WITNESS STATEMENT TO THE EDINBURGH TRAMS INQUIRY

GILL LINDSAY

I certify that the attached statement is true to the best of my knowledge and belief.

17 NOVEMBER 2016

I certify that an addition has been added by me to the Preface of my Statement at page 3 on 7 August 2017.

I certify that an addition named "Appendix 4: Addendum dated 2 October 2017" has been added by me to the end of my Statement at pages 93 – 106 on 2 October 2017.

[redacted] 2/10/2017

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I am asked to respond in this **Witness Statement** to a number of questions and provide detailed and specific information regarding my knowledge and actions in relation to the Edinburgh Tram Project, from 2007 to 2010. I have been provided with various Areas for Discussion and detailed specific questions relating to specific correspondence and specific issues. I would preface my Statement as follows:

1 PREFACE

I am pleased to assist the Inquiry and, at my request, wished to provide a written Statement in my own words for accuracy and context in respect of detailed legal issues and not revise a statement written by others. I have been required to provide this by 17 November 2016 and have done so. A particular issue for me in being in a position to properly respond to numerous detailed areas for discussion and questions has been my delay and difficulty in sourcing relevant material to respond. The Chairman of the Inquiry set out the requirement for all witnesses to have prepared bundles of relevant material. The material made available to me by the Inquiry to consider in my response, in respect of a project around some ten years ago, were selective emails and documents, in no managed order. This was supplemented by addition information only following a number of requests by me for additional information. Some information requested has been declined. Particular difficulty has arisen over my requests to have access to my former legal files for the relevant periods to provide proper evidence in response to questions in respect of historic matters. After repeated and constant requests, I was advised, after considerable time, that this material did not appear to be with the Inquiry and I should make contact with the Council directly. I was then provided with limited access to some 11 bankers boxes containing 33 lever arch files of printed information in no particular order, covering a period to October 2009. These records appear to be a partial record of some of my emails, papers and documents relating to the Project now in no particular order. They have however very helpfully provided me with information to respond to emails sent to me, being my email responses and actions. The printed information is only available due to the diligent practice during my employment with CEC of requiring administrative and support staff to print all email correspondence to ensure availability of hard copy records.

If these files had been acknowledged and access made available at an earlier time, my statement would have been able to be prepared at an earlier time. As the documentation provided by the Inquiry was selective and incomplete, it did not generally provide the information requested. Frequently my responses are not contained within the Inquiry material. Without access to my former files (May and October 2016) I would not have been able to properly respond to the Inquiry's requirements. For completeness, I am advised that the Council do not hold and cannot trace any electronic files of my former information. No paper records can yet be traced between October 2009 and June 2010. I have been required to undertake a forensic examination of the material within the Council with considerable difficulty, in my own time.

The basis for selection of the documents provided by the Inquiry Office is unknown but in my view, the Inquiry has failed to source a significant quantity of highly relevant information and documentation which would readily address the majority of their queries. It is unclear why the Inquiry Office seems to have no record of a large number of my emails, including

responses to emails provided by the Inquiry, given that these were originally sent to a range of individuals.

This Witness Statement is given to the very best of my knowledge, belief and recall, using the material available to me after my extensive efforts to trace and obtain access to relevant material and having regard to the historic nature of matters some 10 years ago. This Statement is provided by the required date of 17 November 2016 to the Edinburgh Tram Inquiry.

I have used and referred to the information available to me without enquiry by me into confidentiality or legal privilege as this Statement is required of me for a Statutory Inquiry. Some of the material both contained in my former files and provided by the Inquiry to me includes material and legal advice provided to the Council and/or Tie and either marked as private and confidential and/or subject to legal privilege/ produced in contemplation of legal action. I have provided a index of the material referred to in this Statement and traced in my former files held by the Council and this can be copied and provided if required.

In addition to providing required information on the Areas for Discussion, for completeness, I have provided evidence on other relevant matters within the remit of the Inquiry which appear to me to be highly relevant. To assist, I have provided a matrix (Appendix 1) as a cross reference to align each question/Area for Discussion provided by the Inquiry to me with my Witness Statement and relevant evidence traced. In addition and for completeness, I have provided a list of all the evidence I have traced and referred to in this Statement, as Appendix 2. I have cross referenced this to the Inquiry material to assist, in the time available. The reference numbers to be inserted in the document are incomplete due to time restriction at present. My email correspondence with the Inquiry Office records my endeavours to have access to my former legal files. Some Areas for Discussion and questions are based on an incorrect interpretation of the material provided and I have detailed this below.

Addition to Preface added to Statement on 7 August 2017:

I have now been provided with additional documents from the Inquiry on 29 June 2017. I have now endeavoured to complete the GL referencing in the limited timescale available and have made minor amendments to incorporate completed reference numbers and any required amendments to Appendix 2 to my Statement. 7 August 2017.

2 CONTEXT AND COMMENT

The questions asked of me have a number of recurring themes. I have set these out below to provide context and comment at a more strategic level, to assist, before dealing with the very specific questions asked.

1 The external legal agents to the project and the Council's role as Joint Client with Tie

2 Risk issues including design risk and Schedule Part 4

3 The role and responsibility and reporting the project to Elected Members

The external legal advisers to the project and to Tie and the Council were DLA Piper, an international legal firm with specialist and expert skills in projects and financing. DLA were appointed by Tie, with a duty of care to the Council. Tie was a wholly owned company set up by the Council to deliver the Council's Transport strategy and Edinburgh Trams with the Council being the sole shareholder and owner. The Council appointed the Directors and Chief Executive. The Council's relevant Director's, The Director of City Development and Director of Finance, were the Council Senior Representatives on The Tram Project Board who were delegated responsibility for the delivery of an Integrated Edinburgh Tram and Bus Network on behalf of the Council and Transport Scotland. Control was also set out in an Operating Agreement and a requirement to Report to the Tram Sub-Committee of the Council. Tie was in essence a vehicle for the Council to deliver the procurement of Edinburgh Trams and an agent of the Council. The Directors of City Development and Finance were clearly content that no conflict of interest arose for them in their roles. At no time was I aware that either the TBP or Tie did not take account of and have regard for matters raised by either Director. In the period to financial close in May 2008 that would have been unthinkable in respect of the Council's role as owner of Tie and the infrastructure. In 2007 when the political and funding situation changed, the Council required to have more direct access to the legal advisers to be able to receive legal advice directly to them. All relevant contracts were entered into by Tie. In considering how to arrange external legal advice, the strategic decision was taken to ensure that the Council was regarded by DLA and Tie as a Joint Client. The relevant Directors within the Council together with the Monitoring Officer and Tie agreed this course of action. DLA confirmed that no conflict of interest arose and, on the contrary, DLA had always been required to consider and have proper regard to the position of the Council as owner of the Company, sole shareholder and owner of the infrastructure. This action provided the Council with the ability to receive legal advice directly to it at no additional cost, avoided what would have been a damaging if not impossible delay to the timetable and, importantly, required DLA who were working closely in the bidder negotiations and preparing all contract documentation, to be required to have an equal regard for the Council in a more formal way and for the Council to rely on their advice.

In terms of a number of risk issues, it appears that the Inquiry are not aware of the respective roles of Tie, TEL and the Council and the particular roles of the Directors of Finance and City Development and the Chief Executive. I have detailed my role below but essentially legal services were not members of TIE, TEL or TPB, they did not sit on these Boards nor take any decisions nor have any delegated authority to do so. Within the Council, legal services were a support role not at Director and Monitoring Officer level and not part of the Council's senior management team of the Chief Executive and all Directors. Legal Services had no decision making roles in respect of the project. DLA were the external legal advisers. Legal Services supported the Chief Executive and relevant Directors by being present at the Chief Executives Internal Planning Group as a support service and not an executive decision maker member. As such, legal services were not the executive decision makers responsible for decisions in respect of the project nor for reporting to Elected

Members, either formally or informally, in terms of Reports or briefings. The many briefings and Reports to Elected Members throughout the project of which there were many through the stage of draft and final business case and financial close were the remit of the relevant Directors and the Chief Executive. The remit of the risk issues and any decisions in relation to them, whether technical or financial, were for the relevant Director and ultimately the Chief Executive and Elected Members, in so far as the Council retained a role not delegated to Tie or the TPB. All relevant questions should be addressed to relevant persons within the former Tie, TPB, TEL and the Council.

3 MY ROLE IN THE PROJECT

In defining my role, I would firstly refer to the governance of this project and the role of the Council, Transport Initiatives Edinburgh (Tie) Limited, Transport Edinburgh Limited (TEL), The Tram Project Board (TPG) and The Tram and Infrastructure Sub-Committee. I have also described The Tram Internal Planning Group (IPG) and the Legal Affairs Group (LAG), latterly renamed the FCL Group.

The requirements of the Scottish Government were that the Project be undertaken not by the Council but by a third party as Agent.

Tie Limited and TEL were both companies set up by and wholly owned by CEC. CEC is the sole shareholder and Member of Tie from 2007 to 2009 when Tie's shares transferred to TEL. Tie was set up by the Council as an in-house company to deliver the Council's transport strategy and projects. The relationship between the Council and Tie and the Council and TEL and the role of Tie and TEL in the Tram project is detailed in Council Reports, including Report to Council 20 September 2007 (GL/2007/21; see Appendices for Reserved matters) and the Operating Agreements (OA) between the Council and Tie and TEL, both of which contained at Appendix 1 the Services to be provided for and on behalf of and as Agent for the Council. Appendix 1 of the OA with TIE define the role and responsibility of Tie, including;

"procurement and contract award of all contracts required to deliver the tram project including the Council's obligations"

"provide efficient and effective project management service for the Project including cost, financial programme, risk, contract and change management"

"ensure the design is assured, and provide the necessary quality of design for technical and prior approvals in a timeous way"

The particular relevance here is in relation to the delivery role of Tie to deliver the procurement, project management and the tram contracts to operation and to the oversight roles of TPB and TEL. The Council had a form of strategic oversight through the Tram sub-committee in terms of both the OA and Council Reports. Both Tie and TEL were populated with Members of Council and private sector individuals chosen for their

expertise. Internally, the Council remained responsible for Council co-ordination amongst its own Departments, including roads, planning, traffic management, legal and some communication with stakeholders.

The role of communication with Elected Members not on the Boards was shared with TIE, TPB and Members of the Council's Management Team, including the Chief Executive and his Directors of Finance and City Development and the Council's Tram Monitoring Officer. The Chief Executive had clear communication plans with the Council Leader, Group Leaders and Elected Members through regular and special briefings and formal Council Meetings. The Minutes of the Chief Executive's IPG Group detail communication plans.

In terms of Council approval and Project approval Tie and TPB had responsibility to deliver the Tram Project and particular "Reserved Matters" were reserved for each of The Council, Transport Scotland and the Scottish Executive. One of the reserved matters for each of the Council, Transport Scotland and the Scottish Executive was that Tie/TPB could not proceed to let the Infraco Contract without consultation with each of the Council, Transport Scotland and the Scottish Executive. In legal and practical terms this project was not regarded or operated as a "Council Project" due to the unique circumstances of the governance required by the Scottish Government, the terms of the OA's, the composition of the Tie Board and the TPB and the specialist expertise of Board Members. It was appreciated that the assets would be Council assets and that following the change of Government, Central Government would fund the scheme to a ceiling only, contrary to the initial funding agreement when the structures were put in place.

The early Governance Reports are relevant here, being Reports to Council in 2006 and 2007 and are referred to in and for their terms. The history and background of the project is relevant in terms of roles and responsibilities and relevant reports. GL/2007/7, GL/2007/14, GL/2007/21, GL/2007/22, GL/2007/24, GL/2007/25 and GL/2007/26.

As this was not a Council project where the Council was procuring or securing services itself, internal staff had adjusted roles and responsibilities. At all times the delivery and procurement of the Tram project has been by a wholly owned Council Company created to manage the delivery and integration of Transport within the City. The OA's envisage the companies employing their own staff and contractors and consultants, including legal consultants, and require the companies to secure suitable collateral warranties/duty of care in favour of the Council, the ultimate owner. In terms of this Project, the Council required to secure Private Acts of Parliament to secure the necessary powers of land acquisition, Agreements with land owners and Traffic Regulations. Bircham Dyson Bell, Parliamentary Agents employed by Tie, acted for the Council and its Agent Tie, in the Parliamentary process. Dundas and Wilson were retained by Tie for transportation and property/land advice and DLA were retained for procurement and contract advice. In the procurement for external legal agents, the role of the Council as ultimate owner was clear as was the requirement for all external agents to be employed by Tie and provide a duty of care to the Council.

As Council Solicitor, my role was to lead a legal team to deliver a legal service for the Council and each of its Joint Boards and as Clerk to the Licensing Board and to advise the Council

and Joint Boards. The Statutory Monitoring Officer for the Council was Mr Inch, the Director of Corporate Services. The Chief Executive and Head of Paid Service was Mr Aitchison. The Statutory Finance Officer and Director of Finance was Mr McGougan. The relevant service Directors were Mr Holmes as Director of City Development and his successor Mr Anderson. The Council's Tram Monitoring Officer was Mr Poulton.

In respect of the specific role which the Council had in relation to the Infraco contract ie to be consulted before Tie enter into the Infraco contract, my role in this project was to be advised of the project by internal staff, seek briefings and be advised by the external legal advisors to the Project, to support the legal issues relating to the required consultation required by Tie and TPB before contracts for the Infraco could be formally let. Many of the Areas for Discussion and questions asked of me by the Inquiry relate to the responsibilities of Tie and to financial, technical, commercial, project management, liaison with Elected Members and corporate governance matters, none of which was within my role or responsibility. The appropriate questions require to be addressed to the appropriate persons and consultants within Tie and the appropriate persons within the Council. The information contained in formal Reports to Council is the subject of various questions. These questions should be addressed to the signatories of the Reports and the Report authors, named and shown as contact officers within Council Reports. The signatories and authors will be aware of their instructions and remit, the revisals and circulation process and the liaison with Council Officers and Tie in relation to Elected Member briefings generally and specifically in relation to each Council Report.

I had no role whatsoever in the procurement strategy of Edinburgh Trams. Council records will show the consultants reports, business case planning, role of Partnerships UK in supporting the procurement strategy and the decisions taken and on what basis.

The Inquiry has requested my assistance with a wide range of queries regarding specific actions by Council staff and by individuals in other organisations involved in the project. A significant number of these queries and requested Areas for Discussion are not relevant to my specific role in the project and would suggest that the Inquiry does not yet understand the role and responsibility of the various individuals, Boards and organisations involved in the project. To assist and to be clear regarding my role as Council Solicitor, the Inquiry should note the following information:

- I was **not** a Member or Director of either Tie or TEL
- I was **not** a consultant to Tie
- I was **not** a member of the Tram Project Board
- I was **not** a member of the Council's Management team (CMT)
- I was **not** a Member of Council
- I was **not** a Member of the Council's Policy and Strategy Committee
- I was **not** a member of the Council's Tram Sub-Committee
- In addition, I was **not**
    - the Council's Head of Paid Service
    - the Council's Chief Financial Officer
    - the Council's Monitoring Officer
    - the relevant Service Director

- the Council's Tram Monitoring Officer
- the Council's Trams Project Manager/co-ordinator
- Tie's Chief Executive
- Tie's Project Director
- Tie's Commercial Director
- Tie's Risk Director

- Furthermore I was **not** involved in
  - the planning or project management of the project
  - the financing of the project
  - the technical/commercial aspects of the project
  - the drafting of any legal project documentation/contracts
  - the negotiation of any legal project documentation/contracts
  - the approving of any legal project documentation/contracts
  - the briefing or reporting to Elected Members in relation to the project
  - nor the External Legal Advisers to the Project

The internal legal team had a range of roles relating to a number of specific Council activities and functions including the Private legislation, third party Agreements, land acquisitions, planning Agreements, Agreements with Network Rail, legal input to traffic management and TRO's and TTRO's, contributing to Council Reports, specific legal issues of building fixings and the like. In addition, the internal legal team had a role to liaise closely with Tie and DLA (the project external legal agents) to support the project. The internal legal team dealt with operational matters and were all senior legal staff qualified and able to act proactively and reactively as part of a wider Council team and Tram team. My own role was of a strategic role in relation to legal support for the project and not an operational role with the Division having 2 senior legal staff in that operational role. As such, no particular documents were reviewed by me and no decisions were made within the legal division regarding the project. The legal team did not own any of the commercial risks. I secured written legal advice letters from DLA at each and every appropriate stage of the Infraco contract including appointment of preferred bidder, agreement to lodge Notice of Intention to award Contracts and Financial close. The Council relied on that advice. The internal legal staff most closely involved in the project were Colin MacKenzie (CMcK), Principal Solicitor and Nick Smith (NS), then Senior Solicitor, Commercial Practice, both full-time on the project from around February 2007 and assisted by other staff from legal planning, legal litigation and legal company staff. The matters undertaken were in relation to specific Council issues of relevant Private Legislation, land acquisition, General Vesting Declarations, Planning Agreements related to Developer Contributions, traffic management issues and Traffic Regulation Orders and temporary Traffic Regulation Orders, corporate governance relating to the project, review, commenting on Council Reports and other matters.

I attended the LAG with both CMcK and NS later reformed as the FCL Group. This Group supported co-ordination of a number of matters but had no delegated authority. I also attended the Internal Planning Group (IPG) to support the full executive decision making members being the Chief Executive and relevant Directors, with CMcK also attending this Group and NS also attending from 2008/9. As legal manager for all legal divisions of

litigation, commercial property, Licensing, District Court, commercial practice, planning, Child Care teams (around 85 staff) I attended to my role in the Tram Project largely within evenings/weekends often due to service demands and pressures.

I established excellent working relationships with staff in other Departments, members of CMT and IPG, Tie and its external consultants and the external legal firms acting for the project. I devoted very considerable time and energy to the project and was thanked by internal senior staff, Tie and TEL senior officers. In terms of the LAG, this group was formed around August 2007 to ensure co-ordination with Council officers on Infraco and related matters and planning for Tie requesting and the Council providing consent for Tie to enter into the Infraco contact. The Agenda and actions from these meetings show the progress to financial close, the topics discussed, the progress on matters and risk management. The full-time legal officers on the project, CMcK and NS worked closely on the relevant issues.

The IPG members were the Chief Executive, the Monitoring Officer, Director of Finance and relevant Service Directors and the Councils Tram Monitoring Officer. The Legal Division supported this group by attendance of myself and CMcK and in addition by NS from around 2008. The Agenda and Action Notes should be referred to for their terms.

In relation to my performance, I received a very kind personal letter of thanks for the way in which I dealt with the Project from the Transport Convenor, Councillor Wheeler and a letter of recognition and thanks from the Leader of the Council, Donald Anderson, for my contribution to all Council work before his departure. I was also thanked by senior Council Officers, members of Tie and legal contacts within the external agents. Thanks were expressed by the Chief Executive of Tie on 15 May 2008 forwarded from the Council's Chief Executive, GL/2008/59. The Director of City Development responded to the Chief Executive of Tie on 15 May 2008, GL/2008/60. providing sincere thanks to the Chief Executive of Tie aided by officers including myself. At no time was there any issue whatsoever with my performance in relation to this project from any of my managers, more senior contacts, from Tie, TEL, TPB or either external agents. The reverse is the position as the record shows.

In terms of internal legal resources, my correspondence to the Director of City Development states an in-house requirement of 2 FTE subject to various parameters. The record shows the attempts made to secure these resources and then to seek to obtain suitable candidates in the market. Due to the size and complexity of the various tasks and the delay and difficulty in securing suitable temporary staff, it was decided to devote the full-time resources of NS to the project, being the most experienced commercial solicitor. Robert Millar's, Principal Solicitor, email to NS of 21 February 2007 refers (GL/2007/17 and GL/2007/18). NS's existing workload of FOI was passed to the Depute Council Solicitor to ensure his full-time availability. NS was devoted full time to the project who then directly reported to CMcK, the most experienced and senior solicitor who had worked on the project through the legislative passage and led the operational in-house legal team.

A wide number of other legal staff contributed to the project in respect of planning, companies, general legal advice, commercial matters and myself as Council Solicitor. The legal advisers to the project and Council were DLA Piper, a highly experienced international legal firm dealing with high profile projects. The Council properly relied on their advice. I am

asked of the position with recruitment of in-house solicitors to the project. The records show that the Division had a wide range of staff dealing with the project in addition to NS and CMcK and Reports and time recording tracked progress and issues dealt with. The Division appointed two temporary staff to effectively back fill the resource utilised for Edinburgh Trams. Relevant correspondence from the Divisions Business Manager is referred to.

The Divisions resources were at a critical level with intense pressure on many legal staff, particularly those staff working in other areas of the Division. The budget for core staff was decreasing significantly and the income targets were increasingly significantly. There was a firm vacancy freeze as Council budgets for support staff were required to provide constant savings and efficiencies. In addition, the legal division were required to make additional savings to support other parts of the Department of Corporate Services budget. I have provided the financial analysis produced by the Divisions Business Manager showing the movement in reducing budget and increasing income targets. That said, resources for Edinburgh Tram were always prioritised and reviewed to determine if additional internal staff were required. The constant feedback from NS was that he was not fully occupied and retained additional capacity.

Council budgets for legal services were complex and my understanding is that at some point the budget for the additional two FTE was secured from the Cities Review Budget. This was suggested as requiring to reduce to 1 FTE following financial close but I successfully challenged this and resources of 2 FTE continued. Essentially when the strategic decision was taken to deliver this Project by a wholly owned company, all resources, including legal resources, were provided to the company. My understanding from the available records is that the various legal firms procured by Tie to advise the project had a budget/spent in excess of £6m.

I took a range of steps to be familiar with the range of issues and risks in relation to the project. An internal team of 2 full-time senior staff were in place. I was advised by the internal staff in accordance with particular reporting mechanisms put in place. I received legal advice from the external legal agents to the project and secured formal written legal advice from the external legal agents prior to every significant formal step, which the Council relied on. Risk matrices and workshops and briefings were put in place for Finance, technical and legal staff in respect of the range of risks. As detailed reporting to Members was not part of my role or responsibility in respect of the Project. The contract was included in the general reporting to Members by the relevant Directors being the Director of City Development and Director of Finance. Good relationships were in place within client Departments and partners of Tie, TEL and external agents. Within August we had a general view and briefing on contract structures, agreements, principles and risk. The particular legal risk issues related to third party Agreements, the Asset Protection Agreement, the issues of consents, approvals and securing novation of the design were significant as well as any required changes by Tie. The particular legal advice notes received will chart the advice provided at every stage.

Your ref TIE00060115 appears an early version of the approvals process documentation. In broad terms, for Legal, I was expecting to receive advice from the external agents to the

effect that the contracts were at the appropriate stage to progress, that we had visibility of any particular or more unusual risks, that the risk alignment was broadly in accordance with market norm and that the remaining risks were contained within the QRA and satisfaction with the business case (GL/2008/61).

In terms of Qn17, I read DLA's letter which I had requested to confirm within the terms of this negotiated procurement, that the terms at preferred bidder stage were fairly market aligned and there was support for selecting preferred bidder, recognising that in a negotiated procurement, negotiations will continue to contract close. Technically, this remained a Tie decision at this stage as procurement decisions were not reserved matters but entering into contracts required consultation and could not be determined by the Council's Senior Rep without such consultation.

Also at Qn17, I have really just noted that when the form of sign off letter was emailed with the slightly more detailed information, words were then added. It was not significant in this context but was not expected. I think I was really setting the expectation that no additional caveats should be added to advice after a recommendation is made for a course of action. It was really a minor point in the context of a very general statement and not at all significant.

At Qn21, I have given apologies for the meeting and did not attend. I have no records to assist here. The minute shows the area of securing the draft letter re residual risk. This question would be better considered by a relevant member of staff who attended and where it may have been discussed.

At Qn23, 24, 25 I see the Minute of LAC states a figure of fixed price of 97%. Finance will be aware of the pricing assumptions. The minute should record the discussion. My commentary at Governance tracks my role generally at this period and I have detailed at Design the position then agreed which changed in February. Principal issues at that time were the list of contract deliverables to be achieved after the delegation to the Chief Executive if the December report was approved. I considered in addition DLA letter of 17 December (GL/2007/34; your CEC015009175) and the added further interim view on risk generally and on significant movements since preferred bidder all as detailed. Please see commentary at Governance and Design. The only evidence I have traced on feedback on discussions is email exchange with Mr Graeme Bissett (GB) when I queried a price different from the previous number I had expected on a slide and this was referred to in the explanation. I had no role whatsoever in respect of the financial negotiations in respect of the project.

At Qn 43, that is not my understanding of the dates of these meetings. My records refer to a summer meeting being cancelled due to leave and I exchanged brief e mail issues but not that there was a gap. The Council records will detail the position. My records show some discussion regarding the focus the group would then have and I believe it may have been named the FCL Group at that time. Please see my detailed commentary at Governance regarding the movements and timescales to financial close. LAG had no delegated authority and all relevant staff will have had constant engagement over that period of close.

At Qn49, your CEC01372642 contains part of an email trail. The emails continued until we achieved wording which secured that the documents were described in detail and could not be amended following the Chief Executives approval. As part of preparation for close Tie shared suggested exchange letters for review or approval to have a consensus. I have sought a clear wording for the exchange of formal letters. This is usual business practice.

At Qn67, the records will show the position. In term of legal issues, there were some contract protections CPS that were not to be delivered at close as detailed. I took instructions from Mr McGougan and we accommodated this, subject to BBS being required to provide in a suitable short period. I understand that Finance were waiting for further information regarding any SDS claims and recognised that the information would not be achieved by that period. My papers note Duncan Fraser may have been waiting for information in addition and he will be best placed to detail any matters he was waiting for.

At Qn 90, I do not agree with the content and it has no foundation whatsoever.

I left the Council in August 2010 after spending 2010 Edinburgh's Alternative Service Delivery (ABM) project liaising with the Project Director. My role and priority from January 2010 was ABM for the Council together with another developing project. I retained a peripheral role in terms of interface with the in-house legal team dealing with Edinburgh Trams. Only very limited records are available for this period. The role of Council Solicitor changed at the end of December 2009 to a further management role and I chose not to apply for that role.

At Qn 66, as I was not dealing with the contract documentation, I have no knowledge of the Appendix H and this would not have been seen by me.

At Qn 87, I am still endeavouring to trace information to determine if this was passed to me in 2010.

4 ROLE, REMIT AND PERFORMANCE OF EXTERNAL LEGAL AGENTS TO THE PROJECT

Qn 6-10, 12, 20 The Inquiry have asked a range of questions regarding external legal agents to the project. I have restated for completeness the text at Content and Context (Section 2) above:

The external legal advisers to the project and to Tie and the Council were DLA Piper, an international legal firm with specialist and expert skills in projects and financing. DLA were appointed by Tie, with a duty of care to the Council. Tie was a wholly owned company set up by the Council to deliver the Council's Transport strategy and Edinburgh Trams with the Council being the sole shareholder and owner. The Council appointed the Directors and Chief Executive. The Council's relevant Director's, the Director of City Development and Director of Finance, were the Council Senior Representatives on The Tram Project Board who were delegated responsibility for the delivery of an Integrated Edinburgh Tram and Bus

Network on behalf of the Council and Transport Scotland. Control was also set out in an Operating Agreement and a requirement to Report to the Tram Sub-Committee of the Council. Tie was in essence a vehicle for the Council to deliver the procurement of Edinburgh Trams and an agent of the Council. The Directors of City Development and Finance were clearly content that no conflict of interest arose for them in their roles. At no time was I aware that either the TBP or Tie did not take account of and have regard for matters raised by either Director. In the period to financial close in May 2008 that would have been unthinkable in respect of the Council's role as owner of Tie and the infrastructure. In 2007 when the political and funding situation changed, the Council required to have more direct access to the legal advisers to be able to receive legal advice directly to them. All relevant contracts were entered into by Tie. In considering how to arrange external legal advice, the strategic decision was taken to ensure that the Council was regarded by DLA and Tie as a Joint Client. The relevant Directors within the Council together with the Monitoring Officer and Tie agreed this course of action. DLA confirmed that no conflict of interest arose and, on the contrary, DLA had always been required to consider and have proper regard to the position of the Council as owner of the Company, sole shareholder and owner of the infrastructure. This action provided the Council with the ability to receive legal advice directly to it at no additional cost, avoided what would have been a damaging if not impossible delay to the timetable and, importantly, required DLA who were working closely in the bidder negotiations and preparing all contract documentation, to be required to have an equal regard for the Council in a more formal way and for the Council to rely on their advice. The Council both sought and relied on their advice. This would not have been achieved as comprehensively with merely a duty of care existing.

I am asked in relation to a short paper produced by NS on the Infraco/Tramco options in relation to external legal advice with 4 options, recommending option 4, which was agreed (CEC01567430). A discussion was arranged between myself and the internal team to consider this short paper. I am asked of my view on the options contained in this paper. A more detailed consideration of the contract terms and documentation was expected by me. At that stage NS, had been allocated full time to the project for some 5 months and I expected a more considered view of matters and the documentation including the Infraco contract for information as I regularly sought from CMcK at most 1-to-1 meetings with him. CMcK regularly advised that he was having difficulty in securing legal work from NS who he was managing. This was consistent with the views I had received from the previous manager of NS. I would stress that that was the position at that time. Notwithstanding that I was expecting a more comprehensive product on the Infraco suite, I agreed with his conclusion of option 4. It was consistent with the structure of the project where Tie was the delivery partner for and wholly owned by the council. I met with NS and CMcK regarding the paper and they advised it was written from a defensive position in the context that they "did not wish to be blamed by the Council if things go wrong with the contract, being the internal officers"

I agreed the conclusion in their paper.

I am asked of the Minute of the LAG on 25 July 2007 (CEC01660091). This requirement was best satisfied by ensuring that the external advisers to the Project and Tie regarded CEC as a

Joint Client to ensure that in all the negotiations undertaken and interface with TIE and all contractors, DLA owed CEC as Joint Client an equal duty of care, could provide legal advice directly to the Council and the Council could rely on it. DLA are an international major law firm with a specialist practice in projects and finance and were the legal agents supporting Tie and the project. I have reviewed early documentation when legal and other Agents were procured by Tie. My understanding is that the contract documentation clearly detailed the position and roles and ownership of Tie and CEC and required all contractors and advisers to provide a duty of care to the Council. This is also required in terms of the Operating Agreements. In this case I determined that the Council required an additional protection of DLA regarding the Council as a Joint Client. I was informed by the internal team verbally, in writing, at meetings and by the update and reporting mechanisms I put in place to ensure I was regularly updated due to the scale and complexity of this project. The reporting mechanisms are referred to (GL/2009/19).

I was not involved in the selection of DLA or the other external legal agents originally procured by TIE (Dundas and Wilson re Transport matters) and had no role in considering or agreeing any fees or payments. I am not aware that any costs were involved by DLA regarding the Council as Joint client. I am asked specifically of why and what benefit accrued to the Council by DLA regarding the Council as joint client. An early example relates to correspondence in July 2007 regarding various Utilities wishing the Council to enter into contracts to indemnify them (GL/2007/33). The suggestion made to me by the in-house team was that DLA could advise their clients Tie and that this information could then be forwarded to the Council. In the fast moving dynamic of the project this did not provide the best solution for the Council and my advice was to ensure DLA regarded the Council as a Joint client and could therefor advise the Council directly and the Council could rely on their advice. CMcK of the in-house team challenged this way forward and suggested the Council procure a separate legal external agent at this stage. I retained my view detailed above as any separate external agent could not advise if contracts properly detailed matters from live procurement negotiations they were not a party to and not aware of the result of developing commercial negotiations in a highly complex project. The matter was considered at IPG, considered with Tie, considered by Council senior officers and agreement was reached on the position. My email in response to CMcK clearly refers TIE00897231. There was a somewhat defensive view from the in-house team who were concerned they had been named in the internal Tie sign off plans for approval to provide agreement on the contracts. Similar considerations applied to the email from Duncan Fraser, City Development which I am asked to respond to. In effect the issue was becoming circular, had been considered at Monitoring Officer level, Mr Inch and actioned. At no stage did the relevant Directors seek additional external legal advice which they could do nor ask me to do so. The internal correspondence regarding DLA as joint clients was also becoming circular and somewhat disruptive by consuming resources that required to be directed on delivery. DLA had confirmed their position and matters were actioned. A meeting was held with Mr Inch, Monitoring Officer, relevant Directors and Tie around 10 August 2007 and it was agreed that DLA would regard the Council as Joint client. CMcK attended that meeting. The IPG noted that the Council was benefitting from DLA advice. CMcK attended the IPG meetings in a similar support capacity to myself (GL/2007/31).

I am asked in relation to an email by CMcK of 15 April 2007 (CEC01567520) on the issue and Qn 9 and 10. In addition to the views above, the matter had already been considered at strategic Director level meetings undertaken and decisions taken and actioned. I am asked of the reference to the "B" team. This is a self-styled term used by CMcK to refer I understand to himself and other operational staff as distinct from Director level staff and the Directors who were the Councils SRO's on the TPB. The term would not have been used by myself and all staff were required to work together both proactively and reactively with colleagues at all levels and partners in TIE, TEL and DLA.

15 April 2007 should be 24 August 2007

Report to IPG 30 August 2007 CEC1566861 Legal resources were considered by this meeting and para 6.2 contains very detailed commentary. That commentary notes the position with DLA treating the Council and Tie as Joint Clients and details the progress with risk allocation matrices and the Legal Affairs Committee.

CEC1566861 should be CEC01566861

DLA provided attendance at the LAC, verbal updates as required, extensive written advice as required and detailed legal advice which I sought at every significant stage of the Infraco contract. Their advice included Issues Lists for resolution, risk matrices and risk workshops/meetings. That Minute of 25 July 2007 (CEC01660091) itself notes that "As legal advisers in contractual matters DLA should consider CEC interests as the overarching Client". DLA confirmed that they had no conflict of interest in regarding the Council as Joint Client and advised that indeed they had always required to have regard to the Councils interest as the ultimate owner of the infrastructure and both TIE and TEL.

Your ref CEC01561544 being Report to IPG of 27 September 2007 captured the role well. It narrates at para 7.3:

"DLA have provided both a detailed and summary version of a risk allocation matrix of the Infraco contract. These were distributed and discussed at a meeting of the Legal Affairs Group, which included representatives from the departments of City Development and Finance, on 30 August.

Further meetings of the Legal Affairs Group have taken place on 10 September and 18 September.
Andrew Fitchie of DLA has been in regular contact with the Council Solicitor advising of progress. The latest meeting took place on 14 September.

At present, tie have proposed a procedure and programme for Council approval of the Infraco and Tramco contracts, leading up to a recommendation to full Council on 25 October on the preferred bidder for the contracts. However, the programme provides that the contract documentation should be provided to the Council and that a response on any issues which the Council may have should be given by officers by 21 September. Essentially, this requires the Council officers to be satisfied in terms of the allocation of risk in terms of the risk matrix from a legal, client department and financial perspective by this date. tie have advised that the date of 21 September is required to adhere to their current programme in terms of selection of preferred bidder. Work is ongoing in considering the contracts, risk allocation matrix and risk from legal, client department and financial perspectives.

