Leith Walk. At every stage until the tram finally came into operation one could not assume that the project would be delivered.

Q. Was there ever any thought given to perhaps providing experience from Transport Scotland or seconding staff from Transport Scotland to assist the project?

158. That is to suggest that there was a problem that could only be solved by the involvement of Transport Scotland. The Council was vastly experienced in running big projects so why would TS be better placed to run the project than they were? We have never managed a tram project, which are fundamentally different from heavy rail projects. The City of Edinburgh Council, in anticipation of the tram project, had with relative success built a guided busway along much of the route of what turned out to be the route for the tram line. That was a significant project involving building bridges and infrastructure. Therefore, if anybody had a track record in something similar to the tram project, then it was the City of Edinburgh Council not Transport Scotland.

Q. So at this point you did not have any doubt as to the expertise within Council and TIE to deal with this issue?

159. I do not think I had a view on that subject is perhaps how I would prefer to characterise it. I do not recall any serious discussion about parachuting in Transport Scotland officials to deal with the problems.

Q. On 3 August 2009 John Ramsay sent a memo to you to brief you ahead of your meeting with Richard Jeffrey (TRS00017098). The meeting was to take place on 5 August 2009. It advised that negotiations had not been successful,

that the dispute resolution procedure had started and that the costs would rise. Can you recall the meeting on 5 August or what might have been discussed?

160. The meeting went ahead but I cannot recall what was discussed, it was one of eleven meetings I had that day in Buchanan House. I do not know who attended that meeting. The fact that my diary tells me that I had a meeting in Buchanan House and the fact that I am there is suggestive that there would not have been any other Minister present at the meeting. I would have gone through to Glasgow to discuss a range of different issues with Transport Scotland.

Q. On 13 August 2009 Bill Reeve sent an email to you to advise on latest developments regarding the dispute resolution process (TRS00017140). He warned that it was likely that the costs would exceed £545m and the project would not be completed until 2012. You wanted an update. John Ramsay, I think, was tasked with preparing a note which is TRS00017151. In that memo you were invited to note that until the formal dispute resolution processes were complete there was insufficient certainty around what the increases in cost and programme would be. You asked Transport Scotland to consider options for refinancing or extending finance for the trams and whether the specification of the projection could be downgraded.

Why did nobody know how much the project would cost or when it would be completed at this point?

161. At that point there was a formal dispute under the contract about money and how much it was to deliver. So I think it was perfectly reasonable to say that the project cost could not be determined at that stage. In **TRS00017140** I raised the issue of novation because it was already clear that the network was going to be truncated and, therefore, we would need less rolling stock. What I was looking at was whether the contract allowed us to pass the interest in the rolling stock to someone else by a process of novation. The fact that I am

raising novation I think makes it fairly clear that at this stage we are looking a smaller project scope.

Q. How had that situation arisen? Did you have any concerns in relations to TIE and the Council's ability to manage and deliver the project?

162. This is connected to difficulties that arise from Bilfinger Berger's actions. I am being careful not to say that it was their fault, although instinctively I would probably say that. Certainly, Bilfinger Berger had said that they were not proceeding on the basis we all thought we were proceeding, which was creating this further crisis and which led to Bilfinger Berger invoking the dispute resolution process under the contract, which I had not read.

Q. What did you understand to be the cause of the disputes?

163. By this point, and with the passage of time, all the different disputes were merging into one long continuous period of dispute about the detail of the project. I have a recollection that having got Princes Street sorted out the next area of dispute was about the next part of the line, which was Shandwick Place and Haymarket.

Q. This does seem to mark a departure in how the Scottish Government viewed the project, it seems to move to a more active role in terms of trying to mitigate in some way this cost overrun. Were you conscious of a change?

164. If we were able to identify ways in which the City of Edinburgh Council could save money, such as leasing the rolling stock, then we let the Council know. That would help them and that would help the project. We had got to the stage where we just wanted to try and explore the options for the project. We were looking at the possibility of the whole project collapsing because, at this stage, we were as close to collapse as we had been at any stage. The outcomes of the dispute resolution procedure could attack the structure of the overall contract which risked the whole project collapsing.

Q. In TRS00017140 it is noted that you used the phrase 'without alerting TIE'. Was that an attempt to say that you wanted officials to give themselves space to work up a proposed solution without going in too early? Is there anything in here that would suggest that you had lost confidence in TIE?

165. I do not think we had lost confidence in TIE by this point. I do not think that really happened in quite those terms. TIE's 'in-tray' was overflowing with issues and the last thing we wanted to do was to give them another issue to worry about or be distracted by. Therefore we were going to do our own thing, which TIE need not know about because they had things to deal with. We had to try to be helpful and the leasing of the rolling stock is an example of that. We could not do anything that would make TIE's job more difficult.

Q. When did you first become aware that the project was unlikely to be brought within the budget?

166. I go back to the Auditor General's Report in June 2007 which cast doubt on the budget at that point. I think throughout the whole thing we had always had a problem with the figures and, of course that is why we were pretty pleased that Parliament came around to the idea that we should cap the contribution. Everybody thought the problem with these kind of projects was runaway costs and this project confirmed that view.

Q. On 14 September 2009 Ainslie McLaughlin sent an email to David Middleton and Bill Reeve (TRS00017238). In that email he said that he had spoken to staff from Bilfinger Berger. They said that the cost of the project would be at least £700m and that there was still a considerable amount of uncertainty. Bilfinger Berger wanted Transport Scotland to take over the project and for Transport Scotland staff to be seconded to TIE. Ainslie McLaughlin's view was that the contract had completely broken down. There was a suggestion that Ministers could become involved, or could think about becoming involved, depending on the outcome of dispute resolution process. It then notes that you were to meet Bilfinger Berger to discuss the M80 project.

167. That is why I met Richard Walker; I did not meet him because of the trams but took the opportunity when I was meeting him about another subject. The M80 project was doing very well and actually came in time and under budget. That was a project on which Bilfinger Berger worked with us and did well.

Q. So that was the only time in the project that you met staff from Bilfinger Berger?

168. Yes I believe that is correct.

Q. What was discussed in relation to the tram project at that meeting?

169. I certainly cannot remember the detail. I do not know if there were any minutes of that meeting. It was on 9 November 2009 and it is labelled in my diary as an M80 meeting with Bilfinger Berger at Victoria Quay, which makes it extremely likely there would be officials present and hence a record of the meeting but it was a meeting for the M80. My recollection is that probably, once we had dealt with the M80 issue, I encouraged them to get on with the tram project because they had done a good job on the M80 project.

Q. Can you remember what they said about the tram project?

170. No. I expect they would have said relatively little but I cannot remember.

Q. Were there any outcomes of that meeting relating to trams?

171. No. I am so glad this has come back to me that that is what happens, that is where I communicated my desire that they got their finger out.

Q. Can you recall from that meeting whether Bilfinger were saying anything that was new to you, that you felt TIE via Transport Scotland had not been telling you?

172. I have no recollection of the detail of the meeting. My objective in relation to the tram project was to encourage Bilfinger Berger to apply their mind to the sorting out the tram project, as they had performed well on the M80 project. It might even have been limited to a few comments as we rose from our chairs and were on our way to the door. It would not have been on the agenda. It would not be a core part of the meeting.

Q. Ainslie McLaughlin also mentions in his email, at least to David Middleton and Bill Reeve that this might be a point for us to become involved if Ministers decided that was necessary. He is talking about the dispute resolution process. What does he mean by getting involved depending on the outcome of the dispute resolution process?

173. I suspect it probably does not mean very much because the dispute was resolved.

Q. What did he mean when he said *"If there are some quick decisions coming out of the dispute resolution then we may get a feel for where the burden of responsibility for contract failure lies to date. That might be the point for us to become involved if Ministers decided that was necessary"*?

174. Do recall that, ultimately, the outcome was that the contract did not fail, in the sense that the framework created by the contract eventually allowed the contracting parties to deliver a tram system. While the contract and its execution could be criticised it did not fail completely.

Q. There seems to be some kind of intention to get involved depending on the outcome of dispute resolution process. Would you agree with that?

175. I would say, at this stage, we were not discounting anything but we did not know what the outcome was going to be. An awful lot of money and an awful lot of personal capital, although not much of our personal capital, had been invested in this project and we would rather see the project succeed by whatever means necessary than see it fail. We would get no benefit from the

project failing. Notwithstanding our opposition to the thing at the outset and all the history we did not want the project to fail. It would have been better for us to refuse to proceed with the project if that was where we wanted to get to. The Government would not have got any shred of credit from anybody for being party to a failed project even though, properly, we could argue and demonstrate that it was not our project.

Q. By what mechanism could Scottish Ministers get involved or try to get the project delivered?

176. I do not think we had that discussion because we were planning for the project issues getting resolved and the project moving forward, so I do not think we had got to the stage of coming to a conclusion. There were these sort of random things like my bringing up novation of the rolling stock, which was more of an indication of frustration than anything else. We did not have a structured sit down with officials to discuss a plan for taking over the project. I do not think such a plan was ever mooted or discussed because, for one thing, if we were to be in a position to take over the project it would be pretty difficult to anticipate at which point we should take over the project. I do not believe there was any serious planning around that.