From a legal perspective, in essence, DLA are being requested to provide advice directly to this Council on whether the contracts can reasonably be recommended for acceptance to the Council and of any particular risks which require to be brought to Council attention, whether due to their financial scale, likelihood, impact with or other material factor. Advice is also sought on any Letter of Comfort which may be sought from the preferred bidder and the interface with the final terms of the funding letter from the Scottish Executive. Advice is also sought on the total and individual legal risk exposure for both tie and the Council, that which is and is not covered in terms of project insurance (referred to as "OCIP insurance") or otherwise, with any reasoning for the exposure, i.e. whether it is necessary or commercial expectation, cost issues regarding bidding and whether or not risks are prudently insurable. DLA are available throughout this process to liaise with the Council Solicitor's Division, Financial Services and City Development as required. A further meeting is arranged for Friday, 21 September for final review.

It is expected that the Council will be in a position to receive further advice from DLA which will assist in the Council providing additional comfort to tie by 21 September. The level of comfort required is that necessary to be reasonably and prudently comfortable with the risk allocation matrix in terms of the choice of preferred bidder. Though there will not then be a competitive situation, a fuller and further assessment of risk can and will continue until financial close."

At Qn 20 I am asked regarding mails of 23 November 2007, CMcK to me at 17.10 and my response at 17.10 (CEC01399996). I properly asked CMcK to write to Sharon Fitzgerald of DLA and meet her as agreed and that she can advise of DLA's position. No further correspondence is available of CMcK follow up. I recall CMcK advising me of a question he had regarding this and my advice was, as 23 November, to liaise with Sharon Fitzgerald. I am not aware of the position but would have advised us to ensure that if there was any doubt at all, for us to secure our services through Sharon as an alternative partner. Sharon Fitzgerald was another partner at DLA Piper who was considerably involved in the project and attended earlier meetings. My correspondence to CMCK following 23 November directs him to Sharon Fitzgerald. Please see my email of 28 November 2007 (16.53) GL/2007/33 and 29 November (16.20) GL/2007/38 and GL/2007/32. My email to her in response to that I received from her of 29 November advised "Colin will liaise with you on this .....I am asking my office to arrange a meeting early in the week beginning 10 December....as we move towards December Council. Colin will likely wish contact through next week". There is a need and responsibility to be proactive. My further email to CMcK of 3 January 2008 (11.56) GL/2008/4 states "please ensure you have constant interface with Sharon Fitzgerald of DLA in respect of understanding and recognising and providing instructions as appropriate in respect of progress towards financial close and risk assessment on the principal contracts." Relevant references are GL/2007/32, GL/2007/33, GL/2008/4, GL/2007/38.

5 SETTLEMENT BETWEEN CEC AND BSC - CONTENT AND CONSEQUENCES

In considering the wider remit of the Inquiry and its scope to consider both the increase in costs and truncation of route, I have observed that In June 2011 before settlement of matters with BB, the Director of City Development reported to Council that the project costs to that date were circa 460m with 198m of that being costs to Infraco. The remainder were for the completion of Utilities, Mudfa, land acquisition, design completion, project management and delivery of the Tram vehicles. I understand the tendered price by the Infraco consortium of BB, Siemens and CAF to have been circa 238m for the original route of 1a. As an observation, Members were provided with confidential figures in terms of the additional settlement amount requested by Infraco and agreed by Officers and approval was taken for expenditure up to 776m. As an observation, I understand that the other costs would have largely been complete at that date, such as vehicles, utilities, land and other costs and on the face of it, it appears that the additional sum of 315m would have been largely for the Infraco contractor or that part of it, BB, who the Council were in dispute with.

As an observation, it appears that the addition sums (in addition to the 198m to July 2011) requested or to be calculated by and agreed to be paid to BB may have been in excess of the entire tendered sum by BSC for all parts of Infraco for the entire length of route 1a. From the Minutes of the IPG provided by the Inquiry, this may have been settled on a commercial basis. It appears the external legal advice received and considered by officers is that the Council should at that time in the project development, with design largely complete, require the Infraco to work to the terms of the contract, at least as a way of gaining leverage for a settlement. The relevant advice of QC advice is summarised as follows:

5.1 RECOMMENDED STRATEGY

"11. The relevant Q.C has advised that in light of the above, there is a real danger that in terminating the contract tie would be playing into the hands of the Infraco. A better strategy may be to hold the Infraco to the contract.

12. The Infraco could be called upon to remedy the Princes Street works. There is a Bilfinger Berger parent company guarantee/bond in relation to this and although capped at around £20 million, it could cause them some pain if called.

13. The current problems with the contract in relation to pricing and tie changes would remain, but forcing the Infraco to get on with the works could exert some pressure on them to agree a commercial settlement. The tensions that exist between the three Infraco members, who are jointly and severally liable, could assist in achieving this.

14. CEC's Q.C. is also of the view that the strategy should be to force the contractor to perform the contract and incur expense. Assessing the design and programme of works and enforcing performance of the contract as a whole is the preferred option.

15. If that does not yield a result by unlocking the present contractual deadlock and providing tie with a stronger position from which to agree a commercial settlement, the contract would need to be terminated. It is hoped that pursuit of the strategy of enforced performance should assist in that event, by providing fresh and more compelling grounds for termination linked to the Infraco's failure to progress the works."

Your reference (TIE00896611) states that both legal QC's for the Council believe there is a need to pursue enforcement (your reference CEC01715625).

In my view, it is essential for the Inquiry to consider the alternative strategy recommended and the financial and other terms of the settlement recommended in considering the scale of increased costs and the scale of route truncation. This appears to be highly material, both in respect of the costs sought by BB and the costs recommended by Officers to Elected Members. A forensic examination of the sums paid to Infraco against the contract payments and QRA and adjudications settled to 2011 is required together with a similar forensic examination of the sums then required by and paid to Infraco for the reduced scope and the basis for that requirement.

In my view, crucial evidence is the confidential settlement recommended to CEC Elected Members and the terms requested by and agreed with BB together with the commercial and legal advice supporting it, in order that this can be reviewed in terms of the Inquiry remit. It may be that the terms of that settlement precludes any further claim or action by CEC against BSC and/or any of their sub contactors, including the design contractors and their own sub-contractors.

Notwithstanding the terms of the settlement Agreement, a forensic examination of the performance and relationship between contractors and sub contactors, sums claimed and delay and management of sub-contractors by contractors, including design contractors and sub-contractors, will assist in determining the causes of increased costs, delay, the scale of increased causes and route truncation. In my view such a forensic examination of contractors and sub-contractors is required to fulfil the Inquiry remit as Tie are no longer an active company, and cannot therefore be a Core Participant. The same may be the case for TPB and TEL. Records of all TIE /TPB detailed Board Papers contain highly detailed Reports tracking all issues, including the performance of contractors and sub contactors, risk management, claims, matters of mediation and adjudication and contract management. A forensic examination of these records will detail the information available to Tie and TPB, the circumstances of the project and the decisions and actions of the Boards and Companies, why they were taken and on what basis.

6 QUESTIONS BASED ON INACCURATE INTERPRETATION

For clarity, an inaccurate interpretation is made by the Inquiry of some of the material made available and the corresponding questions to me appear to be based on an incorrect interpretation of the material referred to. To assist, for accuracy, I have detailed this below:

Qn 14, I am asked why external legal advice did not proceed from an OJEC advert referred to for legal advice. This evidence is not an OJEC advert for legal advice. I had not previously seen this but it appears to be seeking risk management advice from a suitable consultant in respect of the suitability of the sums contained in the risk allowance (of which there were many external consultants) referred to as the QRA. The OJEC advert states "DLA the Projects and CEC's legal advisers have validated that the Risk Allocation Matrix reflects the risk allocation in these contracts". It is seeking consultants to confirm the risk pricing allocation. Your ref CEC01561544 being the Report to IPG 27 September 2007 notes at para 5.1:

"it will be incumbent upon the Council working with Tie to determine the risks inherent in the bespoke infraco contract (including novation of the Tramco and SDS contracts) and assess what headroom is to be recommended for budgeting purposes..... A Gateway Review and a costed CEC risk review are to be undertaken and the results fed into the Council report on 25 October."

This costed risk review may be the nature of this OJEC advert.

Qn12 advises that a Report to IPG 30 August 2007 (CEC01566861) raises the issue of CEC obtaining independent legal advice at para 4.1. Para 4.1 however appears to relate to the costed risk review detailed above. Legal resources were considered by this meeting and para 6.2 contains very detailed commentary. That commentary notes the position with DLA treating the Council and Tie as Joint Clients and details the progress with risk allocation matrices and the Legal Affairs Committee.

Qn 84, I am referred to and asked questions of advice by DLA stating that I forwarded this to internal colleagues noting DLA's strong recommendation that the decisions be challenged. This is not the basis of this evidence. The evidence referred to is rather the advice of DLA recommending not an appeal but rather that (external) Legal Counsel's opinion is sought on the prospects of success of appealing. The decisions were not favourable to the project. I am then asked if consideration was given to independent legal advice. A reference to Counsel as recommended by DLA was independent advice.

Qn 61: This is not evidence of a risk identified by GB of proceeding. The evidence referred to is rather an explanation by GB of the risks of delay and behaviours of the contractor in his paper highlighting one of the reasons and benefits of proceeding to close and the risk of the contractor opening areas for further discussion if matters are further delayed and not closed. The matter of delaying or withdrawing a Report at officer level is for the relevant Director presenting the Report and the Chief Executive. The Council and Tie records will show the diligence process, the urgency, the advice, the recommendation of Tie the protracted period leading to close and the risks of further delay.

I am referred to correspondence in respect of a governance review where I am asked why I have been asked to deal with this personally. The correspondence and my reply states the reverse of this position. It seeks assistance and my email to the Director Mr Inch seeks approval for a member of my legal team to undertake the particular aspect of this role (GL/2009/4).

7 FINANCIAL ISSUES

I had no role or responsibility in relation to financial matters within the remit of Tie, TPB, TEL or CEC. The Final Business Case for the Edinburgh Tram Network should be considered in detail for all financial planning and projections, risks and their management and procurement approach and strategy. A copy of the Final Business Case dated 18 October 2007 is referred to for its terms (GL/2007/1). All questions regarding Schedule Part 4 should be addressed to the authors and reviewers of this schedule detailed in GL/2008/61 and to CEC Finance and City Development staff.

Notwithstanding the above and to assist, I can advise as follows:

7.1 SCHEDULE PART 4

I am asked if I saw or sourced a copy of Schedule Part 4 to the Infraco Contract. Though this is a financial schedule and matter, it may be that the full-time in-house legal team members being CMcK and/or NS may have been involved in relation to this Schedule. Relevant Qn numbers: part of 32, 35, 39, 46, 52, 55, 64 and 66.

In terms of my strategic legal role, I have traced within Council records a request by the Principal Finance Manager Rebecca Andrews to Tie for sight of this Schedule for the Director of Finance and City Development in relation to changes. Rebecca states that this request has come from the IPG but that it need not be provided by financial close. Council records show that as the Report of 1 May 2008 was being prepared, Alan Coyle (AC) of CEC Finance forwards on an email for information and to show his response to Stewart McGarrity re the financial analysis on 15 April 2008 to CMcK, myself, Steve Sladdin and NS. The attachments to this email appear to be a Financial Analysis Spreadsheet and Schedule 4 (GL/2008/5a and GL/2008/5b). My knowledge of this Schedule was as contained in the relevant Legal Advice letter provided to the Council by DLA, the external legal agents to the project, being DLA legal advice letter of 12 May 2008 (GL/2008/14a and GL/2008/14b). No matters of concern or comment for my attention or advice were raised to me by the in-house legal team of CMcK or NS, by the CEC finance team or any other team or by DLA. I understand the document was drafted by Geoff Gilbert, Commercial Director of Tie, Bob Dawson of Tie and Dennis Murray of Tie, reviewed by Stewart McGarrity, Finance Director of Tie, further reviewed by Steven Bell, Project Director/Manager of Tie and reviewed by DLA, legal advisers to the Project. The records contain a Financial Close Approvals Process paper for the Legal Affairs Committee of 7 April 2008 agreeing the approval and QC process to financial close. This 2-page paper and 2-page schedule details authors and approvers (GL/2008/1a and GL/2008/1b). In terms of my strategic role, even if this was not a finance schedule, I would not have expected to review it personally.

7.2 COUNCIL GUARANTEE

I am asked at Qn 15 my views on the form of Guarantee being provided by the Council and why both bidders were not required to accept a so called "Level 2" Letter of Guarantee. I would advise that this matter was acknowledged since the Business Case of being required, was agreed to be provided by Finance within the Council from an early stage, was recognised and approved by IPG on 27 September 2007 (GL/2007/20) and was advised to Council and approved by them at all stages. It should also be noted that the Guarantee was not in fact called up by BBS at any time. Essentially it was expected and known that the structure of this transaction with Tie as agent of the Council and contracting party, having no assets and with the Grant from the Scottish Government being provided via the Council, would result in the bidders seeking a financial guarantee. It should also be noted that this was a procurement undertaken by Tie as required to procure the various contracts on behalf of the Council in terms of the Operating Agreement between them. The procurement was carried out by Tie with support of Partnerships UK. In terms of the Negotiated Procedure adopted in terms of EU public procurement, bidders are responding to an invitation to tender and will have their own view on a range of matters and conditions of their bid. Tie, relevant consultants and DLA will all have considered this issue when it arose.

In respect of my personal involvement relevant emails detail my challenge and requirement for suitable justification and information which I detail below. It is likely that the position of both bidders would have been consistent following the change in financial funding by the Scottish Government.

Email from Andrew Fitchie (AF) of DLA of Friday 5 October 2007 (17.44) GL/2007/2a, to myself and CMcK advising that, to keep us informed, one bidder is content with a so called level two letter. The other bidder will require a formal guarantee from CEC full financial and performance undertaking. AF advises "I have explained to them that this will require approval at Full Council level, not forthcoming until much later and that, in return, I expect that CEC would wish to be a direct beneficiary of the corporate holding companies PCGs taken by Tie."

I responded on Monday 8 October at 10.16 (GL/2007/2b) both challenging and seeking advice, stating:

"Andrew this is a significant issue for us. Both Directors of Finance and City Development were aware that Level 2 was likely to be required from our last meeting and I updated them on this. Much more info on risks, costs and deliverability of this will be required. Can you consider how this can be presented and if indeed this is a cost issue in bidder negotiations and how it is being dealt with in evaluation. 1 option is to provide both letters to Finance consultants and include in their costings of risk. Can you please provide any updated info including any updated analysis you have of it and how CEC could provide this and what contingency would require to be in place even to consider. Presumably this would also require to be reflected in the business case and OGC review Finance are completing"

AF responded to myself and CMcK on 8 October 2007 (22.11) GL/2007/2c advising:

"We can perhaps elaborate at the LAG meeting tomorrow on this. In the meantime my view would be

1. I believe that Level 1,2 and 3 draft letters were exposed to CEC Finance a while back and there is already an understanding that a full performance and financial guarantee from CEC might be required from the Infraco provider – given the size of the contract. This is the case with one bidder.
2. The risk profile for CEC is not altered by this requirement, unless it were the case that Tie's covenant is not fully supported by its owner. Tie has no balance sheet of its own and the project grant funding commitment is provided to CEC.
3. Though administratively the issue of a financial and performance guarantee by CEC is different from the approach accepted by the other bidder (who is content with sight of the Ministers funding commitment (if permitted) and the provision of the Level 2 comfort letter, I do not consider that this is a significant evaluation issue since under both situations CEC (as Tie's client) will be underwriting the public sector side risks (subject to Insurance, PI and mitigation).
4. In strictly financial terms then, I do not consider that the provisions of the financial guarantee by CEC, provided it is drafted in the correct terms, creates any greater liability than that established by Tie letting the Infraco Contract, supported by the Letter of Comfort Level 3. In legal terms, it does create a more formal direct contractual nexus between the Infraco and CEC but that is all"

My response on 8 October 2007 at 22.46 (GL/2007/2c) states:

"Andrew thanks for this advice. Finance will be able to comment on their awareness. In purely practical terms would CEC be guaranteeing to step in and perform Tie's obligations. If so do they have the necessary resources and contractual relationships with Tie's contractors to facilitate this. Does this increase the risk exposure for CEC and reduce that of the bidder. If not, what is the bidders reasons for seeking and what do they gain. Presumably CEC and Tie's relationship would also require to facilitate this. It also mitigates against the purpose of Tie as an entity. Appreciate project delivery reasoning. Look forward to meeting".

Email from Geoff Gilbert, Project Commercial Director TRAM Project on 9 October 2007 (8.26) GL/2007/2d to myself and CMcK, copied to AF states:

"Please note that it was a condition laid down by both bidders at the outset that such guarantees are provided by CEC and Transport Scotland at that time. This issue and requirement has been flagged in the TPB minutes since last year. I agree with the points Andrew makes on this issue".

AF confirms by email of 9 February 2008 (CEC01479715) copied to CEC Finance and CMcK:

"Just to confirm that BBS have now dropped the issue regarding their wish to have CEC obliged (under its guarantee) to step into the Infraco contract if the Tie Operating Agreement were to be terminated. This is a sensible outcome. I expect the CEC guarantee to be closed out by Wednesday. We are closed bar detail on the BBS performance securities,

with the remainder of the Security package requiring further exchange – but 10 days of inactivity by BBS hit momentum on this aspect of the transaction"

Relevant emails are GL/2007/2a, GL/2007/2b, GL/2007/2c and GL/2007/2d and GL/2008/13. The so called Level letters would require to be viewed for their terms. Copies are not available. DLA have clearly set out the negotiating position of one bidder, their commentary re the effect and impact and the particular circumstances of CEC being the owner and sole shareholder of Tie. As above the Guarantee was not called up. As above, on 9 February 2008, BBS dropped the issue of CEC being required to step in and perform the contract. This was therefore not part of the final terms of Guarantee.

7.3 ON STREET SUPPLEMENTAL AGREEMENT ("OSSA")

At Qn 76, I am asked if I provided legal advice in respect of the OSSA and of any involvement with this Agreement. No legal advice was requested from me in relation to this Agreement and I had no knowledge of it until after its execution by the relevant parties of Tie, Siemens, BB and CAF. It may be that CMcK and/or NS were made aware of it or were aware of it though this is unlikely as I consider they would have brought it to my attention. This came to my attention at the IPG meeting on 25 March 2009. As I was not aware of it, I asked AC for a copy of the Agreement. The records show that AC of Finance copied me in to an email from him to the Director of Finance on 25 March 2009 (GL/2009/1a and GL/2009/1b) attaching a copy of the signed Agreement. The records show it was signed on 20 March. My email in response to AC of 25 March 2009 (GL/2009/1a) asked:

"On the Supplemental Agreement, Marshall advises that these are the completed terms and not any interim situation pending resolution of DRP. Can you advise if the impact of the agreed commercial terms in this Agreement have been costed and how they will be contained."

AC responded on the 25 March 2009 (GL/2009/1a).

I am asked on my understanding of demonstrable cost and see this is defined at Clause 1 of the Agreement.

All questions regarding this Agreement should be addressed to the relevant individuals within Tie and CEC, being the most senior Finance and City Development staff. Your ref CEC00900262 refers.

7.4 CONTINUING DELAY ON FINANCIAL CLOSE

I am asked if my legal advice was taken prior to the report to Council on 1 May relating to the increase in price sought by BB in respect of the procedure for Council on 1 May. As far as I am aware no advice was sought from me or given in relation to this matter in terms of

Council Corporate Governance. Council Directors including the relevant service Directors, the Monitoring Officer, Council Secretary and the Chief Executive are likely to have discussed the matter and consulted with the Leader of the Council and other Members following a discussion with Tie. The Council remained under pressure to reach financial close. An email from John Ramsay, Project Manager Edinburgh Trams, Transport Scotland, was sent on 1 May 2008 (GL/2008/6) to Finance and City Development which states:

"As discussed this is a follow up to my earlier note alerting you to Ministers' concerns about the continuing delay on Financial Close.

Mr Swinney has asked me to make very clear to the City of Edinburgh Council and Tie that, as major funders, they are deeply concerned by the delays and want assurances that the delay is at an end.

You have advised me this afternoon that further uncertainty has developed over the course of the last few days and that BBS representatives from Germany are due to meet Tie Limited on Monday. I am assuming that we will have information on CEC's /Tie's formal position in the Promotor Report due Monday with a further updated position on the potential for further delay/impact when we meet on Wednesday afternoon. As said before, it is likely that we will raise a number of queries on the developing programme."

The terms of Funding Agreement between the Council and The Scottish Government were prescriptive in terms of the timelines for draw down and spending available funding and related penalties and breach provisions.

When it was clear after a period of negotiation that a price increase was negotiated with Tie after discussion with Council executive officers, the matter proceeded to be considered by the Policy and Strategy Committee on 13 May 2008 for consideration before any consent to Tie to close the contract was provided.

7.5 SDS DELAY AND CLAIM SETTLEMENT

In Qn 2, I am asked of my awareness of the SDS delay. I have added in addition my knowledge of a claim settlement with SDS. In general, there was constant reference in 2007 and beyond to design and SDS delay. This was a technical matter for Tie, a risk to be managed by them and the appropriate risk holder for the interface with the Council was City Development Department. Council and Tie/TPB records will document in great detail the issue and its development and risk mitigation. Each IPG Report will track the extent of the various statutory approvals and consents required and the interface with the system design. The technical officers can best detail the link with each approval process. Constant risk mitigation and management was in place by Tie and the Council, including additional resources. The section below on Approvals and Consents provides the response by the Chief Executive of Tie Mr W Gallacher (WG) to the Council dated 10 April 2008 with a 2-page attachment to improve matters to be agreed between Tie, SDS, BBS and the Council (GL/2008/1a and GL/2008/1b). Twelve individuals from within these four organisations are

listed as having a role in this improvement. Very many reports within Tie and TPB and IPG within the Council will document this issue. I have considered a table form showing the interface of design works, MUDFA Works and the Infraco contract (GL/2007/30). The various close Reports prepared by Tie detail SDS issues as a separate appendix and some of these narrate particular risk management events including considering each significant area where matters are outstanding and seeking to consider and quantify this risk prior to financial close. I had no particular role in the issue.

The claim settlement with SDS was a matter for Tie and TPB and the Council in terms of the Operating Agreements with Tie and TEL and the role of the Tram Sub-Committee and relevant officers being the Director of Finance and the council's Tram Monitoring Officer, Mr Poulton. Contract claims in respect of the project were not the role or responsibility of Legal Services. I have traced correspondence from the Council's Director of Finance to the Chief Executive of Tie dated 18 April 2008 GL/2008/12 requiring details of the settlement with SDS, the cause of the claim and the costs of settlement and requiring information on any other further competent claims expected from SDS. The Director advises that the Tram Sub-Committee requires this detail for the meeting of 12 May 2008. The role of the sub-committee in claims over £500,000 in terms of the Council's corporate governance is explained. The Operating Agreements between the Council and Tie and TEL are also referred to for their terms in matters not delegated to the Companies. This letter was copied to a range of contacts in Finance and City Development and to myself and CMcK on 22 April. I understand the Chief Executive of Tie attended the relevant sub-committee when this matter was considered and agreed. I would again state that this is not within the role or remit of Legal Services Division but is explained to assist (GL/2008/12, GL/2007/15 and GL/2007/16).

7.6 GVD NOTICES AND MINISTERIAL ANNOUNCEMENT RE TRAM BUSINESS CASE

The Project appeared to have a constant pressure of aligning project spend in accordance with the terms of the grant letter from the Scottish Government, due to the complexity and statutory nature of elements of the Project. Particular pressure related to the issuing of compulsory purchase notices by the Council for required land. Tie wished to acquire land with a budget of around 10m by 31 March 2007 in terms of financial allocations for that year's budget. The in-house legal team supported by myself considered that formal steps may not be taken to compulsorily acquire land from landowners unless and until the project had financial approval for the project beyond the first allocation of funding for the Council to consider the project to the stage of Business Case. Relevant advice notes are GL/2007/41 and information email to the Director of Corporate Services and Chief Executive of 2 March 2007 (GL/2007/19).

7.7 FINANCIAL ISSUES IN CLOSE REPORT 28 APRIL 2008

At Qn51, I am asked a number of questions regarding the financial provisions at contract close. These were not within my role or responsibility but I had been tracking the movements in price and risk in general terms due to the scale and complexity of the Project and to take a view as required on matters of governance and Council authority and procurement risk/challenge. I had no role in negotiating the contracts which Tie were entering into nor any role in making decisions on the commercial terms. I considered that any incentivisation provisions for SDS would have been made to remove risk to the project of late delivery though I had no involvement in the concept or detail of Tie's negotiation. To confirm, I had no role in negotiating or providing advice in relation value engineering items, provisional sums or fixed pricing. This was not the Council's role and not a legal issue. Relevant Members of Tie/TPB and the relevant Council Directors will have been aware. The risk of SDS delay and the changed position in February 2008 is as detailed in Design. My information and understanding was that the final contract price estimate was 508m with a risk contingency of 33m, including the additional costs claimed and negotiated in February. These were considered to be the best terms which could be achieved and were recommended to the Council (GL/2008/92). To confirm, I had no role in negotiating or providing advice in relation to value engineering items, provisional sums or fixed pricing. These were not legal issues.

7.8 FINAL BUSINESS CASE VERSION 2 (DATED 7 DECEMBER 2007)

At Qn 28, I was not involved in the preparation of this Document. Finance colleagues will have more information on who had involvement in drafting and revising and being briefed on the document. I would anticipate that would be both the service Department and Finance. I am not aware Legal had a role here and I have no records of involvement. My role at this point on returning from leave on 11 December was on the strategic issues of the state of readiness for the decision at the December Council and legal issues surrounding that. Please see in Governance section. I have checked the DLA letter for this period for evidence. The DLA letter states that a full presentation has been made to Council Finance officers and that no issues of concern arose. It is not the role of legal officers to track the movement of risk and price. I anticipate that this dialogue would have been between Mr McGarrity and AC/Rebecca Andrews. Please see sections on Governance (Section 10).

8 STATUTORY PLANNING ISSUES

I had no role or responsibility in relation to Statutory planning matters or Consents or Approvals. All questions regarding Statutory planning matters and Consents or Approvals should be addressed to the relevant staff within CEC and Tie, TEL and TPB who supported and liaised with CEC with the delivery and management of these activities and the relationship to relevant contracts, sub contracts and risk management.

Notwithstanding the above, having viewed Council records and to assist, I can advise as follows:

8.1 PRIOR APPROVALS AND CONSENTS

At Qns 41 and 45, I am asked of my awareness of correspondence from City Development to Tie regarding Prior Approvals and the issue and effect. The Chief executives IPG group was very aware of the issues and risk management and that influenced the letters to Tie to record the positioning dated 28 March and 3 April. All risk registers of Tie and CEC were aware of these risks with the strategic management of both Tie and CEC aware of and actively managing the issues. All risk registers of Tie and CEC should be considered for noting and analysing and determining the risks, their ownership, how they were to be mitigated and the officers responsible for managing them. None of these roles were the responsibility of Legal Services. The inquiry may not have the response from the Executive Chairman of Tie dated 10 April which states that after discussions, they concluded that the best way forward involved an agreed approach to the management of the design process in which all parties are full participants. A 2-page summary of the proposed approach is attached. The attachment is referred to in its terms in full relating to Key Outcomes and Principles, shared purpose and proposals to achieve this including 12 named individuals from Tie, SDS, CEC and BBS being the relevant technical and strategic managers. This was copied to me for information. The letter and attachment are referred to should the inquiry not have this information from any of the 12 relevant individuals from these 4 organisations (GL/2008/1a and GL/2008/1b). The Minute of the LAG of 14 April (CEC01227009) notes the revised process that has been introduced which accommodates the concerns raised, that WG has written back to City Development and awaits confirmation that David Leslie is satisfied. The key risk changed and developed constantly. My understanding of the relative Finance issues was as detailed by DLA in their advice notes and my emails to the in-house team and as detailed at Design Risk section (Section 9.1) below.

8.2 RUSSELL ROAD BRIDGE PRIOR APPROVAL

At Qn 42, I am also asked to discuss an issue with Russell Road Bridge Prior Approval and an issue brought to my attention by CMcK on 11 April 2008 in relation to both the risk issue and the disclosure in the Report to Council of 1 May. I have traced this within Council papers and my response to CMcK also of 11 April 2008 (GL/2008/2) which states:

"Thanks Colin. Can we get a view from Fin re QRA and both Directors re issue. Can you ensure you contribute as appropriate to May Report. Suggest this issue then put to Tie for awareness and resolution."

My response provides immediate and appropriate direction and support in relation to the issue, risk management and the QRA and Council Governance. Later correspondence from CMcK (email of 14 April 2008 at 13.02 which was copied to me), CEC01399470 suggests the

risk profile may not be as great as considered and CMcK has chosen not to include reference to this in the 1 May 2008 Report.

While the issues of Consents and Approvals was not a role or responsibility of Legal Services, Tie had sought to meet with CMcK at a high level with technical and strategic managers of Tie to have his input before sessions which would influence positions, in their email to CMcK of 31 January. CMcK declined to attend despite his role of leading the legal support from the in-house legal Division and my greeting and direction of 3 January 2008. CMcK's response to Tie's request on 31 January states "I am content to step back from this matter" (GL/2008/3).

My greeting and direction of 3 January refers to the recommendations of the Council Report of 20 December 2007 (GL/2008/4) and states:

"Council approved a series of recommendations on 20 December which require a range of significant work and progress to be in place prior to financial close. It is imperative that we fully support work and progress towards delivery. Can you please ensure that all possible resources relating to this Project are utilised on a full time basis as agreed to support the legal work which requires to be undertaken as a matter of the utmost urgency during January and leading to financial close.

Please also ensure that there is sufficient presence by this Division at Tie offices as required during this period. It is also important that we take the opportunity to fully utilise the Legal Affairs Committee meetings during January. By the first meeting in January we should be at the stage of confirming final revisals to the Tie Operating Agreement and expecting Tie to agree these. We should also have identified any additional activities which we wish Tie to complete prior to financial close. Can you please ensure I have a brief written report prior to each of the Internal Planning Group Meetings. Please ensure that issues are escalated to yourself and myself as they arise in order that they can be timeously resolved.

Can you please ensure you have constant interface with Sharon Fitzgerald of DLA in respect of understanding and recognising and providing instructions as appropriate in respect of progress towards financial close and risk assessment on the principal contracts.

Thank you for your support to this project."

Relevant emails are referred to (GL/2008/2, GL/2008/3 and GL/2008/4). This email properly provides support and direction to proactively engage with the project mechanisms urgently as we approached financial close, following on from the 20 December 2007 Report and Council Decision and also seeks proactive engagement with Sharon Fitzgerald of DLA in respect of risk assessment of the principal contracts.

CMcK then passed this to City Development who properly escalated the matter to the Director of City Development, copying all relevant individuals. The Director provides his reply that day (GL/2008/2). The Director of City Development can best advise if he gave any consideration to delay, being the relevant risk owner for technical risks and the relevant owner. The issue was properly identified and escalated to the service owners. I anticipate that he would have considered the risk allocations and mitigations rather than delay. I am

asked whether I considered the design risk allocation of 3m as sufficient and my understanding of quantification of this risk. I have provided detailed commentary of my email responses in this regard at Design Risk (Section 9.1) below. I would again state that this risk and its quantification was not a role or responsibility of legal services.

9 TECHNICAL/COMMERCIAL ISSUES

I had no role or responsibility in relation to technical/commercial matters which were within the remit of Tie, TPB, Tel or CEC. The relevant risk owners and decision makers are within Tie and the relevant Directors in the Council. All questions regarding technical/commercial issues should be addressed to the relevant staff and consultants within these bodies. The relevant staff can also provide the best evidence of the inter relationship between design risks and responsibilities and approvals and consents. The risk registers of Tie and CEC will show these risks clearly with risk owners, mitigations and risk allowances. Tie had full-time Risk Managers and Risk Consultants and undertook a range of risk management exercises involving Tie, technical officers of CEC and Risk Consultants to determine, quantify and manage these risks. There was a developing and changing position from BBS on this matter during the period and process to financial close and a direct relationship with the novation of the SDS design contractor from Tie to BBS. All legal advice letters from DLA at each significant contract stage reported on the position of negotiations and risk in relation to design. This was also accepted from the earliest external consultants reports planning the project, which contain references to requiring risk awareness and not a risk averse position and not considering it cost effective to have external contractors pricing in risk premiums into the contract price. This is continued in the various iterations of draft and Final Business Case documentation for Edinburgh Trams which should be considered in detail for their terms and the narration of risks, design risks, price premiums, procurement choices and rational, comparison with other light rail systems and the full financial cost, benefit and risk position. As above all risk registers of Tie and CEC refer to these issues in detail with technical and specialist risk owners. None of these risks were owned or managed by the legal team, internal or external. Reference should be made to all relevant TIE/TPB Board Papers and Minutes and each iteration of the Close Report for the developing position, risk awareness and management and solutions. In particular, regard should be had to the changing and developing position of BB from 20 December to financial close, the continuing concern regarding accepting the risk of design and each element relating to that risk and the evolving positions achieved to secure the novation of the SDS design contract to achieve financial close. Tie/TPB Board Papers and the developing close report narrates that a managed process was put in place with relevant TIE and risk consultants and CEC technical staff to consider each emerging design risk and its accommodation and containment within the developing QRA.

9.1 DESIGN RISKS

Qns 18, 23,27,32, 35, 39, 46, 52, 55, 63, 65, 66 include issues of design risk. Notwithstanding that design risks were technical and commercial/financial, I am asked how I responded to internal legal issues of concern, of my own view of whether a risk allowance in the QRA of 3.3m was sufficient and a range of other matters. I would firstly again emphasise that these were technical consents issues and commercial and financial risks and not a legal issue to manage or quantify. Notwithstanding, I followed the emerging position on design and risk to have an awareness of this and as the matter was reported in each DLA legal advice report at each significant stage of the project. As with all risks and changes in position, the legal issue of likelihood of procurement challenge and successful procurement challenge always requires to be and was considered by me, with a further view from the external legal agents DLA. The questions asked can best be answered and evidenced by relevant documentation, as follows:

The document "Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve Tie to sign the Contract with BBS" developed (GL/2008/7) leading to and from the Report to Council on 20 December and was in effect a developing blueprint showing the issue, description and approval required and whether this was technical, Finance or legal approval. As above, the procurement and delivery was a Tie role and responsibility with the Council and the other parties having a requirement to be consulted prior to Tie entering into the Infraco Contract. The issues relating to risk, SDS and design, in so far as the Council had any role or remit, were for technical (City Development Duncan Fraser and Alan Conway) and financial officers (Rebecca Andrews and AC) and ultimately their service Directors within CEC, not legal. This document is referred to for its terms (GL/2008/7).