177. It would be very unwise to open up discussions about project failure when, in fact, you are in a position of encouraging everybody to make a success of the project, because then there is a danger of undermining the prospects of success. I do not think Ministers would have wanted to have any serious discussion about what to do if the project failed. That would just add pressure to the project and send signals to Bilfinger Berger, who had to change their position and support the project that Ministers were now prepared to pull the plug on the project, which would not have been helpful. While I do not recall the discussion or the character I am now saying, I would have expressed it in those terms if we had got to that point but we had not.

Q. On 22 December 2009 John Ramsay sent an email to you (TRS00017326). In his email he mentions a meeting you had a meeting with

TIE and the Council on 2 December 2009. At that meeting Richard Jeffrey said the optimism surrounding the improvement in relationships was not being reflected in construction activity from Bilfinger Berger and that final costs remained unquantifiable. Ministers were made aware of recent DRP decisions going against TIE. TIE was to hold key meetings with Bilfinger Berger and Siemens in early 2010 and wanted to hold a subsequent meeting with you. What was your view of the project at this stage?

178. Our objective always was to see the project progress and at this stage it is clear the project is back on track. I think that was pretty good news as far as it goes. I have got a meeting with Jenny Dawe and Councillors at Holyrood, which is the only meeting I have got for 2 December. It says "CEC and TIE".

Q. What were your views on the decisions coming out of the dispute resolution process? What information were you getting on that?

179. I do not think Ministers had a view on the decisions coming out of the dispute resolution process. I certainly never saw a list of the 400 disputed items.

Q. Were you being briefed on the dispute resolution process?

180. Only that it existed and, from time to time, I would be told what progress was being made working through the pile of disputes and roughly how they fell. The value associated with each dispute would be quite variable and I do not recall being briefed on the resolution value of each dispute.

Q. Were you being briefed in whose favour these decisions were falling?

181. Yes. My recollection is that the majority of the decisions were falling in Bilfinger Berger's favour, but that a reasonable number were falling in the Council's favour. Dispute resolution can be very complex and it was not for Ministers to get involved in the detail.

Q. Did that shake your confidence or did you have any recollection of Transport Scotland officials' confidence in TIE being shaken at that point?

182. No. I think there was always an expectation that it would fall both ways because that is the nature of things. Something going to dispute resolution is not intrinsically a message that the project is in trouble, although when you have 400 of them you begin to ask questions, because it is a normal and natural part of a project.

183. I do not know if minutes for the meeting on 2 December were taken. What I would normally be aware of would be a note from officials that document actions that come out in meetings that would generally be what it is. At the end of a meeting a Minister or I generally might ask officials to work out the next steps because generally the officials will stay behind once the visitors have left and will agree next steps.

Q. There is another briefing paper (TRS00010627) which mentions that another meeting with Richard Jeffrey is to take place on 25 January 2010. You were told in this memo that recent adjudications had gone against TIE and disappointing progress had been made by Bilfinger Berger. Richard Jeffrey had held separate meetings with Bilfinger Berger and Siemens and these proved to be inconclusive. You were advised that Transport Scotland thought that phase 1a would cost significantly in excess of £600m. John Ramsay recommends that Ministers consider issuing a Cure Notice.

Do you know what was discussed with Richard Jeffrey at his meetings with Bilfinger Berger and Siemens? If you met him on 25 January?

184. I did meet Richard Jeffrey at Victoria Quay in my office which is suggestive that the Cabinet Secretary was not present, he would not normally come down to VQ unless he was down there for some other reason.

Q. Can you recall what was discussed at your meeting? Do you recall what Richard Jeffrey had discussed with Bilfinger Berger and Siemens or what the outcome of the meetings were?

185. No. This memo invites me to note the recommendations, and the Cabinet Secretary has been sent the memo for awareness. One recommendation was that the meeting with Richard Jeffrey afforded the Minister an opportunity to express the growing concern of the Scottish Government. I can only assume that I did that, but he would not be unaware of it of course.

Q. TRS00010654 is a note of the meeting with you and Richard Jeffrey on 25 January 2010. Again, it discusses DRP decisions going against TIE, cost increases in programme, delays being unquantifiable. What was the thinking in Government at the time about the project?

186. Paragraph 10 of the minute mentions the point that the tram line could be truncated or de-scoped. The de-scoping being discussed at this stage was clearly not of the extent that it ultimately turned out to be. I think this was a discussion about not running the line all the way to Newhaven. Paragraph 6 of the minute notes a discussion about terminating the contract. There was not one clear breach by the contractors that would allow TIE to terminate the contract, but Richard Jeffrey felt that there were a number of the examples of bad behaviour e.g. ample evidence of inflated invoices. It is noted that on average invoices would be twice what was settled if TIE had not challenged them. It is noted that Richard Jeffrey thought that BSC had failed to mitigate the impact of delay and were holding the City of Edinburgh to ransom. It is noted at paragraph 7 Siemens being sympathetic to Bilfinger leaving the consortium although Siemens do not want to replace them. This briefing did not provide actions for Ministers but was providing information about the status of the project to Ministers. Paragraph 8 notes the default position; "stay together and "knock lumps out of each other"", which just sums up the project. Mr Jeffrey said that with this option he could not be certain of the financial outturn of the project. At paragraph 3 Mr Jeffrey said that he could not provide certainty of financial outturn and time for completion of the project.

He stressed the top range of the project estimate would be unaffordable to CEC. Therefore, it is quite clear that there was an understanding that the issue is one for the City of Edinburgh Council and not for the Government. The Government's core of interest was in getting a tram project delivered.

Q. You must have at that point thought the project might not get delivered?

187. I thought that project would not get delivered on quite a few occasions, I think it would be fair to say.

Q. There was a risk that the cost was going to become unaffordable for Edinburgh, which would mean the tram project would not be delivered and that £500m would be spent with nothing to show for it?

188. We had not spent £500m at that stage to be fair. In fact at that stage we had spent about £100m. Nonetheless the principle point you are making is correct.

Q. Did it strike you then that, at this point, Transport Scotland or someone needed to step in, as was being proposed?

189. The people who understand best how to solve the problem are the people who are already on top of the detail and have been involved in what has gone before. That is a fundamental truth. If you took it out of the hands of the people who are running the project and put in a set of people who have not been engaged in the detail of the project; the project would basically stop for six months while they got up to speed. Under those circumstances you would then have the risk that the lead contractor would just walk away because if the project is not progressing the lead contractor's cash flow is cut. Do not imagine that we had any thought, at any time, that replacing the whole management team of the project was the magic bullet. There was a whole set of risks associated with that. I do not think we had the discussion on those terms but I am confident that we would have been intensely reluctant to do that. Of course if you put people in over the head of those who are in the

project and running it, you are probably not going to get the best from those people, who have now been effectively demoted. It would not work.

Q. On 11 March 2010 David Middleton sent an email to the Permanent Secretary and others (TRS00010651). He wrote that Mr Swinney had met TIE staff on 10 March. He wrote that Mr Swinney was uncomfortable with where the project now stood. He wanted Transport Scotland to “stay close” to TIE. It was hoped that TIE’s approach would induce a shift in approach by Bilfinger Berger. A paper produced by Bill Reeve (TRS00010646) set out the main points covered in that meeting, it notes that you were also in attendance at the meeting.

What did Mr Swinney mean when he said he wanted Transport Scotland to “stay close” to TIE? Can you recall?

190. Not in specific detail but I think there is just a sense of increasing frustration with project progress. A project with which we were associated.

Q. The email mentions a private meeting with TIE on 10 March with TIE and Bill Reeve’s memo dated 29 March mentions that on 10 March the Cabinet Secretary and Minister met senior representatives of TIE, including David Mackay and Richard Jeffrey.

191. I see that I have a TIE meeting in John Swinney’s Parliament office at 0730. also met John Swinney for a catch-up. However I have nothing to remind of the detail discussed at either meeting.

Q. There is a reference to TIE’s approach around this time. What was TIE’s approach at this time and why was it thought it would induce a shift in approach by Bilfinger Berger? There were two parallel work streams that TIE was working on. Do you know anything about Project Carlisle, Project Termination, or Project Pitchfork, do any of these projects ring a bell?

192. I do not remember any named projects associated with the trams.

Q. An email was sent to you on 10 May 2010 (TRS00010718) advising you of TIE's two pronged approach to Bilfinger Berger, which consisted of a truncated route option or a termination of contract option. He advised that it was soon to be publicly confirmed that the project would not be delivered within budget. Do you have an understanding of how TIE's strategy was to work? Can you recall what TIE's strategy was at the time? Can you summarise it?

193. At this stage I do remember that there was a strategy to obtain a guaranteed maximum price, as it is described in the papers, for the remaining works. I cannot recall the phrase 'guaranteed maximum price'. By this point the project had dealt with the major uncertainties associated with the utilities diversions works. The uncertainties faced by the project at this stage were now of a much more modest nature but they are not fundamental to the success of the project. The guaranteed maximum price strategy was an attempt to get the risks locked down and get Bilfinger Berger to price the remaining risk and take it onto their books. It does not sound like an appealing option for Bilfinger Berger, because it would make them responsible for all the risk. It does not strike me as a way that would deliver the desired outcome. I cannot recall any discussion about this strategy, or any other strategy, at the time.

Q. What did you consider to be the best option for the project at this time?

194. My view was always that the project was not going to proceed unless there was an agreement to work together between the contractor and the Council. There was not going to be a good outcome if Bilfinger Berger walked away from the project and never came back. The project could probably be rescued if Bilfinger Berger walked away but it would not be as satisfactory as having Bilfinger do what we thought they were going to do.