My email to Mr Inch, Director of Corporate Services, Council Monitoring Officer and my reporting Director (being a member of the LAG and the Chief Executives IPG) of 11 February 2008 is referred to for its terms (GL/2008/8; your CEC01406011). This email properly advises Mr Inch of Tie's communication with me (telephone call from WG, Chief Executive of Tie) advising of the additional financial sums sought by BB and Tie having negotiated these down to an additional £5 million pounds on the contract costs. I was properly providing Mr Inch with a brief and immediate executive briefing. I advised that WG had contacted the Director of City Development and was trying to contact the Council's Director of Finance. It states:

"WG advised no specific reasons/material in support of additional cost but that this was expected and could be contained within overall budget. He also advised that the novation of SDS to BBS the principal contractor would now be subject to a cap on BBS's liability ie they would not take all liability for delay's/costs to the project caused by SDS. WG advises that the level of cap is not yet agreed but it would seem material to me when agreeing costs. WG advises the timetable to close is again extended to 28 February to lodge Notice of Intention to Award and 10/11 March to close. ... Andrew Holmes has arranged a smaller meeting with Tie for Tuesday. Andrew advised this morning he would give Chief Executive a brief update and I understand IPG is later this week.... I am checking the position with Chief Executives delegated authority as this may not be sufficiently wide to include closing the deal at this higher figure. We will also be seeking DLA sign off that these changes do not provide a

procurement issue. They will require all risk assessments to be reconsidered and the level of cap is particularly important. Good progress is being achieved on all other significant outstanding diligence issues."

This document is referred to for its terms. Your ref CEC01393753 provides a brief update from Finance colleague AC to the Director of Finance.

My email to CMcK of 29 February (GL/2008/9b) and contained within your CEC01400987 discussed the matter of the Chief Executive's delegated authority and referred to the design risk and the value provided for this in the QRA. Again, I would stress the context of the Councils role here, the experts within Tie and there being no role for legal Division in respect of quantifying this risk.

My email states:

"Thanks Colin. Appreciate the update. I was expecting a call from Graeme Bissett last night which became a meeting as discussed this morning at IPG. Essentially matters are unresolved re SDS and novation and other matters are unresolved such as PCG's on which we understood there was agreement. On the positive side, I understand Tie are presenting an update to Finance colleagues on Monday on QRA which we are all agreed is an essential in determining whether or not we are within the Business Case. Can you please arrange to join this meeting and have constant engagement with relevant parties over the period next week. Can you also let me know please as I would like to join the QRA discussion if I can. As discussed this am the difficulty with current dates is that we are likely not to have a settled position (in any way) in time for Report distribution. .....Today agreed to proceed with brief Report if matters were settled. Can you liaise with Rebecca and Duncan early next week to reach a view on progress and differing positions between now and next IPG Wednesday.

My concerns are around the robustness of risk and contingency as although I accept there are movements from risk to price and closing of some risks, I believe the residual risk re SDS may be very significant and I understand we still have no figures to assess this (my comments to Graeme Bissett on SDS paper refer). The previous level of around £3m is appearing to me grossly undervalued depending on final position. .....Lets keep in close contact between now and the next IPG, meeting before to discuss and evaluate the position, including the very important issue of Council approval and delegated authority. We may wish to agree with Andrew on Monday pm a close of day contact between Tie and CEC each day commencing Monday. Can you let me have a final version of the Business Case which you have pl to let me also review this. Thank you again for all your help with matters prior to Budget Council which was very helpful and much appreciated".

CMcK's response (GL/2008/9a) notes "One factor that we must have regard to is the position of Transport Scotland. Rebecca (Andrews) was very clear that there is an expectation from TS that Financial Close must take place before 31 March."

Your CEC01474538 provides a document by Tie Limited Alignment of QRA and Risk Allowance to DLA Letter and Risk Matrices referred to in its terms. Tie confirm the Risk Allowance is sufficient having regard to DLA letter and Risk Matrices. This narrates that Tie

consider the risk allowance of 3.3m adequate in the context of the number and criticality of consents still to be delivered, the liquidated damages available to BBS from SDS in the event the delay is caused by SDS, the responsibility of BBS to mitigate the costs of any delay and the close management of the process beyond Financial Close by Tie.

In terms of my awareness of the SDS design risk I would also highlight my response to an opportunity to consider and revise the Report to Council of 1 May 2008 and my email to AC, copied to CMcK and NS, of 22 April (GL/2008/11) which states:

"I have used the latest version of the Report which I have which contains Graeme's provisional changes, to provide some very minor adjustments from myself. In essence, I have pulled out the SDS risk as, it seems to me, this is actually the most significant risk and, as the matter is now going back to Council, it would not be appropriate to preclude a reference to this. Can you please consider how SDS should be referred to and make any necessary adjustments to wording. I appreciate that we are no longer being asked to grant a Certificate in terms of the contract and I have taken the opportunity to effectively remind Members that the guarantee will be provided to BBS at financial close."

Essentially when provided with the opportunity to revise the Report to Council of 1 May, it was myself who required a specific reference to this particular risk, notwithstanding this was not a role or remit of Legal Services (relevant email is GL/2008/11)

My earlier email to AC of 18 April, copied to CMcK, CEC01245400 and GL/2008/10 is also referred to for its terms being:

"Alan, thanks. I will submit some minor suggestions Tuesday. In essence, I think we have dealt with the issue of authority but essentially this Report is also reporting on the outcome of original use of delegated authority and a little more detail/info could be added to narrate the progress to close. I would also like to consider the recommendations to ensure consistency with the way we will deal with Toms delegation and other officers including myself re Operating Agreements and Guarantee. The issue for Tie is that they are trying, understandably, to keep the legal authority flowing from the 20 December Report and not introduce another to avoid the governance issues and certifications of Minutes and the like, particularly on the plan to close on 2 May. On current plan I think this is difficult and this Report will be a part of that chain".

In terms of design risk, GB provided a paper on consents on 22 February 2008 circulating this widely within CEC and Tie, including myself, CMcK and NS. Again, although not a legal issue, I raised with GB what the level of Liquidate and Ascertained Damages were and if they would be set against the costs incurred by Tie/CEC. Also on risk assessment I ask if we have a bottom line ie estimated figures for costs of delays. GB responds advising that the cover will be capped and the estimate quoted of 0.5 m is under negotiation, that risk quantification will be executed when we have a definitive view of the terms and an updated view of the actual delivery position at close, that at present we have a provision against design delay of £3m and that there is a further £6m against overall programme delay but this obviously captures a wider range of risks (relevant emails are GL/2008/39).

Your ref CEC01465878 contains emails not previously seen regarding Jim McEwan of Tie seeking clarity that only where a change can be shown to materially change the Infraco programme critical path should Tie be liable for potential additional charges. The responses are not attached though the Reports to Tie and TPB clearly do not expect all changes to have a cost.

Part of the procurement strategy as documented through the Business Case was the early involvement of the design team, the avoidance of risk premiums being added by contractors and the planned novation of the SDS design contract from Tie to BBS at financial close. This was seem as providing the best way forward and for BBS to take over the product and responsibility, through SDS, for the product and delivery of design, with SDS becoming a direct contractor of Tie and SDS remaining a contractor to their sub-contractor. The planning appears to show that there would be a required overlap between design and the Infraco contract but the design was expected to be more advanced at the stage of novation. Until February 2008, SDS were expected to take the risk in respect of quality of design and design delay risk excepting where the Council were specifically responsible in respect of its approval and consents role, for the delay. The emails above detail my reporting and actions from the changed position of BBS in February 2008. BBS were then to continue to accept the risk on quality of design but the costs of delay to the project would be met by a provision of liquidate and ascertained damages from SDS to BBS at the rates detailed in the advice note from DLA and the residual risk and cost of delay in excess of those sums would remain with the Council, essentially as a Compensation Event, excepting the fully approved design packages at Financial close where the risk remained as at December. Communications from Tie confirm this is the best position which could be reached and was required for BBS to accept the novation of contract. There are a wide range of papers produced by Tie detailing the position, changed position, risk management and dealing with the range of issues/concerns the Council officers had. The iterations of the close report and the separate Appendix on SDS design risk chart the issue, the changing position and the risk planning and consideration undertaken jointly by Tie, their risk consultants and officers within the City Development Department to consider and agree the residual risk and its quantification as its own separate risk sum and as part of the wider risk allowance for general delay. The focussed risk analysis referred to in the close report detailed refers to this being undertaken by the Tie Programme Director, Tie Design Project Manager, Tie Programme Manager and Tie Risk Manager together with the CEC Tram Co-ordinator from City Development Department. The close report narrates that the risks summarised in the DLA Report are therefore accommodated in the risk and contingency allowance to an acceptable degree and manage the exposure successfully. The position with regard to the Finance Schedules are as detailed at the Finance section above.

9.2 GENERAL RISK

I am asked at Qn 16 about an email to me from Finance, Ref CEC01399632. Firstly, my response to Finance is also attached dealing with the legal issues in the emails of 19 October 2007 (12.35) and 22 October 2007 (10.33). Your CEC 01383842 details my further update to AC. Your CEC 01399641 contains updated information on the positions and consideration

between the Director of Finance and City Development and references my request to the internal legal team to secure an update on the technical matters before the LAC 22 October 2007. Duncan Fraser had a particular role regarding managing various technical risks which areas are documented in the risk registers retained by both CEC and Tie. The risks detailed are included in the technical risks to be managed, they will have risk owners, methods to mitigate and risk allocations. The IPG Reports will refer to progress. Similarly, TPB and Tie Board papers detail extensive risk management and QRA sums. The relevant Tie/TPB papers will show the exposure to these and other risks and decisions and action taken. Donald McGougan and Andrew Holmes are the CEC representatives on the TPB and the relevant Directors who can best advise within CEC on technical risk management. They will be aware of their own responses and actions re these technical risks.

10 PROJECT CORPORATE GOVERNANCE

A wide range of Reports regarding the Project were provided by relevant Council officers during the period 2006 and earlier to 2010 and beyond. I am asked to detail the process for a range of these Reports, the choice of Committee, the content of Reports, the content of presentations to Elected Members and whether there should have been further delay. I had no role or responsibility in relation to liaising with or advising Elected Members formally at Council meetings or informally at various briefings. Extensive communication with Elected Members was the role and responsibility of the relevant service Directors being the Director of Finance and the Director of City Development, the Tram Monitoring Officer within City Development, the Chief Executive and senior staff within Tie and TEL. I was not asked for advice regarding briefing of Elected Members by any of these senior Officers and was not asked to be part of the team briefing Elected Members for any Council Reports or the briefing of particular Members such as the Leader nor the various political Groups. This was a role undertaken personally by the relevant service Directors of City Development and Finance and the Chief Executive together with the Chief Executives of Tie and TEL, WG and Mr Renilson. Each of the extensive suite of Reports to Elected Members shows the signatories of the Report, in most cases being Joint Reports by the Director of Finance and Director of City Development and also shows the individual members of their staff who have likely drafted the Report and produced a draft to final copy under their direction. All questions regarding the process of drafting, seeking contributions and final content should be addressed to the relevant contact persons and signatories to each Report. The council will have master lists of each and every Report on Edinburgh Trams and each should be considered. At IPG meetings the Chief Executive frequently considered the communication with Elected Members as a key part of the process and communication plans were in place for formal and informal briefings of Members for all Reports to Members regarding each stage of the Infraco Contract. In addition to having no role or responsibility in relation to briefing Elected Members, I had no role or responsibility in the timing of Reports to Members or the choice of Council Committee. These roles were again the responsibility of the Directors and Chief Executive together with the Council Secretary and Director of Corporate Services, Mr Inch.

Within the context detailed above, I had an opportunity to contribute to a range of Council Reports as detailed below. In general the authors of Reports would seek any views/revisals/comments from both CMcK and NS, the fulltime members of the Division working on Edinburgh Trams and working with those officers. My own views may also have been sought or matters escalated to me as I have detailed below. Council records should show each Report and its progression. In addition as many of the Reports on Trams were particularly political with the Leader and the Liberal Democrat Members supporting the project as Council policy with other Council Groups and Members and with the Depute Leader and SNP Members opposing the project, there were likely Formal Motions to Council supporting the steps to securing consent to Tie to award the contracts and Formal Amendments to Council opposing the steps to securing consent. There was a unique corporate governance position for the Council here with the Leader and Depute Leader and their parties joining together to form a coalition during the period of the Council whilst accepting that both Groups held different and opposing views on trams for Edinburgh.

10.1 REPORT TO COUNCIL 1 MAY 2008 and POLICY AND STRATEGY COMMITTEE 13 MAY 2008

Qns 44-66 cover this period. The author AC copied the draft Report to me for any comment. Comments would have also and already been input by CMcK and NS as part of their role in the project. The content and purpose of this Report arose from the Decision of Council of 20 December 2007 and delegation to the Chief Executive at that date. The intention was to Report to Elected Members on that date with the settled position of consent to Tie to award the contracts having been reached. Considerable discussion and email traffic took place to consider whether this Report was providing information to Members in relation to the stage reached or whether there had been sufficient change to the position agreed between Tie and BBS from the 20 December Decision to require any additional approval to the Chief Executives delegated authority. I sought to obtain a view from internal CEC officers on whether and to what extent there were any deviations from the contract price and the position reported in the Final Business Case approved on 20 December. My emails to CMcK seeking this information record these steps together with my emails to Finance (18 April; GL/2008/10), Mr Inch and the discussion at and decision at IPG on 16 April (GL/2008/15) refer. The IPG would have been the forum for discussion on 16 April as all relevant officers would be available. The agreed position was that the Chief Executive's delegated authority did need to be refreshed at that point and the earlier delegation of 20 December could not be relied on. In this way the Report on 1 May became part of the Council approval process which Tie were seeking to avoid as this was seen as raising another corporate governance and approval issue requiring explanation and certified copy Minutes and further checking and consideration by the foreign lawyers acting for each part of the Consortium. In legal services, CMcK strongly considered that this Report was required as part of an approval position (his email providing this view to Finance dated 14 April 2008 copied to me refers). I agreed with that positioning, confirming matters to Tie and putting in place an arrangement for Certified copy Minutes by the Council Secretary.

The Action Note from IPG of 17 April (GL/2008/27) noted the IPG had analysed the Risk Register in the Highlight Report and agreed the appropriate treatment of risks. Key issues were the need for the Council Report to refresh the current delegated powers and provided instructions on the content of the Report to be drafted by AC, Finance and CMcK, providing review, updating on major issues which have changed and seeking refreshed delegated powers to the Chief Executive in light of the changes. The Highlight Report of 16 April (GL/2008/15) is referred to for its terms on relevant matters at that time. My additional contribution to the Report is as detailed in my emails to the author AC re delegated authority and requesting the SDS design risk to be specifically referred to together with the granting of the Guarantee (GL/2008/11). The design version and related issues were a tie responsibility and in so far as the Council were considering this in term of the Critical Contractual Decisions, the issue and named risk/progress owner was City Development as it was a technical matter linked with a Financial matter. My understanding re the design version used to fix a price was that the position was known to and agreed with the Directors of City Development and Finance. My understanding was that planning prior approvals had been and continued to be a risk. The management and mitigation and risk allowances are as detailed in commentary at both Technical Approvals and Design. Legal services were not responsible for risk management or communications. I understood there was transfer of risk from all the extensive papers and files on a wide range of matters leading to 1May. It was known that the risk profile for design delay costs and SDS had changed such that SDS were accepting less risk. In terms of audit, though not the responsibility of legal services, I was aware from the founding documents, Business Case, consultants reports and the like that there had been considerable external scrutiny. Tie and TEL had external experts on their Boards and external Chief Executives, both the Council and Scottish Government had worked with Audit Scotland, the entire Business case was assessed in accordance with the Scottish Government STAG appraisal system, Gateway reviews and Office of Government Commerce Peer reviews had taken place and a wide range of specialists and experts were supporting the project.

I am asked regarding a number of issues in respect of the legal advice letter from DLA Piper of 28 April 2008. The risks re design and prior approvals was as set out in the letter and close reports and as narrated at Design in this Statement. The liability caps were a ceiling of liability for delay at 1m together with a cap/ceiling of 10m in respect of liability for design liability as opposed to design delay costs. The individual and general related risk allowance is as detailed in the relevant Design sections. When the matter of a change in positioning of BBS arose in February and this was being dealt with at that point, the liability cap was suggested as only 0.5 m but under discussion (GL/2008/39). The text here is factual from a legal perspective and legal had no role or responsibility in negotiating or taking any decisions in these matters. Similarly with the risk and related financial issue identified at point 5 of this letter. Tie had and confirmed again that the risk allowances and QRA were adequate.

I am asked of my knowledge if my advice was sought or given in respect of the information from Tie that BB advised Tie of an increase in price just prior to the Council meeting, following circulation of the report. I would confirm to the best of my knowledge and recollection that no advice was sought or given by me. This new information which had not yet been evaluated or considered by Tie would be for the relevant Directors and Chief

Executive to consider in liaison with the Council Leader and other Members. At the time of the meeting on 1 May, no increase to price had been agreed by Tie. I am asked why the Report was not delayed or withdrawn. As advised I was not part of this executive governance process but the likely reason was to proceed with business on the terms negotiated by Tie until Tie advised otherwise. Tie would have likely wished to be able to negotiate strongly with BB for a close with authority being secured. The Director of Finance and Chief Executive will have more accurate information (GL/2008/54). I am asked of my information re provisional sums. Again, I had no role or responsibility in respect of the project finance. I was aware of a number of provisional sums, including for Picardy Place and design issues. I am asked regarding the overlapping issue of design and construction. At OBC the expectation was that risk premiums would not be included but that design would be advanced and some approvals completed before novation of the contract to BBS. A plan is attached from the original panning showing the overlap of Infraco with both Mudfa and Infraco (GL/2007/30). In terms of risk management to assess, quantify and contract management, the section on design clearly identifies the risk management measures in place, the Tie Board details the efforts to manage and mitigate this risk.

I am asked why the Council then reported the matter to the Policy and Strategy Committee on 13 May and not eg any special meeting of Council. Again I was not part of this corporate governance process. It is likely that senior officers wished to select the next available suitable Committee for Executive/Strategic business and the pre-agenda meeting for this was the following day, 2 May. There was clearly considerable pressure from Tie, BB and the Scottish Government to secure a financial close. From other correspondence, my understanding is that the Policy and Strategy Committee was selected following consideration between the Chief Executive and Mr Inch The Director of Corporate Services and Council Monitoring Officer, involving Mr Sturt, the Council Secretary. My email of 7 May at 1900 (GL/2008/33) states "Appropriate forum re Committee choice was discussed today with Council Secretary and Jim Inch. This will likely lead to a discussion with Tom" (Aitchison). No legal advice was taken as the matter was one for the Council Secretary.

I have attached a note I was copied into being a note from Stan Cunningham, Committee Services Manager to the Leader of the Council providing information and advising on procedural Standing Orders for the meeting on 13 May (GL/2008/28a and GL/2008/28b). Mr Cunningham had earlier been concerned on the timetable as you noted and was later personally involved in securing this.

I am asked regarding an email from GB of 17 April on close programmes and approvals which states:

"Gill, this follows up our useful meeting earlier today. The Schedule below is built around the need for a positive response to the Tram Project Board at the full Council meeting on 1 May". I am asked if I am aware of the two important areas within the Infraco schedule where Tie were dependant on BBS/SDS producing necessary information. "Willie has convened a session with BBS et all tonight to close these down". The best person to provide evidence on this matter is GB or WG of Tie. The process of novation of SDS to BBS had been continuing for many months. I am not aware of the 2 particular areas which were referred to in this email by GB. The issue for me would be to ensure they were settled and properly

reported in the DLA legal advice letters. Again, I would stress that these were technical/commercial risks not managed by Legal staff and managed by Tie and the relevant technical staff at CEC. On receiving this email on the close programme and approvals on 17 April 2008 at 14.13, I duly copied it to all relevant staff and service Directors, being Rebecca Andrew, AC, Donald McGougan (the Director of Finance) Duncan Fraser and Dave Anderson, the Director of city Development (GL/2008/32). At 15.15 (GL/2008/31) I copied to the internal legal team of CMcK and Nick at 15.15 for information following our discussion that day and I copied this to my own Director Mr Inch for information at 15.17 (GL/2008/32). Relevant emails are referred to.

There was heightened activity each day towards 1 May and then each day towards 13 May. Council records will provide evidence of all activity. I received a draft report to Policy and Strategy of 13 May from Rebecca Andrews, Finance on 7 May at 17.14 (GL/2008/33) advising:

"This is a very early version and Duncan (Fraser) and I will be working on it tomorrow morning, but early comments on tone and content would be very helpful".

My response of 7 May at 1900 (GL/2008/33) stated:

"Thank you. Agree tone and content. Agree with Graeme that if there is a "value" we should be stating it and also the impact on risk contingency. My judgement is we also state it is regrettable, has been negotiated robustly and other alternatives considered and discounted. My advice is that circulation awaits receipt of DLA view on robustness on procurement, which is an essential in legal chain."

Rebecca Andrew confirmed by email of 8 May (GL/2008/33):

..."Donald (McGougan) Leanne and I met this afternoon regarding the comms programme. There will be briefings for key elected members on Mondays from Donald (McGougan) and Tom (Aitchison) and the evening news will be briefed on Monday afternoon.

At the moment the plan is to issue the Report to Councillors and on line on Tuesday morning. Can you liaise with John Sturt (Council Secretary) to ensure that his staff do not release papers any sooner than planned". I duly passed this information to John Sturt.

At 15.57 also on 8 May, GB circulated widely within Tie and CEC a "Final Terms and Event History" (CEC01294646).

At 11.52 on 9 May (GL/2008/38) I emailed the Directors of Finance and City Development, both of whom had received the Final Terms and Event History above.

This stated "I have considered Graeme's paper and would advise as follows:

Essentially the matter is financial and relates to securing value. I have concentrated on the particular legal issue of considering the robustness we would have to a procurement challenge and some view in general of legal tests of value....From my perspective the document is realistic and quite thorough though I believe it lacks some robustness in

identifying the price impact and increases re Infraco from bidder selection and some robustness in valuing the adjustments to be made.....The reason I had focussed on price differential was because I believe that some of the other differentiating factors are becoming tenuous due to the extent of negotiation and difference in the contract terms and the original shift in price to date.....In terms of securing and evidencing value in relation to defending a procurement challenge, for me, this is clear where there is a consequent reduction in the QRA value. It is less clear to me where we will not be receiving any real benefit or additional service. For example with the incentivisation payments, these seem only to be paid in exchange for contract works where there is already payment and there will be penalty or default clauses ie they do not yet secure a "gain" over and above what would have been achieved at £508m other than an argument that there is an additional likelihood of contract requirements being secured" My advice re procurement challenge is that we finally consider when the full details are known ie where in the £3-6 m the additional sum will be, in addition to the deferred penalty re Phase 1 b and when DLA provide their advice. I am liaising with Andrew on this now".

This email is listed for reference (GL/2008/38).

At 18.06 on 9 May (GL/2008/37), I updated my Director Mr Inch on a further update from Tie. I was intent on pressing the legal issue of defending a procurement challenge and any risk in this regard. This states:

"I have had a very brief update from Graeme Bissett and he will mail update report later this weekend.

Essentially I understand view now is deferred 3.2m re 1 b as expected , 3m and 1.8m set off pound for pound in QRA ie we can show real value and Tie will not receive the potential pot of 1m re provisional sum set aside for claims for indirect consequential loss re third party claims. I can take a further view on procurement when I have the details but this looks more positive than earlier today.

View earlier today from Tie is that it would be unfair to press DLA to take a view though we have had a view previously and supporting the additions to £508m. This was signalling to me that DLA may not be inclined to commit to a view. This is not appropriate as it is still a legal issue and we need legal clearance. (The last TPB papers show a sum of 6.8m for legal support spent on the project). I discussed at length with Graeme issues and suggestions re securing value and correlation to QRA. I will liaise with Andrew over the weekend and I would expect to have something by Monday.

Relevant emails are attached with the email chain detailing Tie's actions to the increase in price.

My emails to WG of 6 May and AF continued to press the procurement issue essentially asking DLA "Do you remain satisfied on defending a procurement challenge and on what basis" (GL/2008/17).

At 18.36 on 9 May (GL/2008/36) I further updated Donald McGougan and Dave Anderson with the updated information. Relevant emails are listed.

Qn 57, On Monday 12 May I received a draft Report to IPG of 14 May from Alan Conway, Tram Co-ordinator , City Development. This requested a position statement on the DLA letters and close report for the IPG report by the end on Monday 12. Earlier relevant email from City Development 2 May. My response at 17.10 (GL/2008/34) stated:

"The DLA letters should simply be referred to for their terms and re circulated. They detail legally a range of commercial risks/caveats. This will now be amended/supplemented due to recent changing position due to additional price, recent issues re CAF novation, recent issues re security package not being available at close and to be part of suspensive conditions and an updated opinion on procurement. I advised Tom [Aitchison] and Donald [McGougan] of recent issues at a brief meeting today (Monday 12 May)"

Technical matters of CAF novation and others continued constantly between 12 and 14 May 2008.

GB circulated a further paper Final Deal Terms on Monday 12 May (01.27) within Tie, TEL and CEC reflecting the commercial negotiations on Friday, being the updated Final deal paper with track changes with the headline going to 512m from 508m. This concludes "this means the supply chain pressure claimed by BB which gave rise to the late negotiation has been met by milestone related incent bonus and in return we have bought out risk" (GL/2008/18a and GL/2008/18b.

The Director of City Development responded on 12 May at 9.00 "Many thanks....Given the circumstances in which we found ourselves last week this is a very good outcome". Relevant emails are listed (GL/2008/49).

At 19.49 on 12 May (GL/2008/47) WG updated the Chairman of Tie, CEC officers and Mr Aitchison , the Chief Executive, directly advising:

Contract Update

"We have made good progress today on closing out the Tram Contracts. On the positive side we have CAF, BB and Siemens planning to sign tomorrow afternoon at the DLA offices. Officers of the Companies are now travelling to Edinburgh from England, Germany and Spain. We still have live negotiations underway with SDS, but we think we can see a way forward which is reasonable to both parties. Tonight Graeme will issue all the formal Tie documentation to CEC and Tram Project Board. Andrew will also issue the updated DLA letter. We are then reliant on a successful outcome of the Council Strategy and Policy meeting tomorrow and the immediate document transfer....."

There was parallel documentation that evening on signing authorities. I confirmed to AF and others at Tie on 12 May, 19.30 (GL/2008/43):

"...Both Tie and TEL Operating agreements have now been signed by me to be held as strictly undelivered by DLA for CEC pending Tie's receipt of authorisation to sign the contracts following Policy and Strategy Committee.

Willie, all the documents/certification is now complete (rest is unsigned pending approval tomorrow) and I am leaving here copies for Susan to collect to have access this evening and to immediately advise if any issues/adjustments reqd.

I will be available at any time by mail or mobile. At our end we will consider the CAF letters shortly and the final DLA letter as soon as recd."

I received an email from AF at 23.47 also on 12 May regarding CP's (contractual protections).

I replied to AF at 13 May 00.00 (GL/2008/40) as follows:

"Following our call today I advised Donald that it is proposed that the agreed contractual, protections will not be provided at close as expected but would be subject to suspensive conditions. I agree with Donald that this is not desirable and if this is a final current position then BBS should be warranting that they will provide within less timescales. They were part of the evaluation, business case and Council decision. There is concern here that the position is weakened and there will be little effective remedy. There is also a lack of clarity on why this position exist. Can you confirm please and insert your advice in DLA letter for completeness pl. If this is due to changes re CAF can position pre CAF be obtained for close"

Relevant emails are listed (GL/2008/40).

At 11.43 on 12 May AF emailed re CAF joining the consortium, attaching a detailed draft Report (GL/2008/45).

I responded at 00.16 on 13 May (GL/2008/45) advising:

"...I will liaise with Donald (McGougan) and Dave (Anderson) and subject to this and from a legal perspective I agree and accept the analysis subject to the protections detailed in your report. Re formal letter can this be expressed in principle or is there a M of V (Minute of Variation) which is referred to for our consideration yet or how can we incorporate conditions in your paper"

Relevant emails are listed (GL/2008/21, GL/2008/42a, GL/2008/45, GL/2008/48 and GL/2008/50).

Instructions re matters of CAF joining the Consortium were taken by me by email of 00.20 on 13 May. Relevant email is listed (GL/2008/48).

AF emailed the updated DLA legal advice letter on 13 May at 03.11 which was considered by me in full, included the matters of robustness on procurement, CAF joining the consortium and some matters re the performance security package where I required and sought clarification.

Following consideration and approval at the Policy and Strategy meeting on 13 May for the Chief executive to permit Tie to award the contract, as settlement was sought by Tie, I was advised in writing by AF at 22.34 on 13 May after a call that a further formal letter in terms of The Contracts Act was now required by BBS. I responded to AF at 22.45 having considered, taken brief instructions from Mr Inch by phone and signed and provided the relevant letter required (GL/2008/26).

My email of 13 May 22.35 is listed.

At 22.45 I updated the Director of Finance and City development by email (listed) GL/2008/22.

At 22.55 I updated the Director of Corporate Services and Chief Executive by email (listed) GL/2008/25.

At 23.59 I updated the 3 relevant Directors and The Chief Executive that following receipt of an email from WG, close would not proceed further that night, there being no major issues other than the volume of documentation (email listed) GL/2008/23.

At 00.27 14 May WG updated all senior contacts that settlement would commence again from 8 am to close all contracts by 12 noon. (email listed) GL/2008/20.

I am asked of my response to an email from a member of the in-house team CMcK of Friday 2 May 2008 at 15.13. This was a form of commentary on a range of technical and risk matters without named risk owners and was unexpected as all efforts had been on closing matters for the Council report of 1 May following a very significant process and time from December 2007 and the List of Critical Contractual Decisions which were taken by the various internal CEC staff as requiring to be considered towards close together with the meetings, reports and Action Notes from the LAG and the IPG.

My response was at 2 May 2008 16.41 (GL/2008/54) which stated:

"I have considered briefly. My questions are is Tie aware of issues and have resolutions been agreed. Time is of the essence. There are significant issues at present and Tie have briefed Directors and Tom this morning. However Tie wish to be in a position to close with immediate effect if and when resolution is agreed. Any outstanding matters must be resolved with Tie very quickly."

My response to the other member of the in-house legal team NS, copied to the appropriate contacts in Finance and City Development for visibility and resolution was also on Friday 2 May 2008 at 16.46 (GL/2008/53) which expressed my concern that my response had received an out of office leave message, which states:

"Nick, I have received an out of office agent now from Colin. It is essential that matters are progressed with appropriate communication if they are significant issues." CEC01247791

My further response to the internal legal team member NS on Thursday 8 May 2008 at 09.03 (GL/2008/57) in response to The Policy and Strategy Committee Report and the Tie and TEL Agreements provided support with those but states:

"Bigger issue for me is to resolve the outstanding issues Colin advised existed end last week. It is imperative that this is not a current issue for the beginning of next week.

Principal issue at present re OA's is that Tie and TEL and TPB want the Tie Agreement signed now. They advise current position is not supporting negotiations with BBS in current climate. As the wording in Agreement expressly permits and requires Tie to conclude the contracts my view is that we accommodated the changes and included as part of contract suite at Council last week. All would have been signed as a package. To move forward I suggested I inserted a rider in Agreement advising that contracts were suspensive on receipt of written approval to lodge from Tom Aitchison. This is accurate, correct and is the position known to BBS. Graeme advises Tie wish this in a separate letter.

My view is that this would be disingenuous and am not inclined to accommodate ie signature by Council Solicitor now is difficult to rationalise as we recvd agreement to new terms last Thursday but these are not now the terms we will settle on and further agreement at Member level is almost certain.

What is your view and can we support this"

The email response I received at 09.21 on 8 May 2008 (GL/2008/56) agrees the position re the Tie Agreement and advises me that he has chased Duncan (City Development) and Rebecca (Finance) this morning re Tie closing out these issues. NS is likely to have considered these as technical and finance issues and not legal issues. CMcK of the internal legal team appears to have sent this immediately before his departure on annual leave.

I provided immediate responses of expected action, immediate forwarding and copying for progress and resolution and took the opportunity to again raise stressing the importance of resolving. The respective client departments of Finance and City Development would have additional information. Relevant emails referred to are listed (GL/2008/53, GL/2008/54 and GL/2008/57).

I am asked if a planned contract signature arranged by Tie at 2pm on 13 May provided Members with enough time to consider the item. It was for Tie to make the arrangements they considered appropriate appreciating signatories may be coming from Europe. The Policy and Strategy is a formal meeting of the Council. If Members had not provided approval and refreshed the delegated authority of the Chief Executive, matters would not have proceeded and were contingent on this. As this is a formal meeting matters are considered according to a formal Agenda, discussion then decisions taken, voting as required. There were a number of matters of particular interest at that particular meeting in addition to the Tram Report. I had put arrangements in place with the Council Secretary to receive a certified copy minute as soon as a Decision had been taken.

I am asked if CEC officials had sufficient time to consider matters on receipt of GB's correspondence before reporting. The relevant Directors will best be able to advise of their own arrangements. Personally, in respect of legal aspects, CAF joining the consortium, sign off on procurement challenge, updated legal letters DLA, I had been in constant fairly 24 hour correspondence with Tie and DLA. I had been updated by phone on the deal and terms and reviewed all items immediately on receipt irrespective of when it was received. I updated the Directors at 18.36 on 09/05 (GL/2008/36) re the deal terms advised to me by Tie. Various earlier papers were received and considered. These were also expected. The final deal terms were known by phone, the paper on procurement challenged had been constantly developing, I was expecting the further DLA legal advice note to consider immediately on its receipt and the approval letters had been pre-cleared. The Report to Members on 13 May contained the information in the Report drafted confirming the finance changes and the SDS risk. Again, the content of Reports is not a matter for legal services but it is likely that Tie would not have wished to release further details during the contract award/financial close period. My understanding is that was BB's negotiating position ie an opening up of the contract terms if matters were not successfully commercially negotiated to close.

I am asked regarding my email to the Directors of 13 May 07.49 providing commentary on the updated DLA letter received at 03.05 (CEC01222437 and CEC01222438). This letter had been carefully checked and considered by me and the particular new matters in the DLA letter are properly detailed to the Directors for their assistance. I consider my note on the DLA letter to be accurate and helpful for the Director's to have with sufficient time for them to consider before the business later in the morning. The Directors can best detail their own circumstances. Personally, I was very highly committed and expected in my role to work on a 24/7 basis when required. The Report CEC 01222438 was drafted by me as far as I am aware. The purpose of the short sign off was not to brief the Chief Executive on the project or the risks. The Chief Executive, his Director of Corporate Services and Directors of Finance and City Development were very engaged with the project. The Chief executive personally chaired the IPG. I understand he was also the sole shareholder of Tie and TEL. As such he was fully conversant with the project in so far as this was a Tie /TPB procurement activity. At Award Notice stage, three meetings were held with the Chief Executive as the position changed and developed. All briefings with the Chief Executive required to be strategic at the Chief Executive level but chairing the IPG gave the Chief Executive contact with Council staff and all Council issues in addition to his interface with Tie and TEL at a strategic level. If the Chief Executive wished a further or more specific briefing on any subject that would be requested and delivered. The various iterations of the Business Case TIE/TPB papers and a very wide range of Council Reports, some in the name of the Chief Executive, detailed the project well. The Chief Executive met with senior Tie and TEL staff as required. The Chief Executive himself and the relevant Directors would be better able to advise how they updated the Chief Executive. My emails above record a meeting with the Chief Executive on 12 May.