Q. What did you think would be the most realistic outcome at the time?

195. In a sense, the price was not the Scottish Ministers' issue but I had a view on the price. The danger was that the project would become unaffordable for the Council. I now realised that we were not going to get the network that we set out to deliver. Instead we needed to deliver a network that was credible and at a reasonable cost. According to the figures from Transport for Edinburgh we now know that what has been delivered is making a profit and ahead of the business plan, notwithstanding the fact that it is a smaller network than was planned and did not go down to support the important areas in Granton and Leith. Although, of course, with the economic downturn, they knew that the development in Leith and Granton was not what was envisaged anyway. The fear was that the pricing would stop the project and, of course, if Bilfinger Berger left the project and somebody else was brought in, it was unlikely to be cheaper. If you had tried to bring a new contractor in the odds are, under those circumstances, that the price Bilfinger Berger walked away from would be the lowest price that any new contractor would contemplate taking on the contract. I think that would have been part of Bilfinger Berger's calculations.

Q. Did Scottish Ministers then suggest that a truncated line was the best option?

196. No, we certainly did not suggest that a truncated line was the best option, it was not our job to suggest that at all. Despite what we could see coming it was not our project.

Q. There was a briefing from John Ramsay ahead of a Ministers' meeting with Transport Scotland and TIE on 21 June 2010 (TRS00010721 and TRS00010722). It mentions that the meeting took place on 10 March, which we have just discussed. It is noted that at that meeting the Cabinet Secretary made it clear that the current position was unsatisfactory. There was disagreement over the contract and severe delay with no agreed completion date.

On 21 June 2010 a meeting took place between you, Mr Swinney, Transport Scotland, the Council and TIE (CEC00263295). Mr Swinney conducted the meeting by directing questions at TIE personnel.

Can you remember what the purpose of this meeting was? Can you remember the discussions that took place?

197. No.

Q. CEC00263295 is an email from Richard Jeffrey dated 22 June referring to your meeting with him the previous day. He records that Mr Swinney keen to see matters brought to a head. Again, was this just wishful thinking or was there a proposal to do something?

198. It was a clear and unambiguous expression of what he wanted to happen. In a sense it was not for John Swinney to make proposals. It was for John Swinney to ensure that everybody understands what the policy objective was, to hear from people with the executive responsibility for discharging those policy objectives, to hear what help Ministers could provide and, in particular, to make sure that the owners of the project, that is TIE and City of Edinburgh Council, understand that we are not letting this project go. We were committing £500m of public money to this and we wanted our trams.

Q. The minutes for 30 June 2010 (CEC00244400) at item 2.1 noted that you had a meeting with Mr Swinney and with members of TIE again on 28 July 2010. A report to CEC's Internal Planning Group (CEC00224208) records that the meeting on 28 July 2010 would discuss Project Carlisle. Did you attend that meeting?

199. According to my diary, it seems very unlikely that I would have attended that meeting. I left my home in Banffshire at 0915, undertook a dozen constituency meetings, and returned home at 2100.

Q. There is an email chain that contains background information and lines to take regarding the meeting (TRS00010824). I know you did not attend the meeting but there is discussion of about the Gogar tram stop or the Edinburgh Gateway Station. TIE were worried it would complicate negotiations with Bilfinger Berger on a resolution in respect of Project Carlisle, this is the truncated route option. Can you just explain the importance of the Edinburgh Gateway Station in relation to the tram project and how that affected negotiations with Bilfinger Berger?

200. What it boiled down to was that having cancelled the EARL we had taken away a direct heavy rail station at Edinburgh Airport but we did want to connect Edinburgh Airport to the heavy rail system. The reason we wanted to do that is because we wanted to try and get as many people to use public transport rather than private car to go to the airport, because the airport dealt with millions of passengers a year. We wanted to capture passengers coming from Fife and, by way of a proposed Dalmeny chord, capture those going from Glasgow Queen Street to Edinburgh Waverley. In an ideal world you would have just taken the line of the tram track a bit closer to the railway on the same site. We were reluctant, however, to engage with TIE to redesign any part of the tram network because we were concerned that it would cause delay and increase project cost. We concluded that the Scottish Government would have to take the cost on the heavy rail and the link from the heavy rail station, which is at the top of the hill, down to the tram station.

Q. So the Edinburgh Gateway station didn't have any effect on the costs of the tram scheme?

201. I am reluctant to say that was absolutely the case. We ended up with a station at Edinburgh Gateway which probably cost the Scottish Government a bit more than it might have done in other circumstances.