My contribution to the reports of 1 May and 13 May is above. They were considered by the full-time internal legal team. In addition I advised that the SDS risk be included as detailed at Design above. It is a matter for the contact officers/authors of Reports to consider the level of detail. The two authors for this Report could advise. All contributions from legal Division

to the corporate governance of the project sought to ensure risks were included in the relevant Reports. Members had many detailed Reports through 2006 and 2007 in relation to the Business Case, a wide range of Elected Member briefings in person and in print. In addition the Tram Monitoring Officer had a particular role in respect of liaison with Members, there was a regular Leaders meetings and many Members will have been in Tie or TEL. Legal services had no role or responsibility in relation to briefing Members in this project. The relevant staff from the Department of City Development and Finance can best answer your question re Appendix H. They will have been the relevant risk owner for any commercial issue in so far as these matters were not matters for Tie. It may be that the full-time operational staff within legal may be able to assist. I have detailed at Design the relevant matrix showing the authors at Tie and how this was subject to a QC programme

I received an email from my PA on 9 May 2008 at 10.05 (GL/2008/58) advising effectively that neither member of the in-house legal team would be available on Fri afternoon 9 May nor Monday 12 May before the Policy and Strategy Committee of 13/05 and asking if we needed to have NS available on 12 May. I advised that it was likely that NS would be required, particularly as CMcK was on leave and that things will move quickly between Fri am and Tuesday, particularly if NS is not available Friday afternoon and asking if this could be explained to NS to see if he could switch his compressed working week day to a day after Tuesday in the exceptional circumstances. Relevant emails attached. My views re design and QRA, whilst having no role or responsibility, are detailed in the section entitled Design.

10.2 PERIOD FROM 20 DECEMBER 2007 TO 1 MAY 2008

In Qns 30-40. I am asked if a Report was presented to Council Members on the project in March 2008. The records show that the intention initially was that this meeting could be used by the Directors of Finance and City Development to report on financial close of the project (when close was delayed from January) but matters were not sufficiently advanced for Tie to achieve close with their own negotiations, with BBS and in closing out the deliverables to achieve financial close required before the Chief Executive could provide his delegated authority. The LAC minute of 18 February notes that the Council meeting is 13 March and the deadline for reporting would be 6 March. Timetable pressures remained including the requirement to have achieved milestones in terms of the Council's grant letter by 31 March 2008. Your CEC01402692 records my email to Mr Inch and Mr Aitchison when Tie advised that BBS were advising that they required additional time for their own due diligence focussed on Employers requirements and the novation issue from SDS to BBS. Your CEC01406011 contains my email to Mr Inch of 11 and 12 February 2008 advising of the Chief Executive of Tie's call to me advising of the additional contract sum now required by BBS, the change in risk profile re SDS and that the period to financial close was extended to 10/11 March. Your ref CEC01546728 details a meeting towards close on 28 February.

My email of 6 March 2008 at 19.59 (CEC01407509) is referred to for its terms confirming meeting that evening advising update from Tie advising negotiations have gone well, SDS negotiation agreed in principle, that the figure of £498m will now increase to £507m, base cost increased and risk sums allocated decreased, that the risk contingency was now £31m

of which 3m is defined as SDS risk and a further 10m for risk in general. Contract close during March was considered by Tie as essential at that time in terms of funding. In terms of governance my email states:

"I would like time to consider more clearly the variation in price both in terms of increase in base cost and reduction in risk and the assurance sought re quantification of SDS delay ...I will also review the Final Business Case to consider and satisfy myself on the movements and the wording in the FBC and in the Report to Council more clearly on the question of delegated authority..."

My email of 9 May 2008 at 21.48 requested the close report and updated DLA letter in the terms detailed (CEC01541231).

9 May 2008 should be 9 March 2008

My email to Mr Inch of 11 March (19.07), your CEC01407769, Tram Briefing, provides an update by AC on all current issues. This is referred to in its terms.

Your CEC01474538 provides a document by Tie Limited Alignment of QRA and Risk Allowance to DLA Letter and Risk Matrices referred to in its terms. Tie confirm the Risk Allowance is sufficient having regard to DLA letter and Risk Matrices.

At Qn 53, I am asked of my comments on an internal email from the internal legal team on 30 April 2008 to colleagues. The email was not copied to me or the relevant Directors. It appears to me to be a positioning email sent for that purpose prior to a formal stage of the project. The full-time legal team were well able to raise all and any matters to seek resolutions to any issues. This was one of the purposes of the LAG. The letters of March had been in place for some time and there was every opportunity to liaise with DLA /Tie on them. Legal letters provided to support a technical project are of necessity caveated as the legal agent is taking instructions on and not determining the commercial position. I consider that the DLA letters are comprehensive and confirm a legal view for comment or noting. I have some concern that a view is expressed that risks may not be fully covered by the QRA. I would have expected that issue to have been considered in conjunction with Finance and, if Finance agreed, for them to have sought any information required from Tie to close this issue. Tie are advising that the QRA is sufficient. Risk meetings and workshops have been held with appropriate comment and Finance had been in correspondence following this to seek clarity on some points of detail but not a concern that matters were not included in the price or QRA. In any event the consent for Tie to award the contracts was not provided until 13 May and there was adequate time to raise any such concerns with Tie for information and resolution or escalate to the appropriate service Director.

The project moved at a fast pace and staff require to work closely together and with Tie the Council's delivery agent, to secure delivery. This was our officer instruction and political mandate. The Council had an opportunity after some 10 years of planning to support Tie in letting the contract. As an example, I have noted that when each of these emails were received by me I was at the Full Council on 13 March as required of me. That was known to all legal staff. As Tie were preparing to lodge their Notice of Intention to Award Notice ("Award Notice"), DLA sent an updated legal advice note to the Council on 13 March 00.36, advising they were available after 7.30 (GL/2008/66). Following a day and evening at Full

Council I reverted to GB at 21.32 on progress and an 8 am meeting arranged for 14 March (GL/2008/63). Additional information was received from Tie at 22.27 in advance of the meeting on 14 March. I emailed the Directors of Finance and City Development at 22.35 (GL/2008/65) advising of progress before the morning meeting, your ref CEC 01474537. I had already received an email directly from DLA at 13 March (00.36). Matters were very fast moving and I was aware that DLA advice would be provided to CEC and Tie. All have appropriate DLA referencing numbers and initials. I understood that DLA may have made some adjustments since their advice note of 00.36 to reflect improvements and that GB was providing it with other information at 22.27 on the same day to assist. I understood that a letter by DLA would be drafted by them. I appreciated that DLA may be engaged on time sensitive matters in the interests of Tie and the Council and did not consider that this being sent from GB had any significance in relation to it being drafted and provided and later signed. The note attached explaining the linkage from DLA letter to the risk contingency was very helpful. GL/2008/16, GL/2008/62, GL/2008/63, GL/2008/64, GL/2008/65, GL/2008/66, GL/2008/67a, GL/2008/67b, GL/2008/89, GL/2008/90 and GL/2008/91.

CEC01474537 - Graeme Bissett to Gill Lindsay dated 13 March

During the course of Friday 14, BBS adopted a changed position on indemnity which I advised the Directors of the Council would be unlikely to support and, following contact with them, I advised Tie that the Directors would not consent to Tie awarding the contract on the adjusted indemnity provision. That required particular consideration of complex legal matters on the evening of 14 May and the weekend of 15/16 May with Tie and the relevant Directors to seek to secure a more acceptable position and for me to liaise immediately with the Director of Finance's Insurance team and external Insurance agents. DLA prepared position papers of the positions before and following 14 March. The Chief Executive of Tie confirmed to BBS on 15 March (12.10) that a position of no indemnification was unacceptable to the Council and the pressure to close to draw down the 20m funding from Transport Scotland confirming a hard deadline of placing the Award Notice by 18 March to allow the required 10 day cooling off period before 31 March. I received an email on 17/03/08 at 20.24 with a request to plan the Award Notice on 18 March subject to a range of interface with external insurance agents. I sought clarification of the then agreed position at 22.52 (GL/2008/79). Intense activity surrounded the changed position on indemnity. Following Mr Gallagher's email to BB of 18 March 9.59 matters were accepted by BB. GL/2008/69, GL/2008/70a, GL/2008/70b, GL/2008/70c, GL/2008/70d, GL/2008/71a, GL/2008/71b, GL/2008/72, GL/2008/73, GL/2008/74, GL/2008/75, GL/2008/76, GL/2008/78, GL/2008/79, GL/2008/80, GL/2008/81, GL/2008/82, GL/2008/83, GL/2008/84 and GL/2008/87.

I am asked who drafted the document CEC01386276. To the best of my knowledge this was a fully CEC internal document. An initial draft may have been drafted by CMcK, revised by me and then provided to the signatories as a draft for review or comment. I have no paperwork or recall to suggest it was even seen by either Tie or DLA far less drafted by them. It was a very internal sign off for internal parties. I am not clear on the purpose of the question or its implication. The document is referred to in its terms.

I was present at Tie offices with the Directors of Finance and City Development on Friday 14 March pm. The position is detailed above and in relevant emails referred to. Yes, I was sufficiently concerned that despite the pressure on Tie and the Project to agree to Notice of

Intention to Award, I called the Directors who had now left Tie's offices to detail the position and my concerns and The Directors were in full agreement that notwithstanding the pressure to proceed they agreed with me that matters could not proceed on the new suggested basis.

My email to Mr Inch of 17 March (15.10) GL/2008/75 updates the position from our discussion on Friday 13 March and states:

"I am pleased to update on this project following our discussion on 13 March, as follows:

Following a detailed meeting with all relevant officers on Friday am, all issues which were know by CEC then were closed and completed by Friday 3pm, in preparation for signing by CEC officers recommending Tom exercise his authority to permit Tie to lodge the Intention to Award Notice around 4.15 Friday, as agreed. Donald and I met with Tom around 1pm Friday to update.

Around 3.30pm Tie advised that there was a shift in BBS position around liability and indemnity and that they were/had negotiated an alternative position. This was advised to me at a meeting but it was clear that there was not an agreed final worked through position on what were crucial provisions for the Council in such a high value contract. There was a lack of clarity of changed position in respect of breach of contract and loss which may or may not have been "foreseeable" arising from such a breach and the impact on the indemnity provisions. Despite discussing with all available Tie resources, it was also unclear what gaps would or would not be covered by the OCIP project insurance and what gaps may remain and the impact of the risk contingency and the Council guarantee. I liaised with both Donald and Andrew on the telephone and both were fully supportive of requiring to analyse this change before we could recommend the position to Tom, despite Tie's wish to complete by Friday pm for lodging of the Notice.
Essentially we (and the project) were presented with an unclear changed position on crucial provisions with no resources or time to analyse or consider the impact. Andrew and I then met with Tom as agreed though advised that we were unable to yet sign off despite all issues visible on Friday am being closed.

Both Tie, the various parts of the consortium and ourselves have continued consideration of these matters through the weekend and further clarity is emerging, though initially a more extreme position was then adopted by the Consortium, and there may be a different position presented today from the Consortium. Additional insurances may be negotiated. Crucially, we also require to consider when an accommodation can be reached, whether the risk of procurement challenge remains low, depending on the shift of position from bidding which may be reached. There is still extreme urgency to close as there requires to be a 10 day period between lodging and award, both before the 31 March.

WG has updated me again today and we are meeting at 5pm. Intensive consideration of matters has been undertaken in acute timescales to meet the needs of this project. I will ensure you are kept updated."

In terms of internal governance, a meeting was held on 13 March with the Chief Executive updating of the position on 13 March and a further meeting on 18 March when the issue of indemnity was resolved. The APA (Asset Protection Agreement) had been signed, an updated letter received from DLA providing additional comfort on procurement risk the

settled position on indemnity and the need for Tie to have 10 working days between Notice and 31 March and the financial and commercial risks if this was not done immediately.

My email to Mr Inch 19 March (12.16) GL/2008/85 updates again from 17 March advising:

> "Following our discussion yesterday morning and discussion with the insurance brokers an appropriate accommodation was reached with the Consortium. Essentially the extreme position adopted over the weekend re liability and associated indemnities and insurance has reverted to the position before Friday afternoon with 1 exception. Indemnity provisions remain with 1 exception that BBS will not be liable for uninsured consequential economic loss arising from third party claims. This will be contained by an assessment on remoteness and by increasing the insured limit on economic loss to £2m and by BBS setting aside a fund (as if self insured) of an additional £3m for uninsured consequential economic loss. Half of this will revert to the project if unused. This supports an appropriate position and an appropriate procurement positioning.
>
> Andrew, Donald and I have now signed this of for Tom who confirmed the Intention to Award may be released by Tie, following a discussion with the Leader and Councillor Buchanan. There is now the required 10 day period before 31 March Tie have also required written confirmation again that BBS are signed up to the deal as negotiated for completeness though recognising this is not yet formally binding on the parties at this stage. Tom will also be briefing other Group Leaders in relation to his delegated authority, current agreed scope of deal and reporting to Council on 1 May."

Councillor Wheeler, Transport Convenor, recorded his thanks on 19 March (GL/2008/86).

The document CEC01386276 narrates a meeting with the Chief Executive on 13 March, 17 March and 18 March and is referred to in its terms.

I am asked regarding your ref CEC01399118. This appears to be another positioning email. The matrices had been considered and meetings/workshops held and matters discussed for around 6-7 months by then. Ample opportunity existed for staff to engage as required. Projects require an element of proactive work and not merely reactive. The date of 18 March was the crucial date for completion. The version circulated is actually dated 14 December. The records show that CMcK declined to attend a relevant meeting arranged by Tie when he was unavailable and declined to have another member of staff attend, despite the project having a full-time member of staff since February 2007 working on this matter. These were some of the opportunities which existed to engage and strengthen matters working together. Essentially matters were in progress and in flight. Any issues could and should have been addressed at a suitable time and in a suitable way.

I am asked re CEC01390848 of whether this document was signed by the relevant officers. Yes, the Council's records shown the signed form. Again, it is very unfortunate that the Inquiry do not hold and could not provide me with relevant records. The position with design was the position detailed at length at Design being the position post 20 December following the change in February 2008. The position with Schedule 4 is as advised within the Finance Schedule 4 section. Tie requested that they be supported in issuing the Award Notice, which did not bind the parties to proceed, in the improved circumstances with SDS,

having the signed APA, the improved position on indemnities and a strengthened position by DLA on procurement challenge , having regard to the financial consequences if the cooling off period of 10 days could not be attained prior to 31 March. Considerable executive resources of the Chief Executive and relevant Directors had been utilised. The Council had received external legal advice from DLA and the Leader and Councillor Buchanan agreed in terms of remit.

I am asked of the meaning of part of DLA letter 18 March 2008 CEC01347796. My understanding was that the position was as advised and some commercial issues existed that should not preclude the immediate Notice of Award but a caveat is inserted regarding requiring and securing the full cooperation of BBS. The discussion of IPG on 19 March would likely be reflected in the Action Note. I am asked for clarity on the changes on the further DLA letter of 20 March. This appears to be the final legal advice note surrounding this issue which would reflect the most up to date positioning on all matters. I am asked re CEC 01491920. The position regarding design is as known post February 2008. Schedule 4 is as detailed in that Schedule. I had no role in respect of the operational financial documents. My awareness is as Council records of email information and DLA advice notes (GL/2008/88).

I am asked regarding my comments on CEC01542354. My comments simply reflected the text issued to the Council as it took its decision on readiness of Award of Notice and to delete a potential qualification not previously present, for DLA consideration.

10.3 REPORT TO COUNCIL 20 DECEMBER 2007

Council records record all activity by Tie and the Council working towards Tie requiring a financial close in December due to the requirement of the Funding from the Scottish Government and to secure the project timetable. Relevant records include all Tie/TPB Reports and Minutes, LAG records and IPG records including highlight reports and Action Notes. The relevant IPG reports detail the process towards financial close and the IPG Action notes detail the decisions made. All relevant Council records are referred to for their terms (GL/2007/11). The LAG papers will show the process and progress to close, the issues to be considered and managed, including third party Agreements, the Asset Protection Agreement and all matters with Network rail, risk management, SDS novation, consents and approvals, QRA and other matters.

I am asked of my actions and response to a concern that Tie were not yet at a suitable position to seek consent from the Council to permit Tie to award the Infraco Contract and approve the Final Business Case, in particular due to a range of technical and commercial risk issues, Qns 21- 27. At this point the internal full-time legal team had been working with Tie since February 2007 and a more intensive engagement since August 2007 when the political position was adjusted such that the Scottish Government capped the contribution to the project at £500m with the Council responsible for any additional sums, when the procurement structure was at an advanced stage. I was on leave just prior to 11 December

and liaising with the office and project remotely, having briefed Mr Inch and liaised with all before my leave. My email to the internal legal team of 16.53 (GL/2007/33) refers:

"Thank you for the update. I have advised Andrew (Holmes) and Jim (Inch) personally of current issues to assist in managing leading up to Council Report. I will liaise with them again when we meet to discuss resources in Alan's team.

Suggest your team make early contact and constant contact with Sharon leading up to Report issue.....

My leave is next week mid Council. In my absence can you take the lead please. Robert will be acting for me in general matters. Can you ensure I am continued to be copied in to all relevant matters next week as I will be picking up mails and liaising with the office through the week. Don't hesitate to contact me if you require to ....."

My email to Mr Inch Director of 11 December (GL/2007/3) details my view being:

"Jim, I have considered all the material I have and my view is that we are close to the point of closing on the principal contracts but not there yet. I suggest we have the series of meetings you suggested starting relevant CEC officers who have the technical up to date info, then a meeting with Willie Gallacher and others from Tie and DLA leading to the planned IPG on Wednesday pm for Director's to take a view. This could be actioned for Wednesday depending on your view and on Donald and Andrew who will be presenting the Report. These discussions will allow us to clearly consider with the right people current risks and remit to Tie what is required to make this cycle. My advice is we need some additional information, advice and then decisions.

Essentially the land entry and consents from First Scotrail need more info, decision and action.

We need to be clear if the Mudfa risks and other consents, approval risks are all included in current financial contingency at current risk level.

The PI issue and DLA issue you raised need resolved now. ...

The SDS issues and impact need to be contained in current financial contingency at current risk level.

From a discussion with WG today the bidder negotiations seem to be strong and on track. We need to be up to speed with these and I will action immediately. Not aware of any showstoppers in these. WG is very focussed on ensuring costs are contained which we need.

The real issue here is whether or not the position and conditions are right to close with the bidder at this point. Costs of delay not yet known but it would be critical to ensure that BBS do not become concerned and Tie DLA would have more insight here.

WG advised that BBS are aware and will accept novated contract re SDS. There may however be a financial cost here which needs visibility to ensure it could be contained in current contingency.

My advice is for us to continue to do everything possible to ensure we can be on track for this cycle or to clearly know why if this is not the case and balance the impacts.

Can you let me know if you want me to put these meetings in place please."

This email is listed (GL/2007/3).

Following detailed meetings within CEC and between Tie and CEC the IPG decision was that the Report could only not proceed to recommend Council approval to confirm that Tie may award the Infraco contact if a better and later negotiating position could then be presented to Elected Members. The discussion at IPG was as per the Action Note. The Action note of the IPG of 11 December 2007 (GL/2007/37) refers and states that if a late Report is needed the Chief Executive would have to defend this to the political groups on the basis of delivering a better deal. In terms of the timetable to financial close, the position at that time was that financial close was required in January 2008 to meet project programme and budget. The decision was to consent to staged approval with delegated authority given to the Chief Executive providing the remaining issues were resolved to the satisfaction of the Chief Executive. The December Report was also to approve the Final Business Case version 2 prepared by Tie for the Edinburgh Tram Network. This was a joint report by The Director of City Development and the Director of Finance.

I am asked the process of preparation and revisal of this Report. This question should be addressed to the Report signatories and authors named as contact officers on the Report. The records show the Report drafting and revisal was led by Duncan Fraser of City Development. Finance and City Development will have the best evidence of the various iterations and contributions to the Report. For Legal Division, CMcK was asked to contribute to the revisals and provided his text to Duncan Fraser on 15/12/07 (18.42).

In particular CMcK states (GL/2007/6):

"Should the Report not say to seek staged approval. That after all is what is envisaged and may meet the point Gill made yesterday about not giving the impression that approval and commitment is one big bang"

Further revisals were required including:

"should there not be a position statement here on the extent to which design work is complete: it is after all still a Council risk"....

"A number of ongoing matters should be drawn to the attention of Council :these are set out below. Work will continue between now and financial close to ensure that TIE resolves or mitigates these outstanding areas of risk.....

Para 8.1 does not reflect the gravity of the situation with First Scotrail"

My email to CMcK and Duncan Fraser, also of 15 December at 21.31 (GL/2007/6), supports and requires each amendment. It states:

"Thank you Colin. I agree fully that these additions are accurate and required and reflect the discussions within the Council and with Tie this week. They properly describe the position whilst reassuring Members of the process to be followed. Duncan can you pl insert each suggestion and let us have this before we meet please. Colin from memory I think your handwritten note did include the resolution you refer to.

Duncan do you think we should explain to Members that financial close is planned in January and that is why we are proposing to seek the recommendation. Is this clear enough."

By way of explanation up to this point, the Department of City Development were taking the lead between themselves and Finance in respect of these joint Reports. The experience of the Legal Services Division was that where this was the case, the comments/revisals of the internal legal team may not always reach the final edit and may not be considered suitable to include in Reports. This is likely why I have immediately reinforced them for the avoidance of any doubt.

I am asked if there were earlier versions of the Report where risks were more specific. Again the relevant officers in Finance and City Development can best advise. My papers show very detailed paragraphs on both Project Risks and Operational Risks. This suggests that there was more detailed text expected from legal services Division on risks at this stage which appears compressed with a reference to the actual Business Case being approved which fully detailed these risks and appears to be where this text has been taken from, rather than state more fully the risks from the version of the Business Case. My email, provided by the Inquiry , refers.

My paper of 10 December (14.37) [GL/2007/4] states:

"Project Risks

Between now and financial close there is a risk that the preferred bidder may withdraw from negotiations for a number of reasons, including the potential refusal to accept a novated contract for SDS or Tramco. Tie are working to minimise this risk through negotiations with the preferred bidder through to financial close.

The most significant risks affecting the timeous completion of the project within budget are identified in the FBC as those arising from the advance utility diversion works (MUDFA); changes to project scope or specification and obtaining consents and approvals."

The paper is referred to for its terms.

Significant risk issues at this point related to Network rail processes to be completed which had consumed significant resources. Alistair Sim , Tie's Tram Interface Director's update to myself and CMcK and all relevant officers on 12 December re Process to complete Depot

change, Process to complete Station change and APA (Asset protection Agreement). Financial impacts discussed and current urgent meetings continue.

My response 12 December at 23.13 (GL/2007/9) states:

"Alistair you will know the conclusion of this mornings meeting which is to de risk the above and re depot and station change to advance now obtain progress before before Monday as discussed. We should also advance the longstop dates from mid February and March to financial close unless there is an over riding reason why not. Lets pick this up again in the morning"

AF response of 12/12 at 23.34 (GL/2007/9) notes:

"The truth here is that NR ..... and have cost the project a great deal of unnecessary money. There is a legal meeting (APA) tomorrow morning and I will give you an update on that ....Steven Bell is also briefed with how NR have been using up time on negotiations on the APA and will take this up with Ron Macauley tomorrow....."

Relevant emails are listed (GL/2007/9).

Further relevant matters of legal concern related to the proposed delegation to officers subject to the Chief Executives satisfaction. AF email to me of 12 December 23.52 state legal concern that this will be open to probing by BBS in an unhelpful way and seeking a clean delegation to Tie with the Tie Board determining now by extraordinary resolution that it must have the endorsement of the TEL Board and TPB before Tie may sign up. "The outside world is concerned Tie is moving ahead, fully authorised".

My response 13 December (9.26) GL/2007/13:

"Andrew I see the need to be able to fully satisfy BBS but this issue is that the Council are not yet at the stage of the preferred option. At present subject to having enough in place for Monday as we agreed yesterday there would be the specific delegations as we discussed here on Tuesday and at our meeting yesterday...."

AF response with further advice consistent with email of 12 December with detailed reasoning and requested solution.

My response to AF and all relevant contacts of 13 December at 13.04 (GL/2007/12) continuing this legal matter of Council resolutions stated:

"Thanks for the note Andrew. I appreciate this is the way which is considered best for certainty for BBS, This could be adopted if we were at a different stage when we were going to Council but we are not at that stage. In terms of audit and governance here the Council must retain a way of satisfying itself before acting. Ideally we would be at Council were everything closed and using Tie governance may have suited in that case. The only way the Council can take this decision is by Council decision or Council delegation. We will not be at the stage of decision in December, particularly as we try to close the risks as agreed. I still

consider specific delegation is competent and is in fact the way the Council can properly deal with audit issues

Do you have advice that this is precluded and on what basis.

Another thought is to consider the resolution in December Report as being a decision but a suspensive one which needs the officers to purify."

Relevant emails are referred to.

Additional relevant evidence is my emails to AC of Friday 14 December 11.32 and to Mr Inch of 14 December (11.39) GL/2007/8.

My email to AC states at 14 December (11.32) on receipt of a copy Report at 11.12:

"Thank you. Can you advise where the wording in 8.7 came from please. Colin can you please revise as necessary re delegation to appropriate officers for clarity and insert relevant paragraphs consistent with or containing terms of letter to come from DLA. Can this pl be circulated. Does the actual wording of guarantee not require to be inserted. Are copies of the Operating Agreements to be attached or are they also delegated. Are we advising that PI insurance cannot be obtained and how this is being dealt with. We should also explain that risks are changing but continue to be contained within risk allocations.

I think we need to be more explicit that further risk matters require to close prior to financial close hence reason for delegation to officers and they will do this provided it is reasonable. Colin can you please consider and revise as appropriate with Alan. Please also consider Andrew Fitchie correspondence of yesterday pl"

My email to Mr Inch 14 December (11.39) GL/2007/8 states:

"Jim re your mail of now, no I am not satisfied with 8.7. I am asking where this wording came from and intend to revise. Note to Colin and Alan copied for info. I will go through report after meeting 1.15. May be more appropriate from nominated officer to be Tom (Aitchison) rather than have 3 Directors named in a Report. This would be consistent with Toms view and is much cleaner to be with 1 officer, who will get all appropriate sign offs from all relevant parties internally . Do you agree."

On 15 December at 15.47 (your ref CEC01448714), I received the DLA draft advice letter from DLA (as Tie's/CEC advisers), with advice not to disclose as it would be helpful to BBS in terms of tactics to close.

Myself and others received the DLA external Legal advice letter on Monday 17/12 (9.20). My response at 9.41 (GL/2007/5) discussed some legal issues in terms of the technical issues on the formal resolutions and asking if the letter of comfort from Network Rail has yet been agreed, being a significant risk issue. AF response of 10.04 reinforces some issues on the technical legal issues of the resolutions. Relevant emails attached for reference. Your ref CEC01397921 contains further relevant emails re LAC paper on Chief Executive Approvals (GL/2007/35 and GL/2007/36).

The Full Minute of 20 December 2007 re Edinburgh Trams is showing the Motion Approved, Amendment rejected is listed for clarity of its terms (GL/2007/14).

Council approved the Final Business Case ver 2 and

"To authorise the Chief Executive to instruct Tie to enter into contracts with the Infraco bidder (BBS) and Tramco bidder (CAF) provided the remaining issues were resolved to the satisfaction of the Chief Executive as detailed in the joint report by the Directors of City Development and Finance

To delegate authority to the Chief Executive to exercise the role in terms above.....

To issue the Guarantee.... And to delegate authority to the Council Solicitor to conclude and execute this on behalf of the Council for the benefit of BBS.....

To approve.....

The draft Tie Operating Agreement as detailed in Appendix 2 ...and to delegate authority to the Council Solicitor to execute the Operating Agreement with Tie and TEL on behalf of the Council

The delegation of general authority to the Tram Project Board through TEL and Tie"

Additional formal resolutions relating to the Tram Acts were part of the Resolutions.

My email of 3 January 2008 to Mr Inch following the Council Decision of 20 December GL/2008/52a and GL/2008/52b provided a draft letter from the Chief Executive to the chairman of Tie . This email and draft letter from the Chief Executive is attached to place the Decision in context and the plan of work to commence. I am asked of my understanding of the reasons for the qualified approval and the actions then required, all of which are evidenced above and below. The draft from the Chief Executive stated:

"As you know, it was recognised by my Internal Planning Group that a straightforward decision could not yet be sought in the Council Report and rather than considering any delay in reporting to Council, I decided that a staged approval process be recommended to Council.

As the Council requires at financial close to execute the Guarantee, the Report identifies a number of issues upon which I require to be satisfied before exercising my delegated authority to authorise Tie to complete financial close.

I know that yourself and many other officers in Tie working with my officers are making good progress on a range of matters. As we know, one of the main concerns relates to actions which are in the control of third parties such as First Scotrail and Network Rail. These are significant issues which have to be satisfactorily dealt with.

It is encouraging to know that the Legal affairs Committee under your chairmanship considered a draft Report on "Deliverables for Contract Award and that this Report, when

concluded, should set the Agenda for Tie to deal with and close out the remaining risks so as to meet the terms of the authority delegated to me. ...."

This email and draft are attached for reference.

10.4 REPORT TO COUNCIL 30 APRIL 2009

The internal legal team had opportunities to consider and revise this Report to Council but were not the authors, signatories or presenters of this Report being The Director of City Development and Director of Finance. AC Principal Finance Manager in Finance appears to be the lead officer drafting and seeking contributions. AC provided a draft of this Report to the internal legal team, City Development and the Council's Tram Monitoring Officer on 08 April. The internal legal team passed a copy to me for my information. Relevant emails are 08 April (16.25) GL/2009/2.

NS of the internal legal team provided comments 8 April at 16.43 (GL2009/5a) copying me in for my information. AC responded to NS and others, copied to me at 17.25 (GL/2009/3).

Preceding this, I received an email of 7 April at 20.43 sent from Mr Poulton, City Development and the Council's Tram Monitoring Officer, addressed to myself, AC, Max Thomson and Andy Conway, City Development and the internal legal team, setting a meeting for 8 April to complete the 3 tasks the Chief Executive had set and to update all on the Council Reports to be presented on 30 April (GL/2009/4).

The purpose of the Report was to update Council on progress made on the Edinburgh Tram Network, address the funding position for Phase 1 a, the impact of Princes Street diversions, the issues surrounding the development of Phase 1 b and the appointment of the new Chief Executive of Tie Limited. In terms of cost update, the Report also noted and approved a £1.2m settlement under the utility and diversion contract to Carillion, contained within the previously agreed budget. The report advised on the work undertaken by Tie and the Council on strategic options and advised that the preferred option remains to work through contractual and commercial issues with the current consortium and confirms Transport Scotland is being kept informed of the position as it evolves. It further advised that Council officials and Tie were working closely together to continuously review the commercial position, the adequacy of risk allowances and any potential impact on cost and programme implications to the project.

I have detailed in Financial OSSA (On Street Supplemental Agreement) the issue of the OSSA which I had no knowledge of before it was entered into and had provided no advice.

A note summarising the position and progress from the internal meeting on 8 April was sent by Andy Conway, Tram Co-ordinator headed Action Note from Todays Commando Meeting and is referred to for its terms (GL/2009/6), being:

Council Report 30 April, AC leading, input from legal team required,

Strategic Options, AC has draft paper,

Current and future DRP's, internal legal team have this in draft

Technical Issues and Contractual Management, Max Thomson and Marshall Poulton, City Dev to prepare.

Marshall Poulton to speak to Tie to attend the Project Management Panel to obtain better visibility of ongoing issues, City Development to prepare single page report for Councillor's briefing. Alan Conway provided a draft Councillor Tram Briefing to Marshall Poulton, Tram Monitoring Officer on 9 April, copied to relevant contacts (GL/2009/7a and GL/2009/7b). This is described to Mr Poulton as being the draft Briefing note for the Group Leaders meeting on Tuesday 14 April and for this to be provided to Tom Aitchison in advance of this meeting. The email and briefing note are referred to for their terms. In particular I have noted the paragraphs re Design stating that Prior Approvals were 91% complete, Technical Approvals 84% complete. As advised I was not part of the most senior staff at the Council whose role and responsibility was to brief Members regarding Edinburgh Trams. It may be that the Chief Executive and his Directors attended the Leaders meetings and talked to these Reports with these briefing notes. The Report to IPG on 29 April stated that to improve communications, with the political Group Leaders, the TMO (Tram Monitoring Officer) and other chief officers are now briefing Group Leaders on a monthly basis.

The detailed Report to IPG on 29 April just prior to Council, on 30 April is referred to for its terms on all issues, progress roles and responsibilities at that stage, including:

Dispute resolution Process and Strategic Options including recap on commercial strategy (presented by Marshall Poulton)

To note the five Tram related Reports at Council meetings over the next month (presented by Marshall Poulton)

Statutory Council Approvals and Consents (presented by Andy Conway , Tram Co ordinator)

Financial Update (presented by AC)

Progress update on Mudfa, Infraco and Tramco (presented by AC)

Tram Monitoring officer update

Third Party Agreements

CEC resources

10.5 REPORT TO COUNCIL 30 AUGUST 2009

I am asked of my contribution to this Report and whether I was "confident" being terminology used in the Report. Again, Corporate Governance and reporting on this project to Members was not part of my role or responsibility. The Report was a Joint Report from the Director of Finance and Director of City Development.

AC copied me in to an email from himself to CMcK of the internal legal team 09 June (08.46) GL/2009/9 advising the update to August Council will be how we are progressing with the revised governance arrangements. This will also include how we deal with the issue of claims and budget/programme increases. This will be a joint Finance and City Development report which I would see Andy (Conway) Max (City Development) and myself as drafting.

I would also refer to the IPG Action Note of 27 July 2009 for its whole terms and the action on AC and Andy Conway to prepare this Report and contents.

I would also refer to the Summary of Revised Cost Estimates dated 27 July prepared by AC, showing best case scenario, base case scenario and worst case scenario.

I would also refer to the Document Entitled Edinburgh Tram – Critical Issues to be discussed at the Special IPG on 27 July 2009 being decisions required to be taken for the finalisation of the Council Report for 20 August 2009.

I was provided with a draft of the Report to Council 20 August 2009 (GL/2009/15). The draft copy I was provided with did not yet have the use of the word "confident" and did contain the figures prepared by AC detailed above. This copy is entitled "EDINBURGH TRAM PROJECT - STATUS REPORT (DRAFT PRIVATE AND CONFIDENTIAL)" (GL/2009/15).

An email from the internal legal team CMcK to me of 27 July (10.21) GL/2009/14) states re the Report, "With regard to the drafting of the Council Report for 20 August, I have not made a contribution as yet to that. I have made comments on the paper which is up for discussion at this morning's IPG."

From Council records I see that this was very much an Executive Report and The Chief Executive's Council Management Team (membership being the Chief Executive and his Directors) of 23 July 2009 agreed that an update on the Trams Project would be provided to its meeting on 6 August 2009 in advance of the finalisation of the Report to the Council meeting on 20 August. Email from the Chief Executive's office of 23 July refers (GL/2009/16).

The Report to the IPG of 19 August 2009 (GL/2009/17) is referred to for its terms, including:

Council Reports (presented by Dave Anderson/Donald McGougan) A summary of the Reports presented was provided

Evaluation of financial contingency measures and strategic options (presented by Director of Finance)

I see from the copy of the papers I was provided with on 1 September 2009 by Alistair Sim of Tie (Project Interface Director) provided the Minutes of the Tram Project Board of 26 August (GL/2009/18a and GL/2009/18b). I was not a Member of the TPB and have been sent this particular Minute for my information on progress. I see from the attached Minute of the TPB marked (26 July but seems to be dated 26 August) at point 2.2 Richard Jeffrey Chief Executive of Tie at this time states that:

"a great deal of intensive work has been undertaken across the team during August not only on DRP preparation, but also on providing information to inform the 20 August Council meeting including cross party briefings and dealing with media/press reporting. RJ expressed his thanks to the Councillors who steered the tram Motion through the 20 August Council Meeting unopposed."

I see that the Project Directors Report Building the Tram Period 05/09/10 states the words:

"Tie Ltd has taken extensive legal and technical advice, including Counsel's opinion, and is confident of its position on the key matters in dispute. However, given the nature of the process and the complexity of certain issues, it is unreasonable to expect that all adjudication outcomes will be awarded in favour of Tie Ltd and it will also be open to the BSC consortium to use the contract formally to pursue their objectives"

The Action note of the IPG meeting actions the Chief Executive to discuss private briefings/ need for cross party support with Leader/Group Leaders (GL/2009/21).

As the word "confident" was not present in the draft of the Report seen by me, it is difficult at this stage to consider if I would have agreed with that terminology. Principally I was concerned, which will have been shared by others, but I did agree on the approach on supporting Tie to enforce the contract and contract mechanisms as being the appropriate approach. Clearly it would not have been suitable commercially for Tie's negotiating position to place any concern in the public domain of a public Report at the stage of sensitivity with a contractor. The content would have been determined by the authors responsible for those Reports, subject to the direction of IPG and the Chief Executives management team (CMT) who considered the Report.

10.6 CORPORATE GOVERNANCE PRIOR TO DECEMBER 2007

In terms of the Report to Council December 2006 regarding the Business Case and Edinburgh Trams, the in-house legal team had an opportunity to provide comments/revisals on this report. The papers show that the contribution made was largely not incorporated into the Report by the Director of City Development. The in-house legal team had noted a range of risk issues including in particular the risk surrounding the projections of the sum to be achieved by the Council in relation to Developer Contributions. Where a formal Agreement is reached in relation to a Development there may be an as then "s75 contribution". My email to the Director of City Development, copied to Mr Inch, the Director of Corporate Services 13 December (16.15) GL/2006/2 states:

"Andrew

Understand the Report now signed and circulated. Having considered the latest version provided this morning very briefly the consistent points made by this Division have been incorporated in part. Consistent points made and documented by written comments from this Division, incorporating the Director of Corporate Services own comments, are

Risk associated with Developers Contributions - I recognise this is ultimately the remit of yourself and the Director of Finance and I am advised that you did not consider this Division's revisals/comments appropriate in expressing risk issues.....

In respect of funding needs.... I am advised this will recognise the requirement for 2 FTE posts in respect of both areas . Clearly and as agreed, we will regularly assess this demand and it remains subject to there being no public inquiry or other such intense unplanned activity....."

The Director of Corporate Services copied this email to the Chief Executive on 15 December 2006 notifying these concerns.

My earlier email of 1 December 2006 (13.39) GL/2006/4 and response from City Development on 8 December 2006 (16.22) GL/2006/3 details earlier comments. My meeting with the internal legal team supported the Divisions revisals, point 1 of which relates to the risk of Developer Contributions. My email to Mr Inch 7 December 2006 (GL/2006/6) refers. The papers show the last version of the Report that the in-house legal, team saw was version 6 whereas the final version circulated was draft 10.

Whilst the risk of Developer Contributions was entirely within the remit of the Director of City Development and Finance, I have noted that the Highlight Report to IPG of 30 September 2009 (GL/2009/23), considers the position achieved by the Council re Developer Contributions, being the risk identified by the in-house legal team. It records the Planned Contributions of £45m against the Achieved Contributions of £15.1m, leaving a risk deficit of some £30m of Council contribution. I recognise that the Business Case had a wide range of external validation from a wide range of experts. The Highlight Report is referred to for its terms.

A range of activities took place before the Reports to Council in August, September and October 2007. These Reports should be considered in their terms with the signatories and authors being the relevant people to provide the best advice regarding these Reports. Again the Legal Services Division were not the signatories or authors of these Reports nor the relevant staff tasked with briefing Elected Members.

My email to the Director of Corporate Services 6 July 2007 at 02.32 (GL/2007/23) provides a view on a pressing issue of Utilities seeking to have the Council's joint and several liability in relevant Agreements to be entered into by Tie. My concerns and solutions/way forward are detailed. Effectively this exposes the difficult position the Council were placed in with a project which was regarded as a Tie Project with Tie entering into required contracts and all resources within Tie. Essentially the Utilities were not accepting of Tie being the sole

contracting party and were seeking joint and several liability from the Council. The covenant of Tie for liability and indemnity was not being accepted which was negating the project concept of Tie as the contracting party. This note states:

"Essentially I am unconvinced of the commercial need for these utilities to have CEC's joint and several liability and of whether this has been fully explored particularly if the OCIP insurance is in place and includes these utilities. I remain unclear how CEC can be effectively indemnified when the extent of liability seems unlimited and that of MUDFA's is capped, when CEC does not yet seem to be insured and our relationship with MUDFA is not by contract. I understand the risks of delay.....Assuming we wish to implement these Agreements and indemnities, my advice is for Tie to advise DLA to regard this Council as a joint client and confirm in writing to you today

The financial extent and type of liability exposure which the Council would be accepting

How the Council would itself be indemnified whether by being named on all Tie's insurances as a joint party and to benefit from the OCIP insurance.....

What advice they would give the Council...

The above would allow the Council to benefit from advice and to have been aware of the exposure and of how it itself would be indemnified, all of which I would advise to be a minimum and should be easily be achieved"

The Council approved a **Report from the Chief Executive entitled Edinburgh Tram : Update on 23 August, 2007** which is referred to in its terms (GL/2007/24). That Report is referred to in its terms in respect of project governance and positioning at that date, including external validation of the Project Management arrangements and the views of the Auditor General, recent developments in respect of funding, Council Risk, Issues arising and the required Operating Agreements to be and which were put in place.

The Council approved a further **Report from the Chief Executive entitled Edinburgh Tram: Further Update on 20 September 2007** which is referred to in its terms (GL/2007/21). This again detailed the transfer of financial risk to the Council, the Operating Agreements with Tie and TEL, Tram Project Sub-Committee and delegation of powers to the Tram Project Board and in particular paras 10,11 and 15 of that Report re Governance Operating Agreements with Tie and TEL , proposed remit of the Tram Sub-Committee . Appendix 1 to the Report details Reserved matters with respect to the Tram Project Board being both Scottish Minister's Reserved Matters and CEC Reserved Matters.

In terms of the Scottish Minister's Reserved Matters, there are 6 Reserved Matters which cannot be determined by the Transport Scotland Senior Representative on the TPB without further consultation within Transport Scotland and The Scottish Executive. 1 of these Reserved Matters is approval of the Business Case. Another is the Entering into contracts for the delivery of tram vehicles (Tramco) or system infrastructure (Tramco).

In terms of CEC Reserved Matters, there are 9 Reserved Matters which cannot be determined by the CEC Senior Representative on the TPB without further consultation

within CEC. 1 of these Reserved Matters is approval of the Business Case. Another is Entering into contracts for the delivery of tram vehicles (Tramco) or system Infrastructure (Infraco). Other CEC Reserved matters are statutory processes of Prior Approvals, Land Acquisitions, Traffic Management and Roads Demarcation Agreement.

Appendix 2 to the Report details the Remit of the Tram Project Board. This details that, other than Reserved Matters, the TPB has full delegated responsibility for the delivery of an Integrated Edinburgh Bus and Tram Network on behalf of CEC and TS, in particular

"To oversee the execution of all matters relevant to the delivery of an Integrated Tram and bus Network with the following delegations....

To appoint the Senior Responsible Owner...

To receive reports from sub-committees established to oversee Business Planning, Integration and Delivery (BPIC) and Design, Procurement and Delivery (DPD).....

To approve the release of procurement documentation to the market, to approve procurement selection decisions and to recommend to the Tie and TEL Boards(as appropriate.

The **Tram Project Sub-Committee approved a Report on 25 September 2007** (GL/2007/25) detailing the remit of the Tram Sub-Committee to review and oversee decisions with respect to the Tram Project and appointing its membership.

At Qn 18 I am asked re the Council approved **Report to Council Edinburgh Tram Final Business Case on 25 October 2007** (GL/2007/1). This Report is referred to for its terms. The respective roles of the 4 key players of The Council, Transport Scotland, Transport Edinburgh Ltd (TEL) and Tie Ltd are restated. The Council is recognised as the Promotor of the Tram Project through the local Transport Strategy and promotion of Parliamentary Bills, TEL the central focus for Tram delivery and Tie's crucial role on project managing the development of the Tram, preparing the case for parliamentary approval and procuring the Tram system. Detailed information is provided in respect of procurement and objectives of the procurement strategy, designing for the Tram, STAG 2 Report and Final Business Case. Detailed provisions on project risks are included in the text of the Report taken from the Business Case, Tie's approach to risk management and risks retained by the public sector, risks stemming from delays in completing utility diversions, changes to scope or specification and obtaining consents and approvals. The Executive Summary of the Business Case provided detailed information including the estimated costs, the percentage of costs based on firm bids received from Infraco, Tramco, MUDFA and SDS and QRA and confidence level. The most significant risks are noted as costs relating to Utility diversions, changes to scope or specification and obtaining consents and approvals. The Executive summary concludes:

"The responsibility for delivering this document was given to the Tram Project Board by the City of Edinburgh Council through Transport Edinburgh Limited and by Transport Scotland. It

is these organisations who now have the responsibility of concluding on the way forward for the project, based on the evidence presented in this business case."

The internal legal team were provided with a very brief opportunity to comment on the Report on and for 26 September 2007. I was copied the comments of the internal team and supported these noting at 19.16 that on my receipt the acute timescale had prevented any considered view (GL/2007/27 and GL/2007/28).

A **supplementary Report to Council 25 October 2007 Edinburgh Tram Procurement of Tramco and Infraco, Item 8.1(b)(i)** (GL/2007/26) was considered and approved, approving preferred and reserved bidders.

At Qn 19, I am asked regarding a presentation to the Council meeting on 25 October 2007 and if I attended that Council meeting. As far as I am aware I would have attended this Council meeting. Officers would only have a role at any such formal Council meeting if this was sought from the Leader of Council or Member of that Group. Council records show a document entitled **Item 8.1 EDINBURGH TRAM, Presentation by Tie Limited, TEL and City of Edinburgh Council** (GL/2007/29). This is noted as additional supportive material to accompany the Edinburgh Tram Final Business Case Report. This notes the presenters as being Andrew Holmes, Director of City Development, Willie Gallacher, Executive Chairman of Tie Limited and Neil Renilson, Chief Executive, TEL. Questions regarding the content should be addressed to the presenters. The copy in my former file has only part of the presentation in your ref CEC01399996 but this may be that the record in my former file is incomplete. The presenters would be in a position to confirm.

11 DISPUTE/MEDIATION/ADJUDICATION ISSUES AND CORPORATE GOVERNANCE

I am asked regarding the Princes Street dispute and the papers sent by DLA to CEC on 12 March 2009. The disputes were whether Infraco were require at contract to commence work on Princes Street as expected on 21 February, Infraco's case for not commencing and the validity of Tie's instructions to proceed ie are BB in breach of contract by refusing to commence work on Princes Street.

To be clear, I was not advising the Council on Tie's prospects of success. Tie was the contracting party. Tie was in a dispute with its contractor. DLA as external agents for the project and parties were advising Tie and the Council. The Report to IPG on 25 March 2009 your ref CEC00892626 notes at page 3 that the main risks at that time existing were a lack of finalised design and conflict with Mudfa. Late prior approval consent and amendments to design scope were known risks. At this time there was no dispute between the Council and Tie. Tie were the Council's delivery agent. The Council were Tie's owner and sole shareholder and , following a transfer to TEL (another wholly owned Company) of that role,

the Council remained the ultimate owner of Tie. The Council were supporting Tie in delivering the contract.

I have no notes or recollection of the call with AF as detailed on 31 March 2009 your ref CEC01031217. I have checked through my files and I do provide particular thanks to DLA for their service. They had always been very responsive in supporting us and the project as the records show. Council records are the true evidence. DLA provided detailed advice notes at each significant stage. They did reflect changing positions in their terms and the evidence of each of these letters can and should be considered by the Inquiry in their terms for accuracy and completeness. I do recall a call in early 2010 following the appointment by the Council of D&W to undertake a particular role. When this appointment was discussed at a meeting with GB of Tie, GB expressed his concern that this could cause DLA to be defensive at a critical time. I was last fully engaged with the project in 2009. At that time the Council were supporting Tie in relation to delivery by BBS. I am not sufficiently engaged to form a view on the matter expressed at the last point of your question.

The email of 7 April your ref CEC00900404 provides views of a legal meeting on the dispute issues between Tie and BBS. This became a helpful note of meeting prepared by CMcK with revisals from DLA (GL/2009/24a and GL/2009/24b) and GL/2009/27. DLA were then able to provide a helpful paper on actual DRP topics and Tie's strategy on the use of DRP. I did not consider there to be a conflict of information/advice. None of the contributors expressed that view to me. The DLA paper was a development on some further contractual detail and strategy. At that stage it was early to seek to determine prospects of success, principally because a range of technical detail was required where matters were depending on particular circumstances. DLA email of 20 April attaching the DLA paper of that date explains the context and the limitation on a purely legal view (GL/2009/25a and GL/2009/25b).

I was invited to attend the consultation with Senior Counsel on 1 June but was not able to attend. I received a brief email from DLA following this 01/06/2009 at 16.09 advising that the consultation was useful though there are arguable areas and that a number of key views held by ourselves and Tie were reinforced. GL/2009/28. I attended the LAC that evening.

The outcome of Mr Wilsons adjudication was not favourable to Tie. It was significant it terms of point of principle and should it create a precedent. My correspondence with NS shows regular communication to ensure that the ability to challenge was not lost ie that practically we ensure that we were aware of any time limitations of Tie considering an appeal.

It is clear that Tie did not expect to incur cost in respect of all changes. That is clear from the various reports to TIE/TPB. The Council wished to support Tie and were fully supportive of Tie challenging the principles and additional sums sought. There is correspondence in the Leaders name confirming that the Council could not accept requests for sums which Tie did not agree. I understand that Dundas and Wilson were instructed by NS in early 2010. I am asked of my view of Tie's prospects of success in the dispute with BBS. The D&W paper was

a helpful summary of the contract, respective parties rights and termination. A consideration of the merits of matters individually or collectively was outwith its scope.

I am asked to comment on an email I sent to NS (22/3/2009) and my words:

"it is not clear to me that there has been any proper additional or external challenge to Tie (by way of support) as part of operation Pitchfork re project, programme management and operationally and strategically which appeared at IPG to be a potential, issue and with very considerable potential and current costs." Please see both emails in this chain, 17 March and 22 March for their terms (CEC00482825). When IPG was considering the matter it considered the role of the Tram Monitoring Officer and that in contract disputes a number of factors should be considered. It was clear to me that this was outstanding and could be actioned with the Tram Monitoring Officer taking an enhanced role with external support as required.

At Qns 78 and 79, the DLA advice notes the position in effect contained in Senior Counsel's opinion following the consultation on 1 June. DLA are advising that the effect of the novation strategy and the Infraco contract and Novation Agreement was to ensure that the Infraco contractor was responsible for SDS. This relied on the Infraco contractor acting in this way. The primary action would be from Tie against Infraco. DLA note that there is a collateral warranty put in place between PB and Tie to provide a direct contract route but an action directly on that basis would be unusual in not adopting the primary route of claim against the Infraco contactor. My understanding is that the view taken from Tie's perspective was that BBS could and should have been requiring performance from PB and considering the use of liquidate damages provisions between BBS and SDS.

Your Qn 80 and CEC00688665 comments on the first point made in an email containing many points. It states:

"I have just read the Draft Report to August Council and have some additional changes. Can you pi consider and liaise with Alan to amend.

At 3.4, can we be more positive for Tie in the result of DRP 1.

At 3.5. it may be appropriate to explain that proper opportunity has been given to supporting PMP but ultimately it has not yet delivered the certainty reqd.

At governance, can you link the necessary paragraphs. They all read quite separate at present ie if delegated authority was given, what is the outcome and is the August reporting necessary, explain why. The workstreams are referred to but then left without explanation. Rather than report in due course all these maters should be closed now. The link and dependency/sequence on transfer of shares and wider governance at 3.30 is not clear. Essentially more detail and sequencing of share transfer, update and wider governance is needed. Also need update to explain that all matters have been undertaken in liaison with Tie and Tel and LB. Can you consider and let me have a further draft pi. Just give me a call if you want to discuss. Can you also consider if any legal issues require a recommendation or delegated authority.

Will Report detail more fully current strategy of requiring contractors to work to the contract and commencing a range of contractual provisions, particularly DRP (this will likely be in place at time of circulation).

At the appropriate time, DLA view should be sought on the report generally and on commercial confidentiality, appropriateness of text, recognising the need to inform Members."

This is a balanced narrative of suggested points to consider. My ref at para 1 was for accuracy. My understanding at that time was the position was a good result in that particular case. I am clearly then detailing suggestions to assist and link the governance issues and detailed comment re dependency/sequence on share transfer and other matters to improve the Report. For information it may be that there were 2 Reports to August Council on Trams. Your ref CEC00823532 is item 8.3 (a) on the Agenda signalling there was another related Report. Qn 74 is answered in detail at Governance at section 10 above.

Qn 92: Council records will detail the position. There was considerable advice and support through 2007 and 2008. NS should be particularly aware as he was the Division's full time member of staff on project throughout that entire period since February 2007.

The exchange of emails at CEC00336394 is interesting. There was considerable advice and assistance provided by DLA over 2007 and 2008 by both AF and Dr Fitzgerald. The Council records will detail. It's surprising that this comment has come from NS as he was the in-house teams full time staff member working on Edinburgh Trams from February 2007 ie through almost all of the relevant period and he was best placed in that role to have had close working and the ability to both support and challenge and be very familiar with the documentation. In my experience, DLA were highly accommodating.

From around March 2010 I was not in receipt of all relevant information to comment on the adjudications for that period, similarly the Report in June 2010. NS is detailed as the contact officer for the report with Finance and will be best placed to comment on this Report. The strategy of pursuing the adjudications does seem to have had success in securing significant financial savings. I noted the advice of Richard Keen QC in June 2009 regarding requiring the contactor to work to the contract to also be of interest. I have detailed this at section 5 above.

At Qn94, my view in terms of the 90.1.2 correspondence is given at your CEC00242631. I do not share NS view of either Joint Client status or duty of care in these circumstances. At that point CEC remained the owner and sole shareholder.

Appendix 1: Alignment of Statement Sections with Areas for Discussion Requested

Please note that Section 2 (Context and Comment) and Section 3 (My Role in the Project) apply to all Areas for Discussion and Questions requested

Section	Area for Discussion/ Question number
1 PREFACE	
2 CONTEXT AND COMMENT	1 – 95
3 MY ROLE IN THE PROJECT	1, 4, 5, 11, 13, 17, 21, 23, 24, 25, 43, 49, 67, 85, 90
4 ROLE, REMIT AND PERFORMANCE OF EXTERNAL LEGAL AGENTS TO THE PROJECT	6, 7, 8, 9, 10, 12, 20, 53
5 SETTLEMENT BETWEEN CEC AND BBS - CONTENT AND CONSEQUENCES	
5.1 RECOMMENDED STRATEGY	-
6 QUESTIONS BASED ON INACCURATE INTERPRETATION	12. 14, 61, 84
7 FINANCIAL ISSUES	
7.1 SCHEDULE PART 4	32, 35, 39, 46, 52, 55, 64, 66
7.2 COUNCIL GUARANTEE	15

Section	Area for Discussion/ Question number
7.3 ON STREET SUPPLEMENTAL AGREEMENT ("OSSA")	76
7.4 CONTINUING DELAY ON FINANCIAL CLOSE	
7.5 SDS CLAIM SETTLEMENT	2
7.6 GVD NOTICES AND MINISTERIAL ANNOUNCEMENT RE TRAM BUSINESS CASE	
7.7 FINANCIAL ISSUES IN CLOSE REPORT 28 APRIL 2008	52
7.8 FINAL BUSINESS CASE VERSION 2 (DATED 7 DECEMBER 2007)	28
8 STATUTORY PLANNING ISSUES	
8.1 PRIOR APPROVALS AND CONSENTS	41, 42, 45
8.2 RUSSELL ROAD BRIDGE PRIOR APPROVAL	41
9 TECHNICAL / COMMERCIAL ISSUES	
9.1 DESIGN RISKS	18, 23, 27, 32, 35, 39, 41, 42, 45, 46, 50, 52, 55, 56, 63, 65, 66
9.2 GENERAL RISK	16
10 PROJECT CORPORATE GOVERNANCE	

Section	Area for Discussion/ Question number
10.1 REPORT TO COUNCIL 1 MAY 2008 and POLICY AND STRATEGY COMMITTEE 13 MAY 2008	44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66
10.2 PERIOD FROM 20 DECEMBER 2007 TO 1 MAY 2008	29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40
10.3 REPORT TO COUNCIL 20 DECEMBER 2007	21, 22, 23, 24, 25, 26, 27
10.4 REPORT TO COUNCIL 30 APRIL 2009	76
10.5 REPORT TO COUNCIL 30 AUGUST 2009	81, 83
10.6 CORPORATE GOVERNANCE PRIOR TO DECEMBER 2007	18, 19
11 DISPUTE/MEDIATION/ADJUDICATION ISSUES AND CORPORATE GOVERNANCE	69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 84, 86, 87, 88, 89, 91, 92, 93, 94

Appendix 2: Reference Documentation

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
2006			
GL/2006/1			Email from Pat Denholm to Tom Aitchison dated 15 December 2006 entitled "FW: Tram Internal Planning Meetings"
GL/2006/2			Email from Gill Lindsay to Andrew Holmes (cc Jim Inch) dated 13 December 2006 (16:15) entitled "Council Report Trams"
GL/2006/3			Email from Lex Harrison to Gill Lindsay (cc Colin MacKenzie, Rebecca Andrew, Ewan Kennedy, Max Thomson and Duncan Fraser dated 8 December 2006 (16:22) entitled "Re: Edinburgh Tram Draft Final Business Case"
GL/2006/4			Email from Gill Lindsay to Lex Harrison (13:39) dated 1 December 2006 entitled "Edinburgh Tram Draft Final Business Case"
GL/2006/5			Email from Gill Lindsay to Colin MacKenzie and Matthew Clarke dated 7 December 2006 (17:53) entitled "FW: dbfc"
GL/2006/6			Email from Gill Lindsay to Jim Inch dated 7 December 2006 (17:36) entitled "FW: dbfc"
2007			
GL/2007/1		CEC00389604	Document dated 18 October 2007 entitled "Edinburgh Tram Network Final Business Case Version 1"
GL/2007/2a	CEC01714253		Email from Andrew Fitchie to Gill Lindsay and Colin MacKenzie (cc Susan Clark and Geoff Gilbert) dated 5 October 2007 (17:44) entitled "Bidder Negotiations"
GL/2007/2b	CEC01714253		Email from Gill Lindsay to Andrew Fitchie and Colin MacKenzie (cc Susan Clark and Geoff Gilbert) dated 8 October 2007 (10:16) entitled "Re: Bidder Negotiations" (including email chain)

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/2c	CEC01714253		Email from Gill Lindsay to Andrew Fitchie and Colin MacKenzie (cc Susan Clark and Geoff Gilbert) dated 8 October 2007 (22:46) entitled "Re: Bidder Negotiations" (including email chain)
GL/2007/2d	CEC01714253		Email from Geoff Gilbert to Gill Lindsay and Colin MacKenzie (cc Susan Clark and Andrew Fitchie) dated 9 October 2007 (08:26) entitled "Re: Bidder Negotiations"
GL/2007/3			Email from Gill Lindsay to Mandy Wilson for Jim Inch dated 11 December 2007 (13:43) entitled "Tram Report"
GL/2007/4			Email from Kirsty-Louise Campbell to Gill Lindsay dated 10 December 2007 (14:37) entitled "Risks from Report"
GL/2007/5		CEC01500973	Email from Gill Lindsay to Andrew Fitchie (cc Graeme Bissett, Willie Gallacher, Matthew Crosse, Colin MacKenzie and Andrew Fitchie) dated 17 December 2007 (09:41) entitled "Re: Edinburgh Tram Network – Draft Contract Suite"
GL/2007/6		CEC01397776	Email from Gill Lindsay to Colin MacKenzie and Duncan Fraser (cc Rebecca Andrew, Alan Coyle and Nick Smith) dated 15 December 2007 (21:31) entitled "Re: Tram: Council Report"
GL/2007/7			Report dated November 2007 entitled "Review of the Tram Funding Strategy: Report to City of Edinburgh Council"
GL/2007/8	linked to CEC01397758		Email from Gill Lindsay to Jim Inch (11:39) dated 14 December 2007 entitled "FW: Report"
GL/2007/9		CEC01541349	Email from Andrew Fitchie to Gill Lindsay dated 12 December 2007 (23:34) entitled "Re: Network Rail Processes to be completed"
GL/2007/10		Included in CEC01500925	Email from Andrew Fitchie to Gill Lindsay and Graeme Bissett (cc Willie Gallacher, Andrew Holmes and David Mackay) dated 12 December 2007 (23:52) entitled "CEC Resolution"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/11			Email from Rebecca Andrew to Steven McGarrity, Donald McGougan, Andrew Holmes, Willie Gallacher, Miriam Thorne, Geoff Gilbert, Colin MacKenzie, Gill Lindsay and Alan Coyle dated 12 December 2007 (09:38) entitled "TS Information"
GL/2007/12	CEC01500925		Email from Andrew Fitchie to Gill Lindsay dated 13 December 2007 (19:43) entitled "Re: CEC Resolution"
GL/2007/13	CEC01546448		Email from Andrew Fitchie to Gill Lindsay and Graeme Bissett (cc Willie Gallacher, Andrew Holmes, David Mackay, Colin MacKenzie and Hazel Moffat dated 13 December 2007 (11:14) entitled "Re: CEC Resolution"
GL/2007/14	CEC02083446		Minute of "14 Edinburgh Tram: (i) Contracts Acceptance and (ii) Independent Review of Tram Funding Strategy – Council Contribution" in the Committee Minutes of the City of Edinburgh Council Meeting dated 20 December 2007
GL/2007/15		CEC01667649 (duplicate of CEC01667652)	Email from Willie Gallacher to Donald McGougan (cc Graeme Bissett) dated 7 October 2007 (18:43) entitled "Re: Tram Subcommittee Remit"
GL/2007/16			Email from Donald McGougan to Graeme Bissett and Willie Gallacher dated 4 October 2007 (16:55) entitled "FW: Tram Subcommittee Remit"
GL/2007/17		CEC01726206	Email from Robert Millar to Nick Smith (cc Gill Lindsay and Colin MacKenzie) dated 21 February 2007 (20:11) entitled "Legal Support for Tram Project"
GL/2007/18			Email from Kirsty-Louise Campbell to Gill Lindsay dated 19 July 2007 (10:35) entitled "Work Allocation - NS"
GL/2007/19			Email from Gill Lindsay to Mandy Peay and Jim Inch dated 2 March 2007 (17:08) entitled "Re: GVD Notices and Ministerai Announcement re Tram Business Case"
GL/2007/20	CEC01561544		Document entitled "Edinburgh Tram Internal Planning Group Action Note" dated 27 September 2007

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/21		CEC02083455	Document entitled "Edinburgh Tram: Further Update – Report to Council 20 September 2007"
GL/2007/22	CEC02083538		Draft document entitled "Edinburgh Tram: Final Business Case – Report to Council 25 October 2007" " [Item no 8.1(a)]
GL/2007/23			Email from Gill Lindsay to Jim Inch dated 6 July 2007 (02:32) entitled "Trams"
GL/2007/24		CEC02083490	Document entitled "Edinburgh Tram: Update (Report to The City of Edinburgh Council 23 August 2007") [Report no cec/60/07-08/ce]
GL/2007/25			Report entitled "Tram Project Sub-Committee: Transport Infrastructure and Environment Committee" dated 25 September 2007
GL/2007/26		CEC02083537	Document entitled "Supplementary Report - Edinburgh Tram Procurement of Tramco and Infraco: The City of Edinburgh Council 25 October 2007" [Item no 8.1(b)(i)]
GL/2007/27	CCEC01567280 (refers to earlier email in chain)		Email from Gill Lindsay to Colin MacKenzie dated 26 September 2007 (19:16) entitled "Re: Final Business Case Draft"
GL/2007/28	CCEC01567280		Email from Colin MacKenzie to Duncan Fraser, Alan Squair and Nick Smith (cc Robin Goodwin, Rebecca Andrew and Gill Lindsay) dated 26 September 2007 (15:58) entitled "Re: Final Business Case Draft"
GL/2007/29	CEC0203536		Document entitled "Item 8.1 Edinburgh Tram: Presentation by tie Limited, TEL and City of Edinburgh Council (City of Edinburgh Council 25 October 2007)"
GL/2007/30	contained in CEC01566496		Document entitled "Tram Programme Summary 2007-2011" (2007) from the IPG Highlight Report of 27 July 2007
GL/2007/31	GL response to CEC01567628		Email from Gill Lindsay to Colin MacKenzie dated 14 September 2007 (11:46) entitled "Re: CEC Approvals of Tramco and Infraco Contracts"
GL/2007/32		CEC01400013	Email from Gill Lindsay to Colin MacKenzie and Duncan Fraser dated 26 November 2007 (12:12) entitled "Re: LAC Meeting: 26 November"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/33		CEC01400078	Email from Gill Lindsay to Colin MacKenzie (cc to Alan Squair and Nick Smith) dated 28 November 2007 (16:53) entitled "Re: Tram Project"
GL/2007/34	GL follow up email to CEC01540814		Email from Andrew Fitchie to Gill Lindsay (cc to Colin MacKenzie and Graeme Bissett) dated 17 December 2007 (08:21) entitled "Re: Full Council Report – Edinburgh Trams Contract Acceptance"
GL/2007/35	Follow up email to CEC01540814		Email from Andrew Fitchie to Graeme Bissett and Colin MacKenzie (cc to Willie Gallacher, Stewart McGarrity, Steven Bell, Gill Lindsay, Duncan Fraser, Andrew Holmes, Donald McGougan, David Mackay and Neil Renilson) dated 17 December 2007 (08:41) entitled "Re: Full Council Report – Edinburgh Trams Contract Acceptance"
GL/2007/36	Follow up email to CEC01540814		Email from Steven Bell to Graeme Bissett, Colin MacKenzie, Gill Lindsay and Andrew Holmes (cc to Andrew Fitchie, Stewart McGarrity, Duncan Fraser and Willie Gallacher) dated 17 December 2007 (09:00) entitled "Re: Full Council Report – Edinburgh Trams Contract Acceptance URGENT"
GL/2007/37	CEC01391159		Document entitled "Edinburgh Tram Internal Planning Group Action Note" dated 11 December 2007
GL/2007/38		CEC01400101	Email from Gill Lindsay to Colin MacKenzie, Alan Squair and Nick Smith dated 29 November 2007 entitled "FW: Edinburgh Tram Network – Draft Contract Suite"
GL/2007/39			Document entitled "Minute of the CEC/tie Legal Affairs Group Meeting (Wednesday 25th July 2007)
GL/2007/40			Document entitled "Agenda: Meeting with CEC Legal/ Infraco and Tramcoon 1st August 2007"
GL/2007/41			Emails dated 28 February 2007 from Gill Lindsay to Andrew Holmes and Donald McGougan (10:08) and Jim Inch (10:14) entitled "FW: TRAMS FOR EDINBURGH"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
2008			
GL/2008/1a		CEC01494162	Letter from Willie Gallagher to David Leslie dated 10 April 2008 entitled "Tramway Prior Approvals and Quality Control Issues"
GL/2008/1b		CEC01494162	Document entitled "Design & Approvals – Successful Delivery in Compressed Timescales" (attached to 2008/1a)
GL/2008/2	Linked email chain to CEC01401109		Email from Dave Anderson to Andy Conway (cc Jim Grieve, Marshall Poulton, Colin MacKenzie, Alan Coyle, Gill Lindsay and Donald McGougan) dated 11 April 2008 (16:44) entitled "Re: Russell Road Bridge: Prior Approval"
GL/2008/3		CEC01478447 CEC01548478 (= duplicate files)	Email from Colin MacKenzie to Graeme Bissett (cc Gill Lindsay, Andrew Fitchie, Steven Bell, Geoff Gilbert, Matthew Crosse, Willie Gallacher and Duncan Fraser) dated 31 January 2008 (16:44) entitled "Re: Consents"
GL/2008/4	CEC01400439		Email from Mandy Wilson for Gill Lindsay to Colin MacKenzie (cc Alan Squair and Nick Smith) dated 3 January 2008 (11:56) titled "Council Report 20 December – Edinburgh Tram"
GL/2008/5a		CEC01245223	Email from Alan Coyle to Colin MacKenzie, Gill Lindsay, Steve Sladdin and Nick Smith (cc Andy Conway) dated 15 April 2008 (14:38) entitled "FW: Pricing – Commercially Confidential"
GL/2008/5b	Interim document between CEC01451013 (18 March 2008), CEC01451382 (2 April 2008) and USB00000032 (final document – 13 May 2008; not received)		Document entitled "Schedule 4: Pricing" [ETN – Schedule 4 (1504 Clean for CEC).DOC] (attached to GL/2008/5a)