Q. There was a reference there to Mr Swinney's firm view on timing. Do you know what he meant by that comment?

202. Ministers had two principal concerns. The first concern was in relation to the fact that as the project progressed one would expect the window of delivery to reduce to a relatively narrow range, but that did not appear to be happening in this project. The uncertainty as to when the project would be delivered continued and Ministers were quite anxious about that. The second concern was that we were anxious about whether the costs of the project would make it unaffordable for the City of Edinburgh Council. The cost was probably the paramount concern but, equally, we wanted the project to be delivered.

Q. There was an email from David Middleton to Bill Reeve, which was copied to you (TRS00010867) dated 4 August 2010. Bilfinger Berger had just made an offer to complete the line from the airport to St Andrew Square for £660m. TIE did not accept that offer. Mr Swinney noted this email and wanted you and David Middleton to be involved in regular dialogue with TIE and Richard Jeffrey about where the project was heading.

Why did TIE not accept the offer from Bilfinger Berger? What were your views of the offer made by Bilfinger Berger?

203. I think the simple answer was cost; the offer was a substantial uplift on what the City of Edinburgh Council were contributing to the project. Of course that was only for the price of building the infrastructure, there were other costs associated with the rolling stock and so on. It was just quite a long way from what the City of Edinburgh Council felt they could afford and it certainly was outside what they had got authority from political leadership of the Council to spend on the project. TIE would not have had the power to accept that offer without going elsewhere to talk about it.

Q. There is mention of regular dialogue. Did that take place and what form did it take?

204. I have no clear recollection of how that took place but what I do recall is that, basically, the next steps involved the Council. The Council, over a period of a

relatively few weeks, had a number of full Council meetings to discuss, and did end up increasing the funding that was available. By what figure I simply cannot recall. Bilfinger Berger's offer was only an offer and I am sure they would be expecting to get a counter offer and eventually converge on a figure. What Bilfinger Berger's real figure was we will never know because only they know that.

Q. Were you involved in the negotiations with Bilfinger Berger or advising the Council at this stage?

205. No. My recollection of what happened in practice was that the Council carried out its own internal processes over a period of time and that resulted in a settlement. Notwithstanding the instruction that we had regular dialogue, I do not think that very much happened on that apart from a regular flow of information, which is a different thing. The Council and its political leadership was being very active at that stage and they quite quickly, I think within about four weeks, got to a position where it was settled.

Q. There was a mediation that took place in March 2011 to try and settle the disputes?

206. Was it as late as that? That was after I ceased to be a Minister. I ceased to be a Minister in December.

Q. Did Scottish Ministers give advice to the Council or TIE as to whether they should or should not accept the offer coming from Bilfinger?

207. I have no recollection of Ministers offering advice.

Q. Did they have any views?

208. We just wanted our tram system. However, I do draw you to the fact that I ceased to be a Minister in December 2010. One of the personal decisions made, as a former Minister, is that I would not speak publicly or participate

transport issues, at least for a time, to allow the new Minister with space to get on with the difficult job he had inherited. It would not be proper, in any event, for the Government to share anything with me.

Q. Could you sum up the Scottish Ministers' involvement in these negotiations before the Mar Hall mediation?

209. The Scottish Ministers did not have to be all that involved in the negotiations because the Council dealt with it, they had their own processes going on and we eventually got the position where the two sides reached a settlement.

Q. On 16 August 2010 John Ramsay sent an email to Bill Reeve attaching draft text for further advice to Ministers for a ministerial decision (TRS00017806 and TRS00017807). The memo mentioned that the next meeting with CEC and TIE will be on 26 August 2010.

210. I did not attend the meeting on 26 August 2010, I was in the north-east of Scotland for the whole of that day leaving home at 0545 and returning at 1745. **CEC00013818** are minutes of the TPB meeting which note at 2.3 an upcoming meeting between John Swinney, David Mackay, Richard Jeffrey and Donald McGougan on 26 August 2010.

Q. The memo asks Ministers to note the contents of this briefing that Ministers may now wish to consider whether it is appropriate to continue to provide grant support in such circumstances. Did you receive this memo and what did you do in light of that? Again, it has got a draft watermark, do you remember receiving this?

211. No. I do not recall these things in detail in any event because the amount of paper. The copy I have of this from the Inquiry only goes up to page 2 so it has got recommendations but it does not have a distribution and action list. That is a real draft I think. I am not saying I did not receive it in its final form in due course. I certainly cannot recall but, equally, the bit of paper we have is not suggestive of something in its final form.

Q. Do you recall being advised at any point in the project that the project was no longer capable of being delivered within the terms of the grant agreement?

212. No. I do not recall getting advice in those terms.

Q. In his email of 28 September 2010 Graham Robertson wrote that Mr Swinney (TRS00018048) wanted to meet with TIE/CEC along with you within the next week or so. TRS00018059 is a chain of email correspondence between TS staff containing notes for a meeting between you, CEC and TIE on 7 October. Did you attend the meeting on 7 October 2010 with the Council and TIE?

213. In my diary I have only got it scheduled for half an hour from 1600 and it is in Mr Swinney's room. Parliament's Official Report shows me speaking in Chamber at various points between 1640 and 1700. It also shows that John Swinney and I were present for Decision Time at 1700. It is perfectly possible I may not have been in for the whole meeting, depending on how long the meeting took. Although meetings at that kind of time tend to be short meetings because the Cabinet Secretary will require to go and vote at five o'clock.

214. I have no recollection of the meeting is really all I can say at this time. I am not trying to be unhelpful but that is all I can say about it, but, clearly, my diary shows that I was there for at least part of a meeting and, if it was a short meeting, possibly all of the meeting.

Q. There may have been discussion of the grant agreement at this meeting. Do you remember whether, during the whole project, there was any consideration given to simply not paying money under the grant agreement? Was there was any consideration given to grant payments being used as leverage for getting things done?

215. I do not think using the payments as leverage was considered but stopping grant payments was considered. I think it was Mr Swinney who asked whether we were actually getting what we were paying for. At the end of the end of the discussions on that subject Mr Swinney was satisfied that we were getting what we paid for, but that did not mean that Mr Swinney was satisfied with the progress of the project. We had an agreement with the Council that Transport Scotland would make payment when works were done. It would have been a big deal to stop payments under quite a formal agreement to pay for works done. We would need to be able to substantiate that the works had not been completed and, therefore, we were not paying for it. We have seen that a request for payment that related to a bonus to TIE staff was submitted to TS. I cannot imagine that would have been in the schedule of payments so I suspect that was probably an error on TIE's part, I do not know or cannot speak with certainty on that. I cannot imagine that would have been put into the schedule of works we were expected to pay for. I do not recall seeing advice that suggests payment could be stopped under the grant agreement. I never recall the question of using non-payment of the grant as a device to get things done being discussed.

Q. Could it have been used as a device to direct the project?

216. Remember it was not our project to direct. The one thing we were quite anxious not to do was to direct the project and assume responsibility for it, particularly with the project being in some difficulty. If we did that, and it would be a very big thing to think about doing, we would be taking responsibility for the project failures, which we were not anxious to do. If you have got a project that is in such deep difficulties that you are uncertain whether it can be delivered at all, you really will not get many volunteers coming forward to take this project on. You might be given it or told you have to do it but there would not be many people in a position to tell John Swinney that

STIRLING-ALLOA-KINCARDINE RAIL PROJECT (SAK)

Q. CEC01583422 is a letter from Willie Gallagher to you dated 28 June 2007. In that letter Mr Gallagher said that with hindsight it had been wrong of TIE to have become involved in SAK at a time when serious weaknesses in the original management structure were evident and the original cost estimates were clearly unachievable. What went wrong with SAK and was TIE removed from SAK and why?

217. It was very unclear to almost everyone what value TIE could add to the SAK project, because TIE had no expertise in heavy rail. That was a decision made before we were in Government. The circumstances and thinking that caused that to happen have to be addressed elsewhere, I simply cannot talk about that. Again, it was a relatively straightforward project where the costs were running out of control.

Q. Were TIE involved in that project from the start?

218. I think TIE were involved on the SAK project from the start, but I cannot say for certain. I had no idea what TIE's role was on the project. The SAK project did inform our thinking, not so much in relation to TIE, but in relation to the complexity of project governance.

Q. Why were they removed from that project?

219. It was really Network Rail who were running the project and doing the work. It was a heavy rail project, which was Transport Scotland's responsibility. To this day I cannot give you any sort of clear sense of why TIE were involved but, certainly, we were quite clear that having them involved just created complexity. The project benefited from having the complexity removed and it informed our overall thinking about oversight of projects. The SAK project was a good case study in how not to run a project.

Q. Can you explain why Willie Gallagher felt the need to say it was wrong for TIE to become involved in the SAK project in the context of the parliamentary vote on the tram project?

220. I do not recall any particular discussion about TIE in relation to the SAK project at all. I do not think TIE's involvement in SAK coloured our view of TIE. I think it was TIE's involvement in SAK that showed us the potential dangers of having a complex set of conflicting and confusing responsibilities. I think that is what informed some of our views about project governance. TIE were not to blame for the problems with the SAK project.

FINAL THOUGHTS

Q. How did your experience of the Edinburgh Trams Project compare with other major infrastructure projects you have been involved with?

221. It illustrated one of the things that I said to my students when I lectured on project management. One of the key things that I would say is never accept someone else's estimates when you take over a project and, preferably, never take over a project. Only take over the project if you are allowed to re-baseline every estimate because, otherwise, you are then relying on the person who has been taken out having got all this right, and they probably want out because they did not get it right.