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/6		follow-on email to CEC01248856	Email from Rebecca Andrew to Donald McGougan dated 2 May 2008 (09:39) entitled "FW: Continuing Delay on Financial Close"
GL/2008/7			Document entitled "Critical Contractual Decisions to enable Chief Executive to use Delegated Powers to approve TIE to sign the Contract with BBS"
GL/2008/8	CEC01406011		Email from Jim Inch to Gill Lindsay dated 12 February 2008 (11:10) entitled "Re: Agenda for Tomorrow's Meeting"
GL/2008/9a	CEC01400987		Email from Colin MacKenzie to Gill Lindsay dated 29 February 2008 (16:22) entitled "Re: Edinburgh Tram: Chief Executive's Delegated Authority"
GL/2008/9b	CEC01400987		Email from Gill Lindsay to Colin MacKenzie dated 29 February 2008 (11:59) entitled "Re: Edinburgh Tram: Chief Executive's Delegated Authority"
GL/2008/10	CEC01245400		Email from Gill Lindsay to Alan Coyle (cc Colin MacKenzie) dated 18 April 2008 (16:01) entitled "Re: Council Report"
GL/2008/11		CEC01245473	Email from Mandy Wilson for Gill Lindsay to Alan Coyle (cc Nick Smith and Colin MacKenzie) dated 22 April 2008 (12:38) entitled "Council Report"
GL/2008/12		CEC01245489 (attached to CEC01245488)	Letter from Donald McGougan to Willie Gallagher dated 18 April 2008 entitled "Edinburgh Tram SDS Claim Settlement"
GL/2008/13	linked to CEC01479715		Email from Andrew Fitchie to Gill Lindsay and Colin MacKenzie (cc Graeme Bissett, Rebecca Andrew and Colin MacKenzie) dated 9 February 2008 (13:23) entitled "CEC Guarantee"
GL/2008/14a		CEC01349534	Email from Andrew Fitchie to Gill Lindsay (cc Graeme Bissett) dated 13 May 2008 (03:11) entitled "Front Page"
GL/2008/14b	CEC01347798		Letter from DLA Piper dated 12 May 2008 entitled "Edinburgh Tram Network ("ETN") Draft Contract Suite as at 12 May 2008" [SCAN001.PDF] (attached to 2008/14a)

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/15	CEC01246992		Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 16 April 2008
GL/2008/16		CEC01542431	Email from Andrew Fitchie to Gill Lindsay dated 19 March 2008 entitled "Re: Etn"
GL/2008/17	CEC01374311		Email from Andrew Fitchie to Gill Lindsay, Willie Gallacher and Graeme Bissett dated 8 May 2008 (08:52) entitled "Re: Update"
GL/2008/18a		included in CEC01275458 (which includes the duplicates CEC01236803 and CEC01275392)	Email from Graeme Bissett to Willie Gallacher, Steven Bell, Dennis Murray, Susan Clark, Colin McLauchlan, Jim McEwan, Alistair Richards, Andrew Fitchie, David Mackay, Neil Renilson, Dave Anderson, Duncan Fraser, Donald McGoogan, Rebecca Andrew and Gill Lindsay dated 12 May 2008 (01:27) entitled "Final Deal Terms"
GL/2008/18b	CEC01338848		Document entitled "Edinburgh Tram Project: Financial Close Process and Record of Recent Events" (Close Considerations and Event History v2 12.05.08.doc) (attached to 2008/18a)
GL/2008/19	linked to CEC01377657		Email from Gill Lindsay to Donald McGougan and Dave Anderson dated 8 May 2008 (08:41) entitled "FW: Update"
GL/2008/20		CEC01301363	Email from Willie Gallacher to Neil Renilson, David Mackay, Dave Anderson, Donald McGougan, Phil Whealer and Gill Lindsay (cc Graeme Bissett, Stewart McGarrity, Susan Clark, Alasdair Sim, Duncan Fraser and Graeme Barclay dated 14 May 2008 (00:27) entitled "Conract Update"
GL/2008/21		linked to CEC01275458	Email from Gill Lindsay to Ysella Yago dated 13 May 2008 (01:08) entitled "Final Deal Terms"
GL/2008/22		included in CEC01253772	Email from Gill Lindsay to Dave Anderson and Donald McGougan dated 13 May 2008 (22:45) entitled "FW: LGA Letter"
GL/2008/23		CEC01231411	Email from Gill Lindsay to Dave Anderson, Donald McGougan, Jim Inch and Tom Aitchison dated 13 May 2008 (23:59) entitled "Progress on Close"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/24			Email from Gill Lindsay to Andrew Fitchie dated 13 May 2008 (23:11)
GL/2008/25		CEC01253772	Email from Gill Lindsay to Jim Inch and Tom Aitchison dated 13 May 2008 (22:55) entitled "FW: LGA Letter"
GL/2008/26		CEC01347807	Email from Gill Lindsay to Andrew Fitchie, Graeme Bissett and Willie Gallacher (cc Nikki Hoshal) dated 13 May 2008 (22:35) entitled "Re: LGA Letter"
GL/2008/27	CEC01228374		Document entitled "Edinburgh Tram Internal Planning Group Action Note" dated 17 April 2008
GL/2008/28a			Email from Stan Gary Turner (cc Deirdre Wynn, Lesley Birrell and Gill Lindsay) dated 12 May 2008 (17:46) entitled "Re: Application of Standing Orders RE Tram Report"
GL/2008/28b			Document entitled "Tram Report – Likely Requirements Under Standing Orders" (Tram Project.doc) (attached to 2008/28a)
GL/2008/29			NOT USED
GL/2008/30		CEC01245557	Email from Colin MacKenzie to Alan Coyle and Andy Conway (cc Duncan Fraser, Rebecca Andrew, Gill Lindsay and Nick Smith) dated 23 April 2008 (13:48) entitled "FW: Edinburgh Tram"
GL/2008/31	CEC01351908		Email from Gill Lindsay to Colin MacKenzie and Nick Smith dated 17 April 2008 (15:15) entitled "FW: Close Programme and Approvals"
GL/2008/32	CEC01351908		Email from Gill Lindsay to Jim Inch dated 17 April 2008 (15:17) entitled "FW: Close Programme and Approvals"
GL/2008/33	CEC01248987 CEC01248988		Email from Rebecca Andrew to Gill Lindsay dated 8 May 2008 (15:23) entitled "Re: Report to Policy and Strategy Committee"
GL/2008/34		follow-up email to CEC01238252	Email from Gill Lindsay to Andy Conway, Alan Coyle, Rebecca Andrew, Nick Smith and Marshall Poulton (cc Duncan Fraser) dated 12 May 2008 (17:10) entitled "Re:IPG Report"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/35		CEC01238252	Email from Andy Conway to Alan Coyle, Rebecca Andrew, Nick Smith, Gill Lindsay and Marshall Poulton (Duncan Fraser) dated 12 May 2008 (13:37) entitled "IPG Report"
GL/2008/36	CEC01231125		Email from Dave Anderson to Gill Lindsay dated 10 May 2008 (11:37) entitled "Re: Contract Update"
GL/2008/37	CEC01231125		Email from Gill Lindsay to Jim Inch dated 9 May 2008 (18:08) entitled "FW: Contract Update"
GL/2008/38	CEC01258010 CEC01294645 CEC01294646		Email from Gill Lindsay to Donald McGougan and Dave Anderson dated 9 May 2008 (11:52) entitled "Re: Final Terms and Event History"
GL/2008/39		CEC01398966	Email from Graeme Bissett to Gill Lindsay dated 25 February 2008 (10:14) entitled "Re: Consents"
GL/2008/40		included in CEC01347800 (duplicate of CEC01372976)	Email from Gill Lindsay to Andrew Fitchie dated 13 May 2008 (00:00) entitled "Re: CPS"
GL/2008/41		included in CEC01349534	Email from Ysella Jago for Gill Lindsay to Andrew Fitchie dated 13 May 2008 (07:53) entitled "Re: Front Page"
GL/2008/42a		CEC01347783	Email from Nikki Hoshal for Andrew Fitchie to Gill Lindsay (cc Graeme Bissett, Willie Gallacher, Steven Bell and Alastair Richards)dated 12 May 2008 (11:41) entitled "CAF joining Consortium"
GL/2008/42b		CEC01347785	Document entitled "DLA Piper Report to Tie Limited and the City of Edinburgh Council Solicitor: CAF Joins BBS Consortium" [19204864_1_UKMATTERS(DLAP report to CEC re_CAF join consortium – 11.05.08).doc] (attached to 2008/42a)
GL/2008/42c		CEC01347784	Draft letter from The City of Edinburgh Council to BBS Consortium entitled "Edinburgh Tram Network – Infraco Contract" [19204675_1_UKMATTERS(LT from CEC to BBS).doc] (attached to 2008/42a)

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/43		CEC01347791 (duplicate of CEC01375943)	Email from Gill Lindsay to Andrew Fitchie, Willie Gallacher, Graeme Bissett and Susan Clark dated 12 May 2008 (19:30) entitled "Re: Signing Authorities"
GL/2008/44			Email from Gill Lindsay to Graeme Bissett and Andrew Fitchie dated 11 May 2008 (22:02)
GL/2008/45		included in CEC01275605	Email from Gill Lindsay to Andrew Fitchie (cc Graeme Bissett, Willie Gallacher, Steven Bell, Alastair Richards and Nikki Hoshal) dated 13 May 2008 (00:16) entitled "Re: CAF joining Consortium"
GL/2008/46		CEC01352307	Email from Willie Gallacher to Gill Lindsay dated 13 May 2008 (11:59) entitled "Re: Signing Authorities"
GL/2008/47			Email from Willie Gallacher to David Mackay, Dave Anderson, Donald McGougan, Gill Lindsay, Tom Aitchison, Neil Renilson and Phil Wheeler (cc Graeme Bissett, Susan Clark and Andrew Fitchie) dated 12 May 2008 (19:49) entitled "Contract Update"
GL/2008/48		CEC01231259	Email from Gill Lindsay to Dave Anderson, Donald McGougan, Duncan Fraser and Rebecca Andrew dated 13 May 2008 (00:20) entitled "Re: CAF joining Consortium"
GL/2008/49		CEC01275458	Email from Andrew Fitchie to Dave Anderson, Graeme Bissett, Willie Gallacher, Steven Bell, Dennis Murray, Susan Clark, Colin McLauchlan, Jim McEwan, Alistair Richards, David Mackay, Neil Renilson, Dave Anderson, Duncan Fraser, Donald McGoogan, Rebecca Andrew and Gill Lindsay dated 12 May 2008 (13:20) entitled "Re: Final Deal Terms"
GL/2008/50		CEC01275605	Email from Andrew Fitchie to Gill Lindsay (cc Graeme Bissett, Willie Gallacher, Steven Bell, Alastair Richards and Nikki Hoshal) dated 13 May 2008 (11:49) entitled "Re: CAF joining Consortium"
GL/2008/51		check CEC01565006	Appendix 1 (List of Council Reports) to document entitled "Final Business Case Council Report Draft BACK UP.doc"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/52a		CEC01395228	Email from Mandy Wilson for Gill Lindsay to Jim Inch dated 3 January 2008 (12:04) entitled "Edinburgh Tram – Council Report 20 December 2007"
GL/2008/52b		CEC01395229	Draft letter entitled "Edinburgh Tram – Council Report 20 December 2007" (Edinburgh Tram CEC Report 31.12.07.doc) (attached to 2008/52a)
GL/2008/53	Follow-up to CEC01222466		Email from Gill Lindsay to Nick Smith (cc Rebecca Andrew, Alan Coyle and Duncan Fraser) dated 2 May 2008 (16:46) entitled "FW: Closed Report - comments"
GL/2008/54	Follow-up to CEC01222466		Email from Gill Lindsay to Colin MacKenzie (cc Nick Smith) dated 2 May 2008 (16:41) entitled "Re: Closed Report - comments"
GL/2008/55a	CEC01222466		Email from Colin MacKenzie to Gill Lindsay (cc Nick Smith) dated 2 May 2008 (15:31) entitled "FW: Closed Report - comments"
GL/2008/55b	CEC01222466		Document entitled "Report on Terms of Financial Close ("Closed Report") Draft v 28.04.08" (Report on Terms of Financial Close.doc) (attached to 2008/55a)
GL/2008/56	CEC01222074 CEC01248981		Email from Nick Smith to Gill Lindsay dated 8 May 2008 (09:21) entitled "Re: Report to Policy and Strategy Committee"
GL/2008/57	CEC01222074 CEC01248981		Email from Gill Lindsay to Nick Smith dated 8 May 2008 (09:03) entitled "Re: Report to Policy and Strategy Committee"
GL/2008/58		included in CEC01241841	Email from Gill Lindsay to Ysella Jago dated 9 May 2008 (10:19) entitled "Re: Nick Smith"
GL/2008/59		included in CEC01231624	Email from Julie Thomson for Willie Gallacher to Tom Aitchison (cc Sandra Elgin) dated 15 May 2008 (14:32) entitled "FW: Edinburgh Tram Project – Completion of Contracts" forwarded by Sandra Elgin to Dave Anderson, Gill Lindsay, Donald McGougan and Chris Highcock on 15 May 2008
GL/2008/60		CEC01231549	Email from Dave Anderson to Willie Gallacher, Gill Lindsay, Donald McGougan and Duncan Fraser dated 15 May 2008 (10:04) entitled "Re: Edinburgh Tram Project – Completion of Contracts"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/61		CEC01399321 (spreadsheet only)	Spreadsheet entitled "Financial Close – QC Process" (2008): list of Tie responsibilities, owners and status included in document entitled "Edinburgh Tram Network: Financial Close – Approvals Process" Legal Affairs Committee 7 April 2008
GL/2008/62			Email from Gill Lindsay to Graeme Bissett dated 13 March 2008 (21:32) entitled "Re: Close Report and DLA Report Update"
GL/2008/63			Email from Graeme Bissett to Gill Lindsay dated 13 March 2008 (21:51) entitled "Re: Close Report and DLA Report Update"
GL/2008/64	CEC01474537 CEC01474538 CEC01474539 CEC01474540		Email from Graeme Bissett to Gill Lindsay (cc to Willie Gallacher, Steven Bell, Andrew Fitchie and Stewart McGarrity) dated 13 March 2008 (22:27) entitled "Final Supporting Docs for Notification"
GL/2008/65		CEC01389428	Email from Gill Lindsay to Donald McGougan, Andrew Holmes and Duncan Fraser dated 13 March 2008 (22:35)"
GL/2008/66		CEC01490420 (duplicate of CEC01548181)	Email from Joanne Glover to Gill Lindsay (cc Graeme Bissett, Willie Gallacher, Steven Bell and Andrew Fitchie) dated 13 March 2008 (00:36) entitled "CEC Letter on ETN Close Out"
GL/2008/67a			Email from Colin MacKenzie to Gill Lindsay dated 14 March 2008 (12:59) entitled "FW: Network Rail/City of Edinburgh Council —- Edinburgh Tram —-RAI/1/1893"
GL/2008/67b		included in TIE00748566	Email from Gordon M Thomson to Mike Fitzgerald dated 14 March 2008 (11:49) entitled "Network Rail/City of Edinburgh Council —- Edinburgh Tram —-RAI/1/1893" (attached to 2008/67a)
GL/2008/68			Letter from DLA Piper dated 12 March 2008 entitled "Edinburgh Tram Network ("ETN") Draft Contract Suite as at 12 March 2008"
GL/2008/69	CEC01430090		Email from Ian Laing to Andrew Fitchie, Richard Walker, M Gallagher, Flynn Michael and Herbert Fettig (cc Willie Gallacher, Graeme Bissett, Steven Bell, Geoff Gilbert and Suzanne Moir) dated 15 March 2008 (20:42) entitled "Re: Edinburgh Tram"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/70a		CEC01549287	Email from Philip Hecht to Gill Lindsay (cc Willie Gallacher, Graeme Bissett, Stewart McGarrity, Steven Bell and Andrew Fitchie) dated 16 March 2008 (17:32) entitled "Contractual Indemnity/Insurance Cover Papers"
GL/2008/70b		CEC01549290	Document entitled "Edinburgh Tram Network: Infraco Contract – BBP Position as at Thursday 13 March 2008 based on Infraco Contract" (attached to 2008/70a)
GL/2008/70c		check CEC01549288	Document entitled "Edinburgh Tram Network: Infraco Contract – BBP Position as at 3pm Friday 14 March 2008 based on Infraco Contract" (attached to 2008/70a)
GL/2008/70d		check CEC01549289	Document entitled "Edinburgh Tram Network: Infraco Contract – BBP Position as at Saturday 15 March 2008 based on Infraco Contract" (attached to 2008/70a)
GL/2008/71a		CEC01475134	Email from Gill Lindsay to Philip Hecht (cc Willie Gallacher, Graeme Bissett, Stewart McGarrity, Steven Bell and Andrew Fitchie) dated Sunday 16 March 2008 (21:16) entitled "Re: Contractual Indemnity/Insurance Cover Papers"
GL/2008/71b		CEC01489459	Email from Willie Gallacher to Andrew Fitchie, Gill Lindsay and Philip Hecht (cc Graeme Bissett, Stewart McGarrity and Steven Bell) dated Sunday 16 March 2008 (21:52) entitled "Re: Contractual Indemnity/Insurance Cover Papers"
GL/2008/72		CEC01474659	Email from Andrew Fitchie to Gill Lindsay and Philip Hecht (cc Willie Gallacher, Graeme Bissett, Stewart McGarrity and Steven Bell) dated 16 March 2008 (22:26) entitled "Re: Contractual Indemnity/Insurance Cover Papers"
GL/2008/73	Linked to CEC01430090		Email from Willie Gallacher to Richard Walker and Flynn Michael (cc Andrew Fitchie and Steven Bell) dated 15 March 2008 (12:10) entitled "FW: Edinburgh Tram"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/74	CEC01407951		Email from Alan Coyle to Gill Lindsay (cc Colin MacKenzie) dated 17 March 2008 (14:08) entitled "Re: Contract Approvals Rev10 (170308).xls"
GL/2008/75	CEC01407951		Email from Gill Lindsay to Jim Inch dated 17 March 2008 (15:10) entitled "Trams"
GL/2008/76		CEC01390434	Email from Gill Lindsay to Andrew Holmes dated 17 March 2008 (18:01) entitled "FW: Contractual Indemnity/Insurance Cover Papers"
GL/2008/77			NOT USED
GL/2008/78		CEC01464452	Email from Willie Gallacher to David Mackay and Neil Renilson (cc Andrew Holmes, Gill Lindsay, Donald McGougan, Graeme Bissett, Andrew Fitchie, Steven Bell, Susan Clark, Stewart McGarrity, Geoff Gilbert, Matthew Crosse and Jim McEwan dated 17 March 2008 (19:51) entitled "Pin Notification"
GL/2008/79		included in CEC01489504	Email from Gill Lindsay to Willie Gallacher (cc Andrew Fitchie and Andrew Holmes) dated 17 March 2008 (22:52) entitled "Re: Pin Notification"
GL/2008/80		CEC01548735	Email from Gill Lindsay to Andrew Fitchie (cc Andrew Holmes) dated 18 March 2008 (00:13)
GL/2008/81		CEC01489504	Email from Willie Gallacher to Gill Lindsay (cc Andrew Fitchie, Andrew Holmes, Steven Bell, Neil Renilson, David Mackay and Graeme Bissett) dated 18 March 2008 (06:50) entitled "Re: Pin Notification"
GL/2008/82		CEC01390705	Email from Willie Gallacher to Gill Lindsay, David Mackay and Neil Renilson (cc Andrew Fitchie and Andrew Holmes) dated 18 March 2008 (09:51) entitled "Re: Pin Notification"
GL/2008/83	CEC01474670		Email from Steven Bell to Gill Lindsay (cc Andrew Fitchie, Willie Gallacher, Stewart McGarrity, Mark Hamill, B Lidford and Graeme Bissett) dated 18 March 2008 (10:59) entitled "FW: "

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/84	linked to CEC01408044		Email from Gill Lindsay to Colin MacKenzie dated 19 March 2008 (09:37) entitled "FW: Pin Released"
GL/2008/85	CEC01408044		Email from Gill Lindsay to Jim Inch dated 19 March 2008 (12:16) entitled "FW: Pin Released"
GL/2008/86		linked to CEC01391154	Email from Phil Wheeler to Andrew Holmes, Dave Anderson, Donald McGougan, Gill Lindsay and Willie Gallacher dated 19 March 2008 (16:11) entitled "Tram Scheme"
GL/2008/87			Email from Gill Lindsay to Willie Gallacher (cc Andrew Fitchie) dated 18 March 2008 (17:39) entitled "Re: "
GL/2008/88	included in CEC01491920		Email from Willie Gallacher to Gill Lindsay, Donald McGougan, Andrew Holmes, David Mackay, Neil Renilson, Peter Strachan, Kenneth Hogg, Brian Cox, Hazel Cheney and Phil Wheeler dated 21 March 2008 (10:21) entitled "Contracts Update"
GL/2008/89		CEC01549610	Email from Gill Lindsay to Andrew Fitchie (cc GBi) dated 19 March 2008 (19:09) entitled "Re: Etn"
GL/2008/90		CEC01408251	Email from Gill Lindsay to Jim Inch dated 20 March 2008 (19:32) entitled "FW: Trams"
GL/2008/91	CEC01408254		Email from Gill Lindsay to Jim Inch and Colin MacKenzie dated 23 March 2008 (16:39) entitled "FW: Trams Settlement Issues"
GL/2008/92		CEC01245242	Email from Alan Coyle to Gill Lindsay and Colin MacKenzie dated 16 April 2008 (10:36) entitled "Re: Pricing – Commercially Confidential"
2009			
GL/2009/1a	CEC00900262		Email from Alan Coyle to Gill Lindsay (cc Max Thomson and Marshall Poulton) dated 25 March 2009 (11:40) entitled "Re: Supplemental Agreement – PDF Version"
GL/2009/1b		CEC00946347 (unsigned version)	Supplemental Agreement (OSSA) dated 20 March 2009 (attached to 2009/1a)

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/2			Email from Colin MacKenzie to Gill Lindsay dated 8 April 2009 (16:25) entitled "FW: Council Report"
GL/2009/3		CEC00900395	Email from Alan Coyle to Nick Smith, Marshall Poulton, Colin MacKenzie and Andy Conway (cc Gill Lindsay) dated 8 April 2009 (17:25) entitled "Re: Council Report"
GL/2009/4		included in CEC00900385	Email from Marshall Poulton to Gill Lindsay, Alan Coyle, Max Thomson, Colin MacKenzie, Nick Smith and Andy Conway (cc Dorothy Gray) dated 7 April 2009 (20:43) entitled "Tasks set by Chief Exec"
GL/2009/5a		CEC00903311	Email from Nick Smith to Alan Coyle, Marshall Poulton, Colin MacKenzie and Andy Conway (cc Gill Lindsay) dated 8 April 2009 (16:43) entitled "Re: Council Report"
GL/2009/5b			Document entitled "Edinburgh Tram Network – Update Report: The City of Edinburgh Council 30 April 2009" (Item no 9.2; Report no cec/172/08-09/CD+F)
GL/2009/6		CEC00859240	Email from Andy Conway to Marshall Poulton, Alan Coyle, Nick Smith, Colin MacKenzie, Gill Lindsay and Max Thomson dated 8 April 2009 (15:57) entitled "Action Note from today's "Commando" meeting"
GL/2009/7a		CEC00900423	Email from Andy Conway to Marshall Poulton (cc Max Thomson, Alan Coyle, Nick Smith, Colin MacKenzie, Leanne Mabberley and Gill Lindsay) dated 9 April 2009 (17:03) entitled "Group Leaders Briefing Note"
GL/2009/7b		CEC00873823	Document entitled "Group Leaders' Tram Briefing Note – Tuesday 14 April 2009" (Councillor Tram Briefing 14 April 2009 – Councillors Version.doc) (attached to 2009/7a)
GL/2009/8	CEC00860021		Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 29 April 2009

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/9		CEC00886886 (duplicate of CEC00907736)	Email from Alan Coyle to Marshall Poulton and Colin MacKenzie (cc Gill Lindsay, Nick Smith, Ailie Wilson and Max Thomson) dated 9 June 2009 (08:46) entitled "FW: Edinburgh Transport: Integration of Bus and Tram"
GL/2009/10	CEC00659130		Document entitled "Edinburgh Tram – Critical Issues to be discussed at the Special IPG on 27 July 2009: Decision required to be taken for the finalisation of the Council Report for 20th August 2009"
GL/2009/11		CEC00667147	Tram IPG Action Note dated 27 July 2009
GL/2009/12		included in CEC00703422	Email from Gill Lindsay to Marshall Poulton dated 24 July 2009 (16:42) entitled "FW: Draft Council Report - Edinburgh Tram Private and Confidential"
GL/2009/13			Email from Carmel Riley to Councillors, John Sturt, Gill Lindsay and Directors & Business Managers dated 17 August 2009 (08:42) entitled "Council 20 August 2009"
GL/2009/14			Email from Colin MacKenzie to Gill Lindsay (cc Mandy Wilson) dated 27 July 2009 (10:21) entitled "FW: Tram DRP issues"
GL/2009/15	Draft version preceding CEC00823532		Document entitled "Edinburgh Tram Project – Status Report (DRAFT Private and Confidential): The City of Edinburgh Council 20th August 2009"
GL/2009/16		CEC00659119	Email from Evelyn MacKenzie to Alan Coyle, Andy Conway, Barry Leathem, Colin MacKenzie, Dave Anderson, Donald McGougan, Dorothy Gray, Duncan Fraser, Gill Lindsay, Isabell Reid, Jim Inch, Mark Turley, Rebecca Andrew, Sheena Raeburn, Sheila Dove, Tom Aitchison and Marshall Poulton dated 23 July 2009 (14:49) entitled "Tram Project – IPG and CMT"
GL/2009/17		CEC00660426	Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 19 August 2009

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/18a			Email from Alasdair Sim to David Mackay, WW Campbell, Dave Anderson, Sheena Raeburn, Donald McGougan, Donna Roger, Phil Wheeler, Richard Jeffrey, Steven Bell, Stewart McGarrity, Alastair Richards, Graeme Bissett, Marshall Poulton, Dorothy Gray, Brian Cox, Carol Perkins, Kenneth Hogg, Allan Jackson, Gordon MacKenzie, Ian Perry, N Strachan and Peter Strachan (cc Susan Clark, Andy Conway, I Coupar, Frank McFadden, Alan Coyle, Gregor Roberts, Gill Lindsay, Jim McEwan, Dennis Murray, Tom Buchanan, Maggie Chapman, Ailie Wilson and Claire Murray) dated 1 September 2009 (09:50) entitled "Edinburgh Tram – Tram Project Board 26 August 2009"
GL/2009/18b			Document entitled "Edinburgh Tram Network Minutes (Strictly Private and Confidential) Tram Project Board Meeting 26 July 2009" (26-08-09 TPB minutes.pdf) (attached to 2009/18a)
GL/2009/19			Pro forma status update on Worksteams from in-house Legal Services team dated 8 July 2009
GL/2009/20			Agenda and Briefing for Members for Meeting to discuss Strategy for Edinburgh Tram: Traffic Regulation Orders held on 14 August 2009
GL/2009/21		CEC00668078	Tram IPG Action Note dated 19 August 2009
GL/2009/22			Document entitled "Edinburgh Tram Network Minutes (Strictly Private and Confidential) Tram Project Board Meeting 29 July 2009" (includes "Edinburgh Tram Project – Delivery Organisation Period Progress Report (Issue 1)" for Progress Meeting Date of Period 05)
GL/2009/23		CEC00668079	Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 30 September 2009

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/24a	Updated version of CEC00900419, CEC00900404		Email from Mandy Wilson for Gill Lindsay to Colin MacKenzie and Nick Smith (cc Marshall Poulton) dated 14 April 2009 (11:31) titled "Legally Privileged and FOISA Exempt"
GL/2009/24b	Updated version of CEC00900405		Document entitled "Analysis re DRP: 7 April 2009" [Update re DRP 14042009 HW.doc] (attached to 2009/24a)
GL/2009/25a	CEC01003720		Email from Andrew Fitchie to Gill Lindsay (cc Chris Horsley) [Strictly Confidential and FOISA Exempt] dated 20 April 2009 (18:23)
GL/2009/25b	CEC01003721		Document entitled "Edinburgh Tram Network – Summary Paper on DRP Issues" [24153061_3_UKMATTERS(Paper on DRP Issues – 20 April 2009).DOC] (attached to 2009/25a)
GL/2009/26		CEC01033266	Email from Gill Lindsay to Andrew Fitchie dated 8 April 2009 (18:50) entitled "Re: Contact"
GL/2009/27		included in CEC01031541	Email from Andrew Fitchie to Gill Lindsay dated 13 April 2009 (17:42) entitled "Re: Edinburgh Tram: Strategic Options and DRP"
GL/2009/28		CEC01031459	Email from Andrew Fitchie to Gill Lindsay dated 1 June 2009 (16:09) entitled "Re: DRP"

Appendix 3: Abbreviations Used in this Statement

BB	Bilfinger Berger
BBS	Bilfinger Berger and Siemens Group
BSC	Bilfinger Berger and Siemens Consortium
CEC	The City of Edinburgh Council
CMT	Council Management Team
DRP	Dispute Resolution Process
DLAP	DLA Piper
ETN	Edinburgh Tram Network
FTE	Full Time Equivalent
Infraco	Infrastructure provider and maintenance
IPG	Internal Planning Group
LAG	Legal Affairs Group (latterly renamed the FCL Group)
MoU	Memorandum of Understanding

MUDFA	Multi Utilities Division Framework Agreement
OA	Operating Arrangement
OJEC	Official Journal of the European Union (previously Community)
OSSA	On Street Supplementary Agreement
QRA	Quantified Risk Allowance
SDS	System Design Services
TEL	Transport Edinburgh Limited
Tie/TIE	Transport Initiatives Edinburgh
TPG	Tram Project Board
Tramco	Vehicle supply and maintenance
TS	Transport Scotland

Appendix 4: ADDENDUM TO WITNESS STATEMENT dated 2 October 2017

I have provided an Addendum of information to assist the inquiry by expanding my Statement regarding my duties and responsibilities and for clarity in response to other Inquiry evidence regarding myself.

Appointment as Council Solicitor:

Appointment as Depute Council Solicitor in 2001 and as Council Solicitor in February 2004. My appointment as Council Solicitor followed an external recruitment exercise which is a Council requirement. This mandatory Council requirement was managed by the Department of Human Resources in Corporate Services and the Director of Corporate Services had previously been the Head of HR Services. My appointment was not therefore a ring-fenced internal appointment.

My appointment as Council Solicitor resulted from an extensive recruitment exercise with the final stages of interview involving selection from myself as the only remaining internal candidate and two external candidates. As reported in the supplemental Report (GL/2004/1) to the Council Meeting on 19 February 2004, "The Committee interviewed three candidates on 18 February 2004 and unanimously agreed to recommend that G Lindsay be offered the post of Council Solicitor, Department of Corporate Services".

Role of Council Solicitor:

In the period to 1 December 2009, I undertook all the functions and responsibilities of Council Solicitor including managing the legal teams of:

- litigation
- commercial property
- licensing (including liquor, taxi/private hire cars, houses in multiple occupation, gambling and public entertainment, event licensing and Clerk to the Licensing Board)
- District Courts
- commercial practice
- planning
- all Joint Boards and Lothian Pension Board.

I can confirm that I was not at any time seconded to or embedded within a Council team to work on Edinburgh Trams. At no point did my title include any reference to Edinburgh Trams. All relevant principal solicitors, the Depute Council Solicitor and the Division's Business manager, reported to me in relation to the legal work, business, staff and budgets within these teams and the Legal Services Division. Excellent relationships were in place.

The role of Council Solicitor was extremely demanding and challenging. I was highly committed and dedicated to providing a high quality legal service. I typically worked

between 55-60 hours per week and ensured that I was contactable by phone, text and email in the evening, at weekends and when on annual leave. One of the key management challenges of being Council Solicitor was delivering a balanced budget for the Legal Services Division and Department.

In terms of detailing the operating environment in Legal Services:

In addition to all the legal work within these teams in late 2007 and early 2008, key examples of additional legal work and challenges were placed on me in relation to:

- The transfer of District Court functions, staff and records to the Scottish Courts Administration as Edinburgh was an early adopter of Scottish courts unification.

  This included liaising with Scottish Courts administration, staff and unions in relation to the TUPE transfer of staff in my Division, effective and seamless transfer of all District Court business and current and past records of activities, fines and records.

  I was also required to manage the estate building of the District Courts as the property costs remained within my budget and to seek a tenant or income in respect of that building.

  Particular staff issues arose relating to staff terms and conditions, working conditions, alignment to new posts within Scottish Courts and matters of staff pensions, which required my direct involvement.

  Particular issues required attention as the Council had no previous experience of Scottish Courts unification and there was a lack of clarity in the detail of new positions and job descriptions and in relation to transfer terms and conditions of staff.

- In relation to Licensing, the relevant Principal Solicitor can confirm that all matters of strategic importance in relation to Licensing were brought to me for my attention and required involvement including during that period the strategic issue of Edinburgh's policy of restriction on the numbers of Taxi Licenses and the Salteri court decision (Court of Session appeal decision) and the implications for the Council's policy and legal determination of licence applications and the determination of unmet need and the Council's Survey of Demand.
  This issue had considerable strategic and legal and operational significance for Licensing within the City, for Licence holders, potential holders and customers.

  With the relevant Principal Solicitor, the matter was widely researched with guidance available for England and Wales examined as the guidance was not yet available from the Scottish Government, OFT guidance, Counsel's opinion sought in relation to applications and appeals, liaison with relevant persons and detailed reporting on the matter to the full Council meetings on 23 August 2007 and 25 October 2007 (Report Item 8.2) on the implications of retaining the existing policy and the implications of removing the restriction on taxi licence numbers and the

change in procedures considered necessary to continue with this policy following the appeal decisions.

- In relation to litigation, the strategic issue of Equal Pay and related litigation and advice in respect of both female and male employees was dominant through this period.
  This was a historic issue for local authorities with very significant HR, legal, staff and financial implications in relation to present cases, settlements and future actions on Edinburgh and other Local Authorities to ensure pay grades and systems were robust in the future and transitional and legal provisions were in place for relevant staff and staff grades.

- Review of Legal Services Division: consideration of staff, budgets and delivery and link with Council Secretary to make cost savings. Reports to Council on 29 May 2008 (GL/2008/94) and 12 March 2009 (GL/2009/30) acknowledge the high quality of legal services provided despite the extensive and acute budgetary pressure in 2008 and a moratorium on filling of vacancies.
  "The Council wide financial pressures resulted in a number of key vacancies not being filled for an extended period of time"

  "The current funding position has resulted in available resources for funding for core services being at a critically low level at a time when activity is rising"

  In respect of Legal Services staff, these Reports state that they "have continued to deliver a highly professional service" and "Their dedication and commitment has gone beyond what can be reasonable expected with many working long hours to meet client needs".

  Further statements include: "Feedback from Directors...has been appreciative of the dedication and commitment of staff and their availability to the Department and their successes against a background of acute resourcing particularly throughout 2008".

  Customer satisfaction was excellent in each of the four financial years from 2005 to 2009, notwithstanding the budgetary pressures and acute resourcing, with consistent customer feedback scores of at least 91% satisfaction based on the results of approximately 170 survey returns per annum. The results confirm "the commitment, ability and achievements of all staff in the Division throughout a difficult financial period for the Department".