222. I did inherit projects from the previous administration that went well and the M80 was an example of that. The previous administration was capable of getting things right but, of course, Transport Scotland were the key bit of continuity. Projects can go the other way, the Forth replacement crossing project is being built for £1.4bn despite its original suggested costs being between £3.4bn and 4.3bn. A part of the reason for that was that the price of steel dropped through the floor at precisely the right moment. So sometimes you get lucky. The Paisley Canal electrification project was delivered for £12m instead of the estimated £25m. The installation of wires under bridges or in tunnels usually requires the lowering of track or the raising of bridges,

which costs a lot of money. The project avoided doing this by creating 'dead' sections of track in tunnels and under bridges where there were to be no overhead wires and therefore no power. The train would enter the section without overhead wires at 40 mph and coast through to pick up power at the other end. That was an innovative solution copied across the UK. The fact that I as Minister insisted it had to be done for £12m does not mean it can be done for £12m, it just means that there is only £12m available and if it cannot be done for £12m then it does not get done.

Q. Do you have any views on what the main reasons were for the failure to deliver the tram project on time, within the budget and to the extent projected?

223. The utilities were the main problem. That seems to have soured the project at a very early stage. Nobody at the Council or the contractor envisaged that there would be so much work associated with the utilities. Could that have been anticipated and properly dealt with? I suspect it probably could have been because laying tram tracks in world heritage sites in old cities has been done before and in circumstances where there was poor record keeping. I suspect it would have been possible to have a more realistic view of the effort that might have involved. I blame the contractors, primarily, because they are the ones with the experience of doing this. The City of Edinburgh Council had not laid any tram tracks for quite a long time. There are techniques in project management that you could apply to civil engineering that allow you to work out how much you do not know and, therefore, what it boils down to is a prudent contractor. A prudent civil engineer would have done more test bores to try and work out how many utilities needed to be moved. They should have dug a few pits, seen what was down there and compared it to what they were being told. I think the failure to quantify the scale of the utilities work was probably the biggest failure in engineering terms.

Q. One of the issues we seem to have come across is that because the utilities contract took so long the Infraco contract ran into the back of it. TIE seemed to feel that it had to let the Infraco contract as quickly as possible. That is why we are asking questions about whether TIE felt that Ministerial

funding would be taken away if it did not let the contract in time. Did you think that was a possibility at all?

224. There was no indication that the Scottish Ministers would withdraw funding if the Infracore contract was not signed as quickly as possible. We had made our commitment to the project and that was that.

Q. To sum up, your view is that there is expertise that exists that could foresee the issues about delay and errors in relation to utilities?

225. A better quantification of the risk associated with the utilities diversion would have helped but there is always pressure from the purchaser, in this case TIE and the City of Edinburgh Council, to just get on with it. Professional project managers and contractors just have to resist that pressure, which is not easy. In project management do not let somebody else tell you what the timetable is if you do not believe it can be done.

Q. To what extent do you consider that project governance failings were a factor in the project exceeding its budget and its programme? How might such failings be avoided in the future?

226. I do not think the problems faced by the project were caused by project governance. There is no project where you cannot criticise the governance to some degree. With hindsight you can always identify a better path at a particular point. I think the primary failure was that the contractor was just not brave enough to resist the inevitable pressure that came from TIE and the Council to get the project done as quickly as possible. There is always a fear, particularly where there is political division in relation to a project, of previous decisions being overturned and the project being cancelled. In this case, it was not an irrational fear that things will not proceed because of the political climate of change. Therefore, there is a pressure to get to the point where it costs more to cancel the project than to proceed with it. It was a perfectly rational fear and our antipathy to the project was well known. Even in

commercial companies there is that same factor because there is a dynamic inside commercial companies that is not dissimilar to the political dynamic.

227. Equally, of course, I suspect the Council felt under some political pressure because digging up the streets was pretty disruptive for everybody. Businesses were approaching Ministers on a regular basis to say that we, the Ministers, should be compensating them because their businesses were suffering as result of the works.

Q. There were a number of Office of Government Commerce and Peer Reviews carried out on the project and despite these reviews the project encountered a number of difficulties and ending up costing a lot more than had been budgeted for. Do you have any views on why that happened?

228. I am not familiar with the reviews. The Government process for project management is the Prince 2 process, I am not a fan of Prince 2 process at all, there are different processes, they all have similar elements. The Government process, the Prince 2 process, is a process that is quite tick box orientated, in other words, you get to a certain point and you do a certain review. I do not know what reviews they used on the tram project. Ministers are not involved in the review processes, I really have nothing to say on the subject.

Q. Have you 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 questions that we have just been through today?

229. No. I think we have run our course.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 94 pages, and the following appendix extending to 4 pages, are true to the best of my knowledge, information and belief.

Witness signature 

Date of signing.....17 September 2017