Legal Services Budget and Resources:

In relation to Mr Inch's evidence that I was expected to delegate work and responsibilities throughout this relevant period, the budget for Legal Services Division was extremely

compromised with a firm vacancy freeze, reducing budget coupled with aggressive and increasing income targets.

In the budget submission for Elected Members (GL/2007/42a, GL/2007/42b and GL/2007/42c), my correspondence with the Director states that resources within the Division are, in my words, "beyond critical" and my request for the Director to present this to Elected Members for their awareness through the budget process. The term "beyond critical" is not a term that I would have used lightly but reflected the significant budgetary and resource pressures on delivering legal services for the Council. My email to the Director of 29 November 2007 at 17.11 states:

"As advised at the meeting, I am concerned to note that information provided below for the budget pack has still largely not been included and the acute levels of current resourcing have not been highlighted despite my repeated requests to explain the positioning to members."

Please see comment on Licensing income and fee assumptions and the position of Elected Members. In terms of the Legal Services review I confirm:

"The next financial year will not bring both savings and improvements"...."No revenue funding or budget in place to fund core legal services."

The above concern was not presented to Elected Members by the Director through the budget process. It is a matter for individual Directors to determine their budget allocation within their Departments and to determine the information to be presented and discussed with Elected Members during that budget process. The allocation for Legal Services from within the Department of Corporate Services budget for the relevant period shows a 12% reduction in budget in relation largely to staff costs together with an increasing income target of 14% (GL/2007/42c). The majority of the Department of Corporate Services was fully revenue funded to cover all as the figures show.

The Legal Services Division was the only Division within the Council which was faced with such a reduction to compensate for smaller reductions or growth in the wider Department of Corporate Services Budget including supporting the E-Government/ICT Division.

The Legal Services Division was the only support service Division within the Council which had such aggressive income targets which were in place to support the budget of the wider Department of Corporate Services and increasing targets which resulted in the Legal Services Division requiring to tender externally to seek to win work in competition with other private sector providers to gain income.

The Legal Services Division successfully sourced work from other Local Authorities in respect of Court of Session Agency work, which required to be undertaken and billed and managed, in addition to all legal work from the Council and its Joint Boards with the reduced budget and staff numbers.

The Budgets for each Division within the Department of Corporate Services were set by Mr Inch, Director of Corporate Services, who was responsible for all communications to and from Elected Members in relation to budgets and who set individual budgets for each Division.

The requirement to reduce spend to meet reduced budget and increase income to meet increasing income targets was, following discussions within the Department, a non-negotiable and absolute requirement. The pressures of increasing work within the Division, the reduced staff numbers, non-filling of vacancies and increased income targets were such that the Director was well aware of the workload pressures within the Division.

It is incorrect to state that there was any capacity whatsoever within the Legal Services Division for me to delegate any of my work or responsibilities. The reverse is the case with more and increasing functional work requiring to be undertaken by myself due to demand and budget pressures. This was well known within the Department and Council and it was accepted by Directors that support services were vulnerable to difficult budget cuts when the Council required to make savings and support direct client facing services and Departments.

The requirement of service Departments themselves to make savings had the impact of increasing work within the Legal Services Division as new methods of creating savings and delivering services created additional demand for legal services.

External legal opinion was sourced regularly as required. Advice from external Counsel were sought regularly on a wide range of significant legal matters in the interests of the Council.

Position of Council Solicitor in the City of Edinburgh Council structure:

During my period as Council Solicitor, seven Directors (Finance, City Development, Corporate Services, Services for Communities, Health & Social Care, Education and Sports & Leisure) reported to the Chief Executive with these eight officers comprised the Council's Executive Management Team. Some CEC staff refer to these eight officers as the Directorate.

The position of Council Solicitor was as a Head of Service post reporting to the Director of Corporate Services. There were approximately 7 Head of Service posts in the Department of Corporate Services and approximately 40 - 50 Head of Service posts across the seven service areas above managed by the Directors.

All the Head of Service posts were equivalent in seniority and were not part of the "Directorate" and reported to their relevant Director. The Council Secretary in Committee Services within the Department of Corporate Services had very direct access to Elected Members as that role involved the direct provision of support to the Councillors of managing Council business and including IT facilities, staff and training.

In my interview for Council Solicitor, I had presented a strategy for closer and direct engagement of the Council Solicitor with the Elected Members. Although this proposed approach was viewed positively by the Elected Members on my interview panel, I was advised by the Director of Corporate Services following my appointment that contact with Elected Members required to be only through his post.

Elected Members did contact me directly with queries which I was pleased to assist with but in my role of Council Solicitor, I could not directly contact Elected Members regarding the Legal Services Division.

I sought again to have more direct contact at the commencement of the new Council Administration in 2007, to assist. Again the Director of Corporate Services clearly confirmed that the contact arrangements for Elected Members/Groups in the new Administration and arrangements were by himself personally in respect of his Department and he would seek attendance by a Head of Service at a particular meeting if he considered it was required. These were the reporting arrangements in the Department of Corporate Services.

Amalgamation of the roles of Council Solicitor and Council Secretary in 2009 in the post of Head of Legal and Administrative Services changed the above position and provided the postholder, Mr Maclean, with full and unrestricted direct access to Elected Members. This provided full opportunity to directly engage with the Council Leader, Leaders of the individual political parties and with all Councillors. I understand this post had a seniority amongst other Heads of Service within the Department of Corporate Services.

Period between 1 December 2009 and July 2010:

I recall receiving a personal letter from the Director of Corporate Services summarising my duties during this period but my recollection is that it was a short letter in Mr Inch's style. As the Alternative Business Models project was a project where the Programme Director was a member of Mr Inch's staff, I would expect this section to have more detailed comment. Review of the letter will be useful to assist if this document is that which I recall.

Notwithstanding the content of the letter from the Director of Corporate Services, my duties changed at commencement of this period by a highly significant issue regarding procurement evaluation and award of Health & Social Care contracts which arose in Mr MacLean's first day at CEC.

My recollection of the issue was that a joint Report to Council prepared by the Director of Finance (which provided procurement services at that time), the Director for Health & Social

Care and the Director for Services for Communities had been approved at a previous Council Meeting.

This approval of tender decision by the Council would impact the award of contracts for personal care services (covering 12 contracts from recollection) being sensitive and personal services for personal care. The Council received challenge correspondence containing detailed matters regarding the evaluation and a "re-evaluation" and had detailed knowledge of matters.

On my receipt I considered there was sufficient credible information and detail of a potential challenge and that, if the information was correct, there was a real concern that decisions could be unsound and contrary to law and the Council may well not be able to successfully defend a challenge threatened in regard to the selection of the successful tenderers and contract award.

I discussed the matter and these concerns with Mr Maclean who did not initially consider that this would present any issues for the Council. The provisions of public procurement are highly regulated at EU and domestic law and provisions require to be complied with to ensure fair selection and fair competition. We agreed that I should call Mr Inch as Director of Corporate Services and Monitoring Officer that evening to alert him and he requested a fuller briefing the following morning and for the Chief Executive to be updated the following day.

A highly intensive period followed of considering at a very high level the impact of the "re-evaluation" and use of a "confidence factor" during the procurement exercise to determine whether these difficulties had affected the selection decisions taken. The evidence quickly emerging was that this appeared to be the case. Difficult meetings at Director level and senior political level took place to consider and update and determine actions. The agreed way forward was for a further period to consider the evaluation material more closely in consultation with Senior Counsel and I was asked to directly undertake this role to assist.

This involved commencing an extensive and highly intensive exercise of legal review of evaluations and procurement, Elected Member reporting and a weekly Executive Group of all relevant three Directors, the Director of Corporate Services and myself. Mr Inch advised he required me to deal with the matter personally as Mr MacLean had just commenced in his role and had various introductions and commencement activities and as it related to a public sector procurement. Mr Inch also advised he required me to liaise with the Chief Executive and his office.

I was asked to provide particular support to the Chief Executive who wished me to take a personal role in the matter as this matter involved three of his Directors and I was asked to

co-ordinate all the Chief Executives' correspondence and actions on this matter with internal staff, Elected Members, external organisations with close involvement in supporting adults with care needs and the present and existing contractors and the new contractors who were expecting to be awarded the new contracts and have relevant transfer of staff to them and to commence preparations for contract award and commencement. This was a highly intensive, immediate and demanding role and was to be my immediate priority.

Addressing the Health & Social Care issue was agreed with the Chief Executive, Director of Corporate Services and Mr Maclean as my highest priority at the time due to the political and public profile and sensitivities and the potential financial and reputational damage to the Council (GL/2009/29, GL/2010/1).

Most of my time during December 2009 and January 2010 was spent addressing the significant Health & Social Care issue with the remainder on progressing the Alternative Business Models project which was also a highly internally sensitive project with three functional streams for large scale transformational outsourcing of Council services, the desire to facilitate other Local Authorities being able to draw from the awarded contracts and constant and expected challenge from relevant Unions on the process. External legal support for the project was being procured but not yet in place and timescales were urgent.

Nick Smith was continuing to work on the Trams project and had been reporting to the Head of Legal and Administrative Services since 1 December 2009 as expected. Mr Maclean took a significant role in the Edinburgh Trams Project from January 2010 as evidenced by email and meeting records which I was not copied on. It was not responsible to exclude this information from me.

These include the "Trams Potted History" email from Nick Smith (reviewed by Alan Coyle) to on 8 January 2010 (CEC00473789) and correspondence between Mr Maclean and others between 21-22 January 2010 (CEC00473835). Several other emails evidence Mr Maclean's considerable involvement in the Trams project from January 2010.

The Inquiry records also show that although I sought information to assist the internal team as I had been asked to do, information was often not shared and I was not included in the internal legal team's communications and actions, including seeking a Dundas & Wilson opinion on termination and on enhancing the internal team with an additional Solicitor and former colleague of Mr Smith.

With regard to Mr Maclean's written evidence that he had no role whatsoever in the Edinburgh Tram project between 1 December 2009 and August 2010, this is entirely inconsistent with the Inquiry evidence and the position. Mr Maclean's responsibility related

to all work including legal work within the new Division from the date of his appointment in accordance with his contract of employment.

I did raise concerns with the Director of Corporate Services that I was receiving little information about the Trams project and he asked me to continue to try to keep a watching brief on the project which I did. The records show that I was largely not included in relevant meetings and correspondence by the internal legal team at that time.

I remained in regular contact with Mr Maclean regarding the Tram project and he was updated on all activities by Mr Smith and our discussions. In terms of the IPG, I continued to attend the IPG meetings between 23 December 2009 and 12 May 2010 with Nick Smith as requested by Mr Inch. The Action Notes of meetings during this period indicate that there were few Actions assigned to Nick Smith and myself during this period compared to the larger number of Actions allocated to the Directors of City Development, Finance and Corporate Services, the Tram Monitoring Officer and Finance (Alan Coyle) and City Development staff (Andy Conway) in respect of all relevant contract management and related issues relevant at that particular time.

In my opinion, I consider that Mr MacLean is not accurate in the comments regarding myself in his statement and seeks to deflect for his own reasons and I believe he is not in good faith or good leadership in so doing. I do not recognise the comments in his statement and it does not accord in any way with the evidence or the thanks and very kind feedback I received from my extensive and intensive role in respect of the Health & Social Care arrangements, the thanks received from each and every workstream and staff at all levels and Departments and the Programme Director for the Alternative Business Models project. The Legal Services Divisions internal staff member working with me on the Alternative Business Models project expressed her thanks and appreciation constantly for my help and support to her and transfer of skills and knowledge. Excellent relationships were in place.

Clearly I sought to undertake my role within the internal legal team constantly and in the utmost good faith. At the time we had a very good working relationship without issues and I do not recognise any presentation by him at the time of any issues whatsoever. Mr Maclean's evidence seeks to disassociate himself and undermine others. Rather he could have advised that he had chosen to exclude me in this particular project, that I was very fully engaged on business matters and continued to assist and support the team constantly and immediately on all activities. There were no actions requested by Mr Maclean which were not immediately actioned.

In terms of balance, I am not aware of any difficulties which may have been experienced by Mr Maclean in relation to Edinburgh Trams or any matter since December 2009.

Mr Maclean did not exhibit or advise of any difficulties whatsoever. He regularly sought me out to discuss and assist him with various matters in his role. I am certain that if there was any additional support which he did or did not wish, he would have said so. That was the relationship displayed to me.

I provided every support and assistance to Mr MacLean when he commenced on 1 December 2009 in the role of Head of Legal and Administrative Services, as I would have done for all or any new colleague. This was a promoted post and I provided total support recognising his post and position and providing every assistance with handover and all work matters.

Costed Risk Review for Edinburgh Trams

I had no role in the costed risk review for Edinburgh Trams nor whether that should be undertaken by a consultant or OGC. These were matters for the client Departments of City Development and Finance and the relevant staff and Directors.

No Role in Respect of Business Case or Affordability of the Edinburgh Trams project

I had no role in respect of business case or affordability of the Edinburgh Trams project. There are no documents detailing that role to me. All the evidence is to the contrary. At no time did I report to the Directors of City Development or Finance. There are no documents detailing that role to me. My reporting structure was to Mr Inch, Director of Corporate Services.

Finance staff (Rebecca Andrew, Alan Coyle) reported to the Director of Finance, the Statutory Finance Officer. City Development staff (Duncan Fraser, Andy Conway) reported to the Director of City Development.

Review of Council Companies (Report to Council Meeting on 1 May 2008)

Clarification in relation to Council Companies and governance is provided in the Report to Council of 1 May 2008 on the Review of Council Owned, Arms Length Companies and Joint Ventures by the Director of City Development (GL/2008/93).

The Report clarifies that the Companies Strategy Group, set up and chaired by the Chief Executive and attended by the Directors of City Development, Corporate Services and Finance, currently oversees the strategy for all Council Companies. The Council owned companies and joint ventures within the scope of the review were:

- CEC Holdings Limited
- The EDI Group Limited
- Waterfront Edinburgh Limited

- New Edinburgh Limited
- PARC Craigmillar Limited
- Edinburgh International Conference Centre Limited
- Edinburgh City Centre Management Company Limited
- Shawfair Developments Limited

TIE and TEL were not regarded nor operated by the Council in a similar way to the Companies detailed above. TIE and TEL were wholly owned companies to deliver and oversee the procurement and operational delivery of Edinburgh Trams as agent for the Council as Statutory Undertaker. The objectives were aligned. The requirement to create and deliver the project through this structure was a funding requirement placed on the Council by the Scottish Government. The Council remained the owner of the infrastructure. All consultants were required to be procured with a duty of care to the Council, recognising the delivery structure.

A letter from Rees and Freres, solicitors and parliamentary agents, of 15 December 2003 (GL/2003/1), in considering the identity of the Promoter of the Bill for the Tram Acts and the commissioning and contract for solicitors and parliamentary agents, states:

"TIE is not an independent entity, and should be treated for what it is, namely a creature of the Council and one whose functions is to assist the Council in delivering the Council's Transport Strategy including the two Bills."

It further states:

"The Consultants so far engaged for the promotion of the Bills should be re-engaged by the Council as the Council's consultants having a duty of care, and being accountable, to the Council. However TIE, as project manager, would manage the consultants on behalf of the Council and they would, unless the Council should otherwise decide, receive and act in accordance with instructions given by TIE."

Design Risks

In respect of design, I was not advised of Mr Fraser's view that a risk premium or allowance of £25 million in the Council Report in December 2007 should be in place nor that he had suggested such to his Director, The Director of City Development (Andrew Holmes), nor that the Director of City Development had considered the matter, not agreed and/or instructed its removal from a draft Report to Members.

I was not aware that this information was known by Colin MacKenzie and Nick Smith and discussed at their Legal & Property meeting with colleagues from City Development and Planning on 20 November 2007 until receiving document CEC0137445 via the Inquiry. I am not aware if this was advised to Mr Inch, Director of Corporate Services and Monitoring Officer, for his awareness of matters and risk profile and in relation to the role of Mr Holmes as a Member of TPB and Council Director, for transparency. I would have done so had I

CEC0137445 should be CEC01397445

known or been advised in relation to both its recommendation by Mr Fraser and its potential removal by Mr Holmes, for awareness and information.

Briefing of Elected Members

For clarification, I was not involved in or responsible for briefing Elected Members on Reports in relation to Edinburgh Trams. Council and Inquiry records show that this was the role and responsibility of the Director of City Development, Director of Finance, the Chief Executive, various staff within the Departments of City Development and Finance and by Tie and TEL.

I was not involved with briefing of Group Leaders or Elected Members on the Edinburgh Tram Project although the records show that other female members of staff such as Rebecca Andrew (Finance) and the communications role (Corporate Communications) were involved.

I did not author, submit or present any Reports on the Edinburgh Tram Project to Council Meetings. The records show that Reports to Council on the Edinburgh Tram Project were presented by the Director of City Development and the Director of Finance and authored by staff in their Departments such as Alan Coyle, Andy Conway and Duncan Fraser.

For reference in terms of general Reports to Council, there was no mandatory requirement for Directors to obtain advice from Legal Services or to incorporate advice received.

I was not a full member of the Internal Planning Group (IPG) and Legal Services. Myself, Colin MacKenzie and latterly Nick Smith, attended these meetings solely in a support capacity to the Directors and Chief Executive. Duncan Fraser and Andy Conway collated and presented the Reports to the IPG meeting.

TPB meeting on 1 May 2008 (am)

For disclosure, I had no knowledge of a TPB meeting on the morning of 1 May 2008 nor an approval to pay the sums detailed in that minute to SDS. I have no knowledge if Council approval was sought or received. My awareness of this was on reviewing the Inquiry database of documentation.

In terms of balance, I was not aware of the extent of positioning emails sent by Colin MacKenzie to his colleagues just prior to important project steps. In my opinion, these actions may not be consistent with working in good faith. Mr MacKenzie did have a particularly extreme reaction to my promotions to Depute Council Solicitor and Council Solicitor. I remained entirely professional throughout and sought to provide leadership and sought effective communication and saw challenge as positive. Mr MacKenzie supported my role in the Division in part. He rejected my request for more regular internal legal meetings, considering and advising that this was a waste of his time and importing dual reporting mechanisms as himself and City Development and Finance colleagues were producing regular briefings for the Chief Executive's IPG meetings, as they were.

Further and Final Thoughts

To assist and in terms of further and final thoughts, in my opinion:

The element of control required to be provided to Tie/TEL and that retained by local and central Government should have been a factor in the decision and implementation protocols to require the delivery to be outwith the Council, rather than a decision based on delivery confidence. In particular the requirement for private sector contractors to have financial guarantees and not contract solely with a delivery company could and should have been anticipated and again considered as a factor on the suitability of determining the project was to be delivered outwith the Council. The unexpected withdrawal of support by the Scottish Government created some instability and loss of assurance and left a remaining structure determined by Central Government for a project with a dual Central and Local Government role.

The Edinburgh Trams project was publicly funded whether and to what extent by Central and Local Government and there could and should have been more joined up working in the interests of the project. Rather there were constraints by structures and timetable dates which did not provide overall benefit as they should have done.

The strategy and implementation of mediation does not appear to have been founded on or consistent with the external legal QC advice of both Tie and the Council to require the contractor to work to and enforce the contract by robust contract management to gain grounds for termination or leverage in a negotiated situation.

It is not clear that the mediation recognised the impact of not agreeing a negotiated settlement of being the offered solution of the contractor at the cost offered at an earlier meeting. It is not clear nor in the public domain of how and why the figure emerged so quickly at the mediation arrangements and at that scale.

It is not clear why matters proceeded when cost consultants, Faithful & Gould, detail costs as being "grossly inflated". It is not clear what evidence there was that the contractor would submit costs which were not so inflated having regard to the profile of sums claimed to date. This was a particular matter when the advice of the two QCs was to seek to enforce the contract even as a means of leverage. It seems inconsistent that those that sought further external legal review then appeared to ignore the advice of two QCs at such a critical stage in the project.

The summary by Ashursts, solicitors, within the Inquiry evidence shows a risk profile no better than the previous contract with the contractor not taking the risk of utilities and delay nor design delay. A key difference appears to be the ability to work at demonstrable cost, to the benefit of the contractor, within 21 days or costs/delay in excess of £750,000.

Additional References

Reference	ETI Filename	Details
GL/2003/1		Letter titled "Edinburgh Tram Bills" to Colin Mackenzie from Rees & Freres (Solicitors and Parliamentary Agents) on 15 December 2003
GL/2004/1		Council Item no 9.1 (Report no CEC/158/03-04/RC) dated 19 February 2004 presented at the Committee Meeting (14) of The City of Edinburgh Council on 19 February 2004
GL/2007/42a		Email from Mandy Wilson on behalf of Gill Lindsay titled "Budget Pack/Prioritisation" on 29 November 2007 (17:13)
GL/2007/42b		Email from Mandy Wilson on behalf of Gill Lindsay titled "Budget Pack – Text re Review of Legal Services" on 29 November 2007 (17:24)
GL/2007/42c		Appendix Table titled "Corporate Services Budget Allocation" linked to above email (GL/2007/42b)
GL/2008/93		Report entitled "Review of Council Owned, Arms Length Companies and Joint Ventures" presented at the Committee Meeting 1 of The City of Edinburgh Council on 1 May 2008 (Item no 8.7; Report no cec/004/08-09/CD)
GL/2008/94		Report entitled "Review of Legal Services" presented at the Committee Meeting of The City of Edinburgh Council on 29 May 2008 (Item no 9.4(b); Report no cec/033/08-09/CS)
GL/2009/29		Online article titled "Edinburgh care contracts suspended pending inquiry" published on CommunityCare.co.uk on 3 December 2009
GL/2009/30		Report entitled "Review of Legal Services and Council Secretary" presented at the Committee Meeting of The City of Edinburgh Council on 12 March 2009 (Item no 8.4; Report no cec/161/08-09/CS)
GL/2010/1		Online article titled "Edinburgh may be sued by disabled people over contracts saga" published on CommunityCare.co.uk on 2 February 2010

[redacted] 2/10/2017

<END OF DOCUMENT>

I wish to assist the Inquiry and I have accordingly prepared a statement of my understanding and recollection of the Project to the best of my knowledge and belief without access to relevant records. The timescales of some of these matters now exceeds 10 years.

I was last employed by the Council some 5 years ago having left the Council's service in 2010 and have held other legal roles and posts since then. Since 2010 I have had no access to Council records and this statement is therefore prepared without access to Council records. The Council should have all relevant documentation.
I have not had access to any Scottish Government records in relation to the Project. Prior to 2010 I had very limited access to any records of Tie Ltd.

To the best of my recollection, knowledge and belief:-

My understanding and recollection is that the Scottish Government required and mandated that this Project would not be carried out by the Council and required that it be carried out by a separate company, with its own structure and staff. My recollection is that this was as a consequence of an undelivered earlier transport project. As a consequence of the above structure, the Project was not directly a Council Project and the role of the legal services division was unlike any other piece of legal activity for the Council. In summary:-

I was not involved at any time or in any way with making decisions on the procurement/contract or project structure,
I was not party to any contract or commercial negotiations,
I was not involved in drafting or revising any of the contract or project documents.

In terms of timescales, budget and oversight, I had no role in the Project Management nor in the budget or approving any sums to any party or contractor, within or outwith any budget. I had no role in the business case.

I was not a Member of Tie Ltd nor a member of the Tram Project Group.

The contract structure, procurement and its constituent parts and commercial input was undertaken by and determined by Tie.

The role of Tie was the delivery of the Edinburgh Tram Project. Tie had a range of internal staff and a range of external consultants to secure delivery. Tie external consultants included external legal Agents for the Project.

The Council's legal division had some role in associated Council legal activity including road traffic issues, the Parliamentary Inquiry relating to The Tram Acts, the planning issues relating to developer contributions, securing consents for the overhead lines, operating agreements and a number of discreet areas and liaison with Council officers and external Agents.

Should any information which I consider to be inconsistent with the above be made or on any matter of concern to me, I reserve the right to respond or add to this Statement.

Appendix 2: Reference Documentation

Reference	ETI Filename (available for Statement preparation in Nov 2016	ETI Filename (available from 29 June 2017)	Details
2006			
GL/2006/1 **WED00000496**			Email from Pat Denholm to Tom Aitchison dated 15 December 2006 entitled "FW: Tram Internal Planning Meetings"
GL/2006/2 **WED00000486**			Email from Gill Lindsay to Andrew Holmes(cc Jim Inch) dated 13 December 2006 (16:15) entitled "Council ReportTrams"
GL/2006/3 **WED00000487**			Email from Lex Harrison to Gill Lindsay (ccColin MacKenzie, Rebecca Andrew, Ewan Kennedy, Max Thomson and Duncan Fraser dated 8 December 2006 (16:22) entitled "Re: Edinburgh Tram Draft Final Business *Case"*
GL/2006/4 **WED00000487**			Email from Gill Lindsay to Lex Harrison (13:39) dated 1December 2006 entitled "Edinburgh Tram Draft Final Business Case"
GL/2006/5 **WED00000488**			Email from Gill Lindsay to Colin MacKenzie and Matthew Clarke dated 7 December 2006 (17:53) entitled "FW: dbfc"
GL/2006/6 **WED00000488**			Email from Gill Lindsay to Jim Inch dated 7 December 2006 (17:36) entitled "FW: dbfc"
2007			
GL/2007/1	CEC00389604		Document dated 18 October 2007 entitled "Edinburgh Tram Network Final Business Case Version 1"
GL/2007/2a **WED00000489**	CEC01714253		Email from Andrew Fitchie to Gill Lindsayand Colin MacKenzie (cc Susan Clark and Geoff Gilbert) dated 5 October 2007 (17:44) entitled "Bidder Negotiations"
GL/2007/2b **WED00000489**	CEC01714253		Email from Gill Lindsay to Andrew Fitchie and Colin MacKenzie (cc Susan Clark and Geoff Gilbert) dated 8 October 2007 (10:16) entitled "Re: Bidder Negotiations" (including email chain)

Reference	ETI Filename (available for Statement preparation in Nov 2016}	ETI Filename (available from 29 June 2017)	Details
GL/2007/2c **WED00000489**	CEC01714253		Email from Gill Lindsay to Andrew Fitchie and Colin MacKenzie (cc Susan Clark and Geoff Gilbert) dated 8 October 2007 (22:46) entitled "Re: Bidder Negotiations" (including email chain)
GL/2007/2d **WED00000489**	CEC01714253		Email from Geoff Gilbert to Gill Lindsay and Colin MacKenzie (cc Susan Clark and Andrew Fitchie) dated 9 October 2007 {08:26) entitled "Re: Bidder Negotiations"
GL/2007/3 **WED00000490**			Email from Gill Lindsay to Mandy Wilson for Jim Inch dated 11 December 2007 {13:43) entitled "Tram Report"
GL/2007/4 **WED00000491**			Email from Kirsty-Louise Campbell to Gill Lindsay dated 10December 2007 (14:37) entitled "Risks from Report"
GL/2007/5 **WED00000492**			Email from Gill Lindsay to Andrew Fitchie (cc Graeme Bissett, Willie Gallacher, Matthew Crosse, Colin MacKenzie and Andrew Fitchie) dated 17December 2007 (09:41) entitled "Re: Edinburgh Tram Network - Draft Contract Suite"
GL/2007/6 **WED00000493**			Email from Gill Lindsay to Colin MacKenzie and Duncan Fraser (cc Rebecca Andrew, Alan Coyle and Nick Smith) dated 15 December 2007 (21:31) entitled "Re: Tram: Council Report"
GL/2007/7 **WED00000494**			Report dated November 2007 entitled "Review of the Tram Funding Strategy: Report to City of Edinburgh Council"
GL/2007/8 WED00000322	linked to CEC01397758		Email from Gill Lindsay to Jim Inch (11:39) dated 14December 2007 entitled "FW: Report"
GL/2007/9 **WED00000323**			Email from Andrew Fitchie to Gill Lindsay dated 12December 2007 (23:34) entitled "Re: Network Rail Processes to be completed"
GL/2007/10 **WED00000324**			Email from Andrew Fitchie to Gill Lindsay and Graeme Bissett (cc Willie Gallacher, Andrew Holmes and David Mackay) dated 12December 2007 (23:52) entitled "CEC Resolution"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/11 **WED00000325**			Email from Rebecca Andrew to Steven McGarrity, Donald McGougan, Andrew Holmes, Willie Gallacher, Miriam Thorne, Geoff Gilbert, Colin MacKenzie, Gill Lindsay and Alan Coyle dated 12 December 2007 (09:38) entitled "TS Information"
GL/2007/12 **WED00000326**	CEC01500925		Email from Andrew Fitchie to Gill Lindsay dated 13 December 2007 (19:43) entitled"Re: CEC Resolution"
GL/2007/13 **WED00000327**	CEC01546448		Email from Andrew Fitchie to Gill Lindsay and Graeme Bissett (cc Willie Gallacher, Andrew Holmes, David Mackay, Colin MacKenzie and Hazel Moffat dated 13 December 2007 (11:14) entitled "Re: CEC Resolution"
GL/2007/14 **WED00000328**	CEC02083446		**Minute of "14 Edinburgh Tram: (i)** Contracts Acceptance and (ii) Independent **Review of Tram Funding Strategy – Council Contribution" in the Committee Minutes** of the City of Edinburgh Council Meeting dated 20 December 2007
GL/2007/15 **WED00000329**			Email from Willie Gallacher to Donald McGougan (cc Graeme Bissett) dated 7 October 2007 (18:43) entitled "Re: Tram Subcommittee Remit"
GL/2007/16 **WED00000329**			Email from Donald McGougan to Graeme Bissett and Willie Gallacher dated 4 October 2007 {16:55) entitled "FW: Tram Subcommittee Remit"
GL/2007/17 **WED00000330**		CEC01726206	Email from Robert Millar to Nick Smith (cc Gill Lindsay and Colin MacKenzie) dated 21 February 2007 {20:11) entitled "Legal Support for Tram Project"
GL/2007/18 **WED00000331**			Email from Kirsty-Louise Campbell to Gill Lindsay dated 19July 2007 (10:35) entitled "Work Allocation - NS"
GL/2007/19 **WED00000332**			Email from Gill Lindsay to Mandy Peay and Jim Inch dated 2 March 2007 (17:08) entitled "Re: GVD Notices and Ministerai Announcement re Tram Business Case"
GL/2007/20 **WED00000333**	CEC01561544		Document entitled "Edinburgh Tram Internal Planning Group Action Note" dated 27 September 2007

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/21 **WED00000334**			Document entitled "Edinburgh Tram: Further Update - Report to Council 20 September 2007"
GL/2007/22 **WED00000335**	CEC02083538		Draft document entitled "Edinburgh Tram: Final Business Case – Report to Council 25 October 2007" " [Item no 8.I(a)]
GL/2007/23 **WED00000336**			Email from Gill Lindsay to Jim Inch dated 6 July 2007 (02:32) entitled "Trams"
GL/2007/24 **WED00000337**			Document entitled "Edinburgh Tram: Update (Report to The City of Edinburgh Council 23 August 2007") [Report no cec/60/07-08/ce]
GL/2007/25 **WED00000338**			Report entitled "Tram Project Sub- Committee: Transport Infrastructure and Environment Committee" dated 25 September 2007
GL/2007/26 **WED00000339**			Document entitled "Supplementary Report - Edinburgh Tram Procurement of Tramco and Infraco: The City of Edinburgh Council 25 October 2007" [Item no 8.I(b)(i)]
GL/2007/27 **WED00000340**	CCEC01567280 (refers to earlier email in chain)		Email from Gill Lindsay to Colin MacKenzie dated 26 September 2007 (19:16) entitled"Re: Final Business Case Draft"
GL/2007/28 **WED00000340**	CCEC01567280		Email from Colin MacKenzie to Duncan Fraser, Alan Squair and Nick Smith (cc Robin Goodwin, Rebecca Andrew and Gill Lindsay) dated 26 September 2007 (15:58) entitled "Re: Final Business Case Draft"
GL/2007/29 **WED00000341**	CEC0203536		Document entitled "Item 8.1 Edinburgh Tram: Presentation by tie Limited, TEL and City of Edinburgh Council (City of Edinburgh Council 25 October 2007)"
GL/2007/30 **WED00000342**	contained in CEC01566496		Document entitled "Tram Programme Summary 2007-2011" (2007) from the IPG Highlight Report of 27 July 2007
GL/2007/31 **WED00000343**	GL response to CEC01567628		Email from Gill Lindsay to Colin MacKenzie dated 14 September 2007 (11:46) entitled "Re: CEC Approvals of Tramco and Infraco Contracts"
GL/2007/32 **WED00000344**			Email from Gill Lindsay to Colin MacKenzie and Duncan Fraser dated 26 November 2007 (12:12) entitled "Re: LAC Meeting: 26 November"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2007/33 **WED00000345**		CEC01400078	Email from Gill Lindsay to Colin MacKenzie (cc to Alan Squair and Nick Smith) dated 28 November 2007 (16:53) entitled "Re: Tram Project"
GL/2007/34 **WED00000346**	GL follow up email to CEC01540814		Email from Andrew Fitchie to Gill Lindsay (cc to Colin MacKenzie and Graeme Bissett) dated 17 December 2007 (08:21) entitled "Re: Full Council Report – Edinburgh Trams Contract Acceptance"
GL/2007/35 **WED00000347**	Follow up email to CEC01540814		Email from Andrew Fitchie to Graeme Bissett and Colin MacKenzie (cc to Willie Gallacher, Stewart McGarrity, Steven Bell, Gill Lindsay, Duncan Fraser, Andrew Holmes, Donald McGougan, David Mackay and Neil Renilson) dated 17 December 2007 (08:41) entitled "Re: Full Council Report – Edinburgh Trams Contract Acceptance"
GL/2007/36 **WED00000348**	Follow up email to CEC01540814		Email from Steven Bell to Graeme Bissett, Colin MacKenzie, Gill Lindsay and Andrew Holmes (cc to Andrew Fitchie, Stewart McGarrity, Duncan Fraser and Willie Gallacher) dated 17 December 2007 (09:00) entitled "Re: Full Council Report – Edinburgh Trams Contract Acceptance URGENT"
GL/2007/37 **WED00000349**	CEC01391159		Document entitled "Edinburgh Tram Internal Planning Group Action Note" dated 11 December 2007
GL/2007/38 **WED00000350**		CEC01400101	Email from Gill Lindsay to Colin MacKenzie, Alan Squair and Nick Smith dated 29 November 2007 entitled "FW: Edinburgh Tram Network – Draft Contract Suite"
GL/2007/39 **WED00000351**			Document entitled "Minute of the CEC/tie Legal Affairs Group Meeting (Wednesday 25th July 2007)
GL/2007/40 **WED00000352**			Document entitled "Agenda: Meeting with CEC Legal/ Infraco and Tramcoon 1" August 2007"
GL/2007/41 **WED00000497**			Emails dated 28 February 2007 from Gill Lindsay to Andrew Holmes and Donald McGougan (10:08) and Jim Inch (10:14) entitled "FW: TRAMS FOR EDINBURGH"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
2008			
GL/2008/1a **WED00000353**		CEC01494162	Letter from Willie Gallagher to David Leslie dated 10 April 2008 entitled "Tramway Prior Approvals and Quality Control Issues"
GL/2008/1b **WED00000354**		CEC01494162	Prior Approvals and Quality Control Prior Approvals and Quality Control Timescales" (attached to 2008/1a)
GL/2008/2 **WED00000355**	Linked email chain to CEC01401109		Email from Dave Anderson to Andy Conway (cc Jim Grieve, Marshall Poulton, Colin MacKenzie, Alan Coyle, Gill Lindsay and Donald McGougan) dated 11 April 2008 (16:44) entitled "Re: Russell Road Bridge: Prior Approval"
GL/2008/3 **WED00000356**		CEC01478447 CEC01548478 (= duplicate files)	Email from Colin MacKenzie to Graeme Bissett (cc Gill Lindsay, Andrew Fitchie, Steven Bell, Geoff Gilbert, Matthew Crosse, Willie Gallacher and Duncan Fraser) dated 31 January 2008 (16:44) entitled "Re: Consents"
GL/2008/4 **WED00000357**	CEC01400439		Email from Mandy Wilson for Gill Lindsay to Colin MacKenzie (cc Alan Squair and Nick Smith) dated 3 January 2008 (11:56) titled "Council Report 20 December - Edinburgh Tram"
GL/2008/5a **WED00000358**		CEC01245223	Email from Alan Coyle to Colin MacKenzie, Gill Lindsay, Steve Sladdin and Nick Smith (cc Andy Conway) dated 15 April 2008 (14:38) entitled "FW: Pricing - Commercially Confidential"
GL/2008/5b **WED00000359**	Interim document between CEC01451013 (18 March 2008), CEC01451382 (2 April 2008) and USB00000032 (final document – 13 May 2008; not received)		Document entitled "Schedule 4: Pricing" [ETN-Schedule 4 (1504 Clean for CEC).DOC] (attached to GL/2008/5a)

Reference	ETI Filename (available for Statement preparation in Nov 2016}	ETI Filename (available from 29 June 2017)	Details
GL/2008/6 **WED00000360**		CEC01248856	Email from Rebecca Andrew to Donald McGougan dated 2 May 2008 (09:39} entitled "FW: Continuing Delay on Financial Close"
GL/2008/7 **WED00000498**			Document entitled "Critical Contractual Decisions to enable Chief Executive to use Delegated Powers to approve TIE to sign the Contract with BBS"
GL/2008/8 **WED00000361**	CEC01406011		Email from Jim Inch to Gill Lindsay dated 12 February 2008 (11:10} entitled "Re: Agenda for Tomorrow's Meeting"
GL/2008/9a **WED00000362**	CEC01400987		Email from Colin MacKenzie to Gill Lindsaydated 29 February 2008 {16:22) entitled "Re: Edinburgh Tram: Chief Executive's Delegated Authority"
GL/2008/9b **WED00000362**	CEC01400987		Email from Gill Lindsay to Colin MacKenzie dated 29 February 2008 (11:59} entitled "Re: Edinburgh Tram: Chief Executive's Delegated Authority"
GL/2008/10 **WED00000363**	CEC01245400		Email from Gill Lindsay to Alan Coyle (cc Colin MacKenzie} dated 18 April 2008 (16:01} entitled "Re: Council Report"
GL/2008/11 **WED00000364**		CEC01245473	Email from Mandy Wilson for Gill Lindsay to Alan Coyle (cc Nick Smith and Colin MacKenzie} dated 22 April 2008 (12:38} entitled "Council Report"
GL/2008/12 **WED00000365**		CEC01245489 (attached to CEC01245488	Letter from Donald McGougan to Willie Gallagher dated 18 April 2008 entitled "Edinburgh Tram SDS Claim Settlement"
GL/2008/13 **WED00000366**	linked to CEC01479715		Email from Andrew Fitchie to Gill Lindsay and Colin MacKenzie (cc Graeme Bissett, Rebecca Andrew and Colin MacKenzie}dated 9 February 2008 (13:23) entitled *"CEC* Guarantee"
GL/2008/14a **WED00000367**		CEC01349534	Email from Andrew Fitchie to Gill Lindsay (cc Graeme Bissett} dated 13 May 2008 (03:11) entitled "Front Page"
GL/2008/14b **WED00000368**	CEC01347798		Letter from DLA Piper dated 12 May 2008 entitled "Edinburgh Tram Network ("ETN"} Draft Contract Suite as at 12 May 2008" [SCAN001.PDF] (attached to 2008/14a}

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/15 **WED00000369**	CEC01246992		Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 16 April 2008
GL/2008/16 **WED00000499**		CEC01542431	Email from Andrew Fitchie to Gill Lindsay dated 19 March 2008 entitled "Re: Etn"
GL/2008/17 **WED00000370**	CEC01374311		Email from Andrew Fitchie to Gill Lindsay, Willie Gallacher and Graeme Bissett dated 8 May 2008 {08:52) entitled "Re: Update"
GL/2008/18a **WED00000371**			Email from Graeme Bissett to Willie Gallacher, Steven Bell, Dennis Murray, Susan Clark, Colin Mclauchlan, Jim McEwan, Alistair Richards, Andrew Fitchie, David Mackay, Neil Renilson, Dave Anderson, Duncan Fraser, Donald McGoogan, Rebecca Andrew and Gill Lindsay dated 12 May 2008 (01:27) entitled "Final Deal Terms"
GL/2008/18b **WED00000372**	CEC01338848		Document entitled "Edinburgh Tram Project: Financial Close Process and Record of Recent Events" (Close Considerations and Event History v2 12.05.08.doc) (attached to 2008/18a)
GL/2008/19 **WED00000373**	linked to CEC01377657		Email from Gill Lindsay to Donald McGougan and Dave Anderson dated 8 May 2008 {08:41) entitled "FW: Update"
GL/2008/20 **WED00000374**			Email from Willie Gallacher to Neil Renilson, David Mackay, Dave Anderson, Donald McGougan, Phil Whealer and Gill Lindsay (cc Graeme Bissett, Stewart McGarrity, Susan Clark, Alasdair Sim, Duncan Fraser and Graeme Barclay dated 14 May 2008 (00:27) entitled "Conract Update"
GL/2008/21 **WED00000375**			Email from Gill Lindsay to Ysella Yago dated 13 May 2008 (01:08) entitled "Final Deal Terms"
GL/2008/22 **WED00000376**			Email from Gill Lindsay to Dave Anderson and Donald McGougan dated 13 May 2008 (22:45) entitled "FW: LGA Letter"
GL/2008/23 **WED00000377**			Email from Gill Lindsay to Dave Anderson, Donald McGougan, Jim Inch and Tom Aitchison dated 13 May 2008 (23:59) entitled "Progress on Close"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available 29 June 2017)	Details
GL/2008/24 **WED00000378**			Email from Gill Lindsay to Andrew Fitchie dated 13 May 2008 (23:11)
GL/2008/25 **WED00000379**			Email from Gill Lindsay to Jim Inch and Tom Aitchison dated 13 May 2008 (22:55) entitled "FW: LGA Letter"
GL/2008/26 **WED00000380**			Email from Gill Lindsay to Andrew Fitchie, Graeme Bissett and Willie Gallacher (cc Nikki Hoshal) dated 13 May 2008 (22:35) entitled "Re: LGA Letter"
GL/2008/27 **WED00000381**	CEC01228374		Document entitled "Edinburgh Tram Internal Planning Group Action Note" dated 17 April 2008
GL/2008/28a **WED00000382**			Email from Stan Gary Turner (cc Deirdre Wynn, Lesley Birrell and Gill Lindsay) dated 12 May 2008 (17:46) entitled "Re: Application of Standing Orders RE Tram Report"
GL/2008/28b **WED00000383**			Document entitled "Tram Report – Likely Requirements Under Standing Orders" (Tram Project.doc) (attached to 2008/28a)
GL/2008/29 **WED00000384** And **WED00000495** Note these are not the same document			NOT USED
GL/2008/30 **WED00000385**			Email from Colin MacKenzie to Alan Coyle and Andy Conway (cc Duncan Fraser, Rebecca Andrew, Gill Lindsay and Nick Smith) dated 23 April 2008 (13:48) entitled "FW: Edinburgh Tram"
GL/2008/31 **WED00000386**	CEC01351908		Email from Gill Lindsay to Colin MacKenzie and Nick Smith dated 17 April 2008 (15:15) entitled "FW: Close Programme and Approvals"
GL/2008/32 **WED00000387**	CEC01351908		Email from Gill Lindsay to Jim Inch dated 17 April 2008 (15:17) entitled "FW: Close Programme and Approvals"
GL/2008/33 **WED00000388**	CEC01248987 CEC01248988		Email from Rebecca Andrew to Gill Lindsay dated 8 May 2008 (15:23) entitled "Re: Report to Policy and Strategy Committee"
GL/2008/34 **WED00000389**			Email from Gill Lindsay to Andy Conway, Alan Coyle, Rebecca Andrew, Nick Smith and Marshall Poulton (cc Duncan Fraser) dated 12 May 2008 (17:10) entitled "Re:IPG Report"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/35 **WED00000390**			Email from Andy Conway to Alan Coyle, Rebecca Andrew, Nick Smith, Gill Lindsay and Marshall Poulton (Duncan Fraser) dated 12 May 2008 (13:37) entitled "IPG Report"
GL/2008/36 **WED00000391**	CEC01231125		Email from Dave Anderson to Gill Lindsay dated 10 May 2008 (11:37) entitled "Re: Contract Update"
GL/2008/37 **WED00000392**	CEC01231125		Email from Gill Lindsay to Jim Inch dated 9 May 2008 (18:08) entitled "FW: Contract Update"
GL/2008/38 **WED00000393**	CEC01258010 CEC01294645 CEC01294646		Email from Gill Lindsay to Donald McGougan and Dave Anderson dated 9 May 2008 (11:52) entitled "Re: Final Terms and Event History"
GL/2008/39 **WED00000394**		CEC01398966	Email from Graeme Bissett to Gill Lindsay dated 25 February 2008 (10:14) entitled **"Re: Consents"**
GL/2008/40 **WED00000395**			Email from Gill Lindsay to Andrew Fitchie dated 13 May 2008 (OO:OO) entitled "Re: CPS"
GL/2008/41 **WED00000396**			Email from Ysella Jago for Gill Lindsay to Andrew Fitchie dated 13 May 2008 (07:53) entitled "Re: Front Page"
GL/2008/42a **WED00000397**			Email from Nikki Hoshal for Andrew Fitchie to Gill Lindsay (cc Graeme Bissett, Willie Gallacher, Steven Bell and Alastair Richards) dated 12 May 2008 (11:41) entitled "CAF joining Consortium"
GL/2008/42b **WED00000398**			Document entitled "DLA Piper Report to Tie Limited and the City of Edinburgh Council Solicitor: CAF Joins BBS Consortium" [19204864_1_UKMATTERS(DLAP report to CEC re_CAF join consortium – 11.05.08).doc] (attached to 2008/42a)
GL/2008/42c **WED00000399**			Draft letter from The City of Edinburgh Council to BBS Consortium entitled "Edinburgh Tram Network – Infraco Contract" [19204675_1_UJ<MATTERS(LT from CEC to BBS).doc] (attached to 2008/42a)

Reference	ETI Filename (available for Statement preparation in Nov 2016}	ETI Filename (available from 29 June 2017)	Details
GL/2008/43 **WED00000400**			Email from Gill Lindsay to Andrew Fitchie, Willie Gallacher, Graeme Bissett and Susan Clark dated 12 May 2008 (19:30) entitled "Re: Signing Authorities"
GL/2008/44 **WED00000401**			Email from Gill Lindsay to Graeme Bissett and Andrew Fitchie dated 11May 2008 (22:02l
GL/2008/45 **WED00000402**			Email from Gill Lindsay to Andrew Fitchie (cc Graeme Bissett, Willie Gallacher, Steven Bell, Alastair Richards and Nikki Hoshall dated 13 May 2008 (00:16) entitled "Re: CAF joining Consortium"
GL/2008/46 **WED00000403**			Email from Willie Gallacher to Gill Lindsay dated 13 May 2008 (11:59l entitled "Re: Signing Authorities"
GL/2008/47 **WED00000404**			Email from Willie Gallacher to David Mackay, Dave Anderson, Donald McGougan, Gill Lindsay, Tom Aitchison, Neil Renilson and Phil Wheeler (cc Graeme Bissett, Susan Clark and Andrew Fitchiel dated 12 May 2008 (19:49l entitled "Contract Update"
GL/2008/48 **WED00000405**			Email from Gill Lindsay to Dave Anderson, Donald McGougan, Duncan Fraser and Rebecca Andrew dated 13 May 2008 (00:20) entitled "Re: CAF joining Consortium"
GL/2008/49 **WED00000406**			Email from Andrew Fitchie to Dave Anderson, Graeme Bissett, Willie Gallacher, Steven Bell, Dennis Murray, Susan Clark, Colin Mclauchlan, Jim McEwan, Alistair Richards, David Mackay, Neil Renilson, Dave Anderson, Duncan Fraser, Donald McGoogan, Rebecca Andrew and Gill Lindsay dated 12 May2008 (13:20l entitled "Re: Final Deal
GL/2008/50 **WED00000407**			Email from Andrew Fitchie to Gill Lindsay (cc Graeme Bissett, Willie Gallacher, Steven Bell, Alastair Richards and Nikki Hoshall dated 13 May 2008 (11:49l entitled "Re: CAF joining Consortium"
GL/2008/51 **WED00000408**			Appendix 1(List of Council Reports) to document entitled "Final Business Case Council Report Draft BACK UP.doc"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June	Details
GL/2008/52a **WED00000409**			Email from Mandy Wilson for Gill Lindsay to Jim Inch dated 3 January 2008 (12:04) entitled "Edinburgh Tram - Council Report 20 December 2007"
GL/2008/52b **WED00000410**			Draft letter entitled "Edinburgh Tram – Council Report 20 December 2007" (Edinburgh Tram CEC Report 31.12.07.doc) (attached to 2008/52a)
GL/2008/53 **WED00000411**	Follow-up to CEC01222466		Email from Gill Lindsay to Nick Smith (cc Rebecca Andrew, Alan Coyle and Duncan Fraser) dated 2 May 2008 {16:46) entitled "FW: Closed Report - comments"
GL/2008/54 **WED00000412**	Follow-up to CEC01222466		Email from Gill Lindsay to Colin MacKenzie (cc Nick Smith) dated 2 May 2008 {16:41) entitled "Re: Closed Report - comments"
GL/2008/55a **WED00000413**	CEC01222466		Email from Colin MacKenzie to Gill Lindsay (cc Nick Smith) dated 2 May 2008 (15:31) entitled "FW: Closed Report - comments"
GL/2008/55b **WED00000414**	CEC01222466		Document entitled "Report on Terms of Financial Close ("Closed Report") Draft v 28.04.08" (Report on Terms of Financial Close.doc) (attached to 2008/55a)
GL/2008/56 **WED00000415**	CEC01222074 CEC01248981		Email from Nick Smith to Gill Lindsay dated 8 May 2008 {09:21) entitled "Re: Report to Policy and Strategy Committee"
GL/2008/57 **WED00000415**	CEC01222074 CEC01248981		Email from Gill Lindsay to Nick Smith dated 8 May 2008 (09:03) entitled "Re: Report to Policy and Strategy Committee"
GL/2008/58 **WED00000416**			Email from Gill Lindsay to Ysella Jago dated 9 May 2008 {10:19) entitled "Re: Nick Smith"
GL/2008/59 **WED00000417**		CEC01231624	Email from Julie Thomson for Willie Gallacher to Tom Aitchison (cc Sandra Elgin) dated 15 May 2008 (14:32) entitled "FW: Edinburgh Tram Project - Completion of Contracts" forwarded by Sandra Elgin to Dave Anderson, Gill Lindsay, Donald McGougan and Chris Highcock on 15 May 2008
GL/2008/60 **WED00000418**			Email from Dave Anderson to Willie Gallacher, Gill Lindsay, Donald McGougan and Duncan Fraser dated 15 May 2008 (10:04) entitled "Re: Edinburgh Tram Project - Completion of Contracts"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/61 **WED00000419**		CEC01399321 (spreadsheet only)	Spreadsheet entitled "Financial Close - QC Process" (2008): list of Tie responsibilities, owners and status included in document entitled "Edinburgh Tram Network: Financial Close - Approvals Process" Legal Affairs Committee 7 April 2008
GL/2008/62 **WED00000420**			Email from Gill Lindsay to Graeme Bissett dated 13 March 2008 (21:32) entitled "Re: Close Report and DLA Report Update"
GL/2008/63 **WED00000421**			.Email from Graeme Bissett to Gill Lindsay dated 13 March 2008 (21:51) entitled "Re: Close Report and DLA Report Update"
GL/2008/64 **WED00000422**	CEC01474537 CEC01474538 CEC01474539 CEC01474540		Email from Graeme Bissett to Gill Lindsay (cc to Willie Gallacher, Steven Bell, Andrew Fitchie and Stewart McGarrity)dated 13 March 2008 (22:27) entitled "Final Supporting Docs for Notification"
GL/2008/65 **WED00000423**			Email from Gill Lindsay to Donald McGougan, Andrew Holmes and Duncan Fraser dated 13 March 2008 (22:35)"
GL/2008/66 **WED00000424**			Email from Joanne Glover to Gill Lindsay(cc Graeme Bissett, Willie Gallacher, Steven Bell and Andrew Fitchie) dated 13 March 2008 (00:36) entitled "CEC Letter on ETN Close Out"
GL/2008/67a **WED00000425**			Email from Colin MacKenzie to Gill Lindsay dated 14 March 2008 (12:59) entitled "FW: Network Rail/City of Edinburgh Council —- Edinburgh Tram ---RAI/1/1893"
GL/2008/67b **WED00000426**			Email from Gordon M Thomson to Mike Fitzgerald dated 14 March 2008 (11:49) entitled "Network Rail/City of Edinburgh Council --- Edinburgh Tram ---RAI/1/1893" (attached to 2008/67a)
GL/2008/68 **WED00000427**			Letter from DLA Piper dated 12 March 2008 entitled "Edinburgh Tram Network("ETN") Draft Contract Suite as at 12 March 2008"
GL/2008/69 **WED00000428**	CEC01430090		Email from Ian Laing to Andrew Fitchie, Richard Walker, M Gallagher, Flynn Michael and Herbert Fettig (cc Willie Gallacher, Graeme Bissett, Steven Bell, Geoff Gilbert and Suzanne Moir) dated 15 March 2008 (20:42) entitled "Re: Edinburgh Tram"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/70a **WED00000429**			Email from Philip Hecht to Gill Lindsay (cc Willie Gallacher, Graeme Bissett, Stewart McGarrity, Steven Bell and Andrew Fitchie) dated 16 March 2008 (17:32) entitled "Contractual Indemnity/Insurance Cover Papers"
GL/2008/70b **WED00000430**			Document entitled "Edinburgh Tram Network: Infraco Contract – BBP Position as at Thursday 13 March 2008 based on Infraco Contract" (attached to 2008/70a)
GL/2008/70c			Document entitled "Edinburgh Tram Network: Infraco Contract – BBP Position as at 3pm Friday 14 March 2008 based on Infraco Contract" (attached to 2008/70a)
GL/2008/70d			Document entitled "Edinburgh Tram Network: Infraco Contract – BBP Position as at Saturday 15 March 2008 based on Infraco Contract" (attached to 2008/70a)
GL/2008/71a **WED00000431**			Email from Gill Lindsay to Philip Hecht (cc Willie Gallacher, Graeme Bissett, Stewart McGarrity, Steven Bell and Andrew Fitchie) dated Sunday 16 March 2008 (21:16) entitled "Re: Contractual Indemnity/Insurance Cover Papers"
GL/2008/71b **WED00000432**			Email from Willie Gallacher to Andrew Fitchie, Gill Lindsay and Philip Hecht (cc Graeme Bissett, Stewart McGarrity and Steven Bell) dated Sunday 16 March 2008 (21:52) entitled "Re: Contractual Indemnity/Insurance Cover Papers"
GL/2008/72 **WED00000433**			Email from Andrew Fitchie to Gill Lindsay and Philip Hecht (cc Willie Gallacher, Graeme Bissett, Stewart McGarrity and Steven Bell) dated 16 March 2008 (22:26) entitled "Re: Contractual Indemnity/Insurance Cover Papers"
GL/2008/73 **WED00000434**	Linked to CEC01430090		Email from Willie Gallacher to Richard Walker and Flynn Michael (cc Andrew Fitchie and Steven Bell) dated 15 March 2008 (12:10) entitled "FW: Edinburgh Tram"

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/74 **WED00000435**	CEC01407951		Email from Alan Coyle to Gill Lindsay (cc Colin MacKenzie) dated 17 March 2008 (14:08) entitled "Re: Contract Approvals RevIO (170308).xls"
GL/2008/75 **WED00000436**	CEC01407951		Email from Gill Lindsay to Jim Inch dated 17 March 2008 (15:10) entitled "Trams"
GL/2008/76 **WED00000437**			Email from Gill Lindsay to Andrew Holmes dated 17 March 2008 (18:01) entitled "Re: Contractual Indemnity/Insurance Cover Papers11
GL/2008/77			NOT USED
GL/2008/78 **WED00000438**			Email from Willie Gallacher to David Mackay and Neil Renilson (cc Andrew Holmes, Gill Lindsay, Donald McGougan, Graeme Bissett, Andrew Fitchie, *Steven* Bell, Susan Clark, Stewart McGarrity, Geoff Gilbert, Matthew Crosse and Jim McEwan dated 17 March 2008 (19:51) entitled "Pin Notification"
GL/2008/79 **WED00000439**			Email from Gill Lindsay to Willie Gallacher (cc Andrew Fitchie and Andrew Holmes) dated 17 March 2008 (22:52) entitled "Re: Pin Notification"
GL/2008/80 **WED00000440**			Email from Gill Lindsay to Andrew Fitchie (cc Andrew Holmes) dated 18 March 2008 (00:13)
GL/2008/81 **WED00000441**			Email from Willie Gallacher to Gill Lindsay (cc Andrew Fitchie, Andrew Holmes, Steven Bell, Neil Renilson, David Mackay and Graeme Bissett) dated 18 March 2008 (06:50) entitled "Re: Pin Notification"
GL/2008/82 **WED00000442**			Email from Willie Gallacher to Gill Lindsay, David Mackay and Neil Renilson (cc Andrew Fitchie and Andrew Holmes) dated 18 March 2008 (09:51) entitled "Re: Pin Notification"
GL/2008/83 **WED00000443**	CEC01474670		Email from *Steven* Bell to Gill Lindsay (cc Andrew Fitchie, Willie Gallacher, Stewart McGarrity, Mark Hamill, B Lidford and Graeme Bissett) dated 18 March 2008 (10:59) entitled "FW: "

Reference	ETI Filename (available Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2008/84 **WED00000444**	linked to CEC01408044		Email from Gill Lindsay to Colin MacKenzie dated 19 March 2008 {09:37) entitled "FW: Pin Released"
GL/2008/85 **WED00000445**	CEC01408044		Email from Gill Lindsay to Jim Inch dated 19 March 2008 (12:16) entitled "FW: Pin Released"
GL/2008/86 **WED00000446**			Email from Phil Wheeler to Andrew Holmes, Dave Anderson, Donald McGougan, Gill Lindsay and Willie Gallacher dated 19March 2008 (16:11) entitled "Tram Scheme"
GL/2008/87 **WED00000447**			Email from Gill Lindsay to Willie Gallacher (cc Andrew Fitchie) dated 18March 2008 (17:39) entitled "Re: "
GL/2008/88 **WED00000448**	included in CEC0149192		Email from Willie Gallacher to Gill Lindsay, Donald McGougan, Andrew Holmes, David Mackay, Neil Renilson, Peter Strachan, Kenneth Hogg, Brian Cox, Hazel Cheney and Phil Wheeler dated 21 March 2008 (10:21) entitled "Contracts Update"
GL/2008/89 **WED00000449**			Email from Gill Lindsay to Andrew Fitchie (cc GBi) dated 19 March 2008 (19:09) entitled "Re: Etn"
GL/2008/90 **WED00000450**			Email from Gill Lindsay to Jim Inch dated 20 March 2008 (19:32) entitled "FW: Trams"
GL/2008/91 **WED00000451**	CEC01408254		Email from Gill Lindsay to Jim Inch and Colin MacKenzie dated 23 March 2008 (16:39) entitled "FW: Trams Settlement Issues"
GL/2008/92 **WED00000452**			Email from Alan Coyle to Gill Lindsay and Colin MacKenzie dated 16April 2008 (10:36) entitled "Re: Pricing - Commercially Confidential"
2009			
GL/2009/1a **WED00000453**	CEC00900262		Email from Alan Coyle to Gill Lindsay (cc Max Thomson and Marshall Poulton) dated 25 March 2009 (11:40) entitled "Re: Supplemental Agreement – PDF Version"
GL/2009/1b **WED00000454**			Supplemental Agreement (OSSA) dated 20 March 2009 (attached to 2009/la)

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/2 **WED00000455**			Email from Colin MacKenzie to Gill Lindsay dated 8 April 2009 (16:25) entitled "FW: Council Report"
GL/2009/3 **WED00000456**			Email from Alan Coyle to Nick Smith, Marshall Poulton, Colin MacKenzie and Andy Conway (cc Gill Lindsay) dated 8April 2009 (17:25) entitled "Re: Council Report"
GL/2009/4 **WED00000457**			Email from Marshall Poulton to Gill Lindsay, Alan Coyle, Max Thomson, Colin MacKenzie, Nick Smith and Andy Conway (cc Dorothy Gray) dated 7 April 2009 (20:43) entitled "Tasks set by Chief Exec"
GL/2009/5a **WED00000458**			Email from Nick Smith to Alan Coyle, Marshall Poulton, Colin MacKenzie and Andy Conway (cc Gill Lindsay) dated 8April 2009 (16:43) entitled "Re: CouncilReport"
GL/2009/5b **WED00000459**			Document entitled "Edinburgh TramNetwork – Update Report: The City ofEdinburgh Council 30 April 2009" (Item no 9.2; Report no cec/172/08-09/CD+F)
GL/2009/6 **WED00000460**			Email from Andy Conway to Marshall Poulton, Alan Coyle, Nick Smith, Colin MacKenzie, Gill Lindsay and Max Thomsondated 8 April 2009 (15:57) entitled "Action Note from today's "Commando" meeting"
GL/2009/7a **WED00000461**			Email from Andy Conway to Marshall Poulton (cc Max Thomson, Alan Coyle, Nick Smith, Colin MacKenzie, Leanne Mabberley and Gill Lindsay) dated 9 April2009 (17:03) entitled "Group Leaders Briefing Note"
GL/2009/7b **WED00000462**			Document entitled "Group Leaders' Tram Briefing Note – Tuesday 14April 2009" (Councillor Tram Briefing 14April 2009 – Councillors Version.doc) (attached to 2009/7a)
GL/2009/8 **WED00000463**	CEC00860021		Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 29 April 2009

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/9 **WED00000464**			Email from Alan Coyle to Marshall Poulton and Colin MacKenzie (cc Gill Lindsay, Nick Smith, Ailie Wilson and Max Thomson) dated 9 June 2009 (08:46) entitled "FW: Edinburgh Transport: Integration of Bus and Tram"
GL/2009/10 **WED00000465**	CEC00659130		Document entitled "Edinburgh Tram - Critical Issues to be discussed at the Special IPG on 27 July 2009: Decision required to be taken for the finalisation of the Council Report for 20th August 2009"
GL/2009/11 **WED00000466**			Tram IPG Action Note dated 27 July 2009
GL/2009/12 **WED00000467**			Email from Gill Lindsay to Marshall Poulton dated 24 July 2009 (16:42) entitled "FW: Draft Council Report - Edinburgh Tram Private and Confidential"
GL/2009/13 **WED00000468**			Email from Carmel Riley to Councillors, John Sturt, Gill Lindsay and Directors & Business Managers dated 17 August 2009 (08:42) entitled "Council 20 August 2009"
GL/2009/14 **WED00000469**			Email from Colin MacKenzie to Gill Lindsay (cc Mandy Wilson) dated 27 July 2009 (10:21) entitled "FW: Tram DRP issues"
GL/2009/15 **WED00000470**	Draft version preceding CEC00823532		Document entitled "Edinburgh Tram Project – Status Report (DRAFT Private and Confidential): The City of Edinburgh Council 20th August 2009"
GL/2009/16 **WED00000471**			Email from Evelyn MacKenzie to Alan Coyle, Andy Conway, Barry Leathern, Colin MacKenzie, Dave Anderson, Donald McGougan, Dorothy Gray, Duncan Fraser, Gill Lindsay, Isabell Reid, Jim Inch, Mark Turley, Rebecca Andrew, Sheena Raeburn, Sheila Dove, Tom Aitchison and Marshall Poulton dated 23 July 2009 (14:49) entitled "Tram Project – IPG and CMT"
GL/2009/17 **WED00000472** GL/2009/18 – not in original Annex **WED00000473**			Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 19 August 2009

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/18a **WED00000474**			Email from Alasdair Sim to David Mackay, WW Campbell, *Dave* Anderson, Sheena Raeburn, Donald McGougan, Donna Roger, Phil Wheeler, Richard Jeffrey, Steven Bell, Stewart McGarrity, Alastair Richards, Graeme Bissett, Marshall Poulton, Dorothy Gray, Brian Cox, Carol Perkins, Kenneth Hogg, Allan Jackson, Gordon MacKenzie, Ian Perry, N Strachan and Peter Strachan (cc Susan Clark, Andy Conway, I Coupar, Frank McFadden, Alan Coyle, Gregor Roberts, Gill Lindsay, Jim McEwan, Dennis Murray, Tom Buchanan, Maggie Chapman, Ailie Wilson and Claire Murray) dated 1 September 2009 (09:50) entitled "Edinburgh Tram – Tram Project Board 26 August 2009"
GL/2009/18b **WED00000475**			Document entitled "Edinburgh Tram Network Minutes (Strictly Private and Confidential) Tram Project Board Meeting 26 July 2009" (26-08-09 TPB minutes.pdf) (attached to 2009/18a)
GL/2009/19 **WED00000476**			Pro forma status update on Worksteams from in-house Legal Services team dated 8 July 2009
GL/2009/20 **WED00000477**			Agenda and Briefing for Members for Meeting to discuss Strategy for Edinburgh Tram: Traffic Regulation Orders held on 14 August 2009
GL/2009/21 **WED00000478**			Tram IPG Action Note dated 19 August 2009
GL/2009/22 Following are Inquiry refs for these docs **CEC00739552** **CEC00843272**			Document entitled "Edinburgh Tram Network Minutes (Strictly Private and Confidential) Tram Project Board Meeting 29 July 2009" (includes "Edinburgh Tram Project – Delivery Organisation Period Progress Report (Issue 1)" for Progress Meeting Date of Period 05)
GL/2009/23		CEC00668079	Document entitled "Edinburgh Tram Highlight Report to the Chief Executive's Internal Planning Group" dated 30 September 2009

Reference	ETI Filename (available for Statement preparation in Nov 2016)	ETI Filename (available from 29 June 2017)	Details
GL/2009/24a **WED00000479**	Updated version of CEC00900419, CEC00900404		Email from Mandy Wilson for Gill Lindsay to Colin MacKenzie and Nick Smith (cc Marshall Poulton) dated 14 April 2009 (11:31) titled "Legally Privileged and FOISA Exempt"
GL/2009/24b **WED00000480**	Updated version of CEC00900405		Document entitled "Analysis re DRP: 7 April 2009" [Update re DRP 14042009 HW.doc] (attached to 2009/24a)
GL/2009/25a **WED00000481**	CEC01003720		Email from Andrew Fitchie to Gill Lindsay (cc Chris Horsley) [Strictly Confidential and FOISA Exempt] dated 20 April 2009 (18:23)
GL/2009/25b **WED00000482**	CEC01003721		Document entitled "Edinburgh Tram Network-Summary Paper on DRP Issues" [24153061_3_UKMATIERS(Paper on DRP Issues-20 April 2009).DOC] (attached to 2009/25a)
GL/2009/26 **WED00000483**			Email from Gill Lindsay to Andrew Fitchie dated 8 April 2009 (18:51) entitled "Re: Contact"
GL/2009/27 **WED00000484**			Email from Andrew Fitchie to Gill Lindsay dated 13 April 2009 (17:42) entitled "Re: Edinburgh Tram: Strategic Options and DRP"
GL/2009/28 **WED00000485**			Email from Andrew Fitchie to Gill Lindsay dated 1June 2009 (16:09) entitled "Re: DRP"

Appendix 3: Abbreviations Used in this Statement

BB	Bilfinger Berger
BBS	Bilfinger Berger and Siemens Group
BSC	Bilfinger Berger and Siemens Consortium
CEC	The City of Edinburgh Council
CMT	Council Management Team
DRP	Dispute Resolution Process
DLAP	DLA Piper
ETN	Edinburgh Tram Network
FTE	Full Time Equivalent
Infraco	Infrastructure provider and maintenance
IPG	Internal Planning Group
LAG	Legal Affairs Group (latterly renamed the FCL Group)
MoU	Memorandum of Understanding

MUDFA	Multi Utilities Division Framework Agreement
OA	Operating Arrangement
OJEC	Official Journal of the European Union (previously Community)
OSSA	On Street Supplementary Agreement
QRA	Quantified Risk Allowance
SDS	System Design Services
TEL	Transport Edinburgh Limited
Tie/TIE	Transport Initiatives Edinburgh
TPG	Tram Project Board
Tramco	Vehicle supply and maintenance
TS	Transport Scotland

Appendix 4: ADDENDUM TO WITNESS STATEMENT dated 2 October 2017

I have provided an Addendum of information to assist the inquiry by expanding my Statement regarding my duties and responsibilities and for clarity in response to other Inquiry evidence regarding myself.

Appointment as Council Solicitor:

Appointment as Depute Council Solicitor in 2001 and as Council Solicitor in February 2004. My appointment as Council Solicitor followed an external recruitment exercise which is a Council requirement. This mandatory Council requirement was managed by the Department of Human Resources in Corporate Services and the Director of Corporate Services had previously been the Head of HR Services. My appointment was not therefore a ring-fenced internal appointment.

My appointment as Council Solicitor resulted from an extensive recruitment exercise with the final stages of interview involving selection from myself as the only remaining internal candidate and two external candidates. As reported in the supplemental Report (GL/2004/1) to the Council Meeting on 19 February 2004, "The Committee interviewed three candidates on 18 February 2004 and unanimously agreed to recommend that G Lindsay be offered the post of Council Solicitor, Department of Corporate Services".

Role of Council Solicitor:

In the period to 1 December 2009, I undertook all the functions and responsibilities of Council Solicitor including managing the legal teams of:

- litigation
- commercial property
- licensing (including liquor, taxi/private hire cars, houses in multiple occupation, gambling and public entertainment, event licensing and Clerk to the Licensing Board)
- District Courts
- commercial practice
- planning
- all Joint Boards and Lothian Pension Board.

I can confirm that I was not at any time seconded to or embedded within a Council team to work on Edinburgh Trams. At no point did my title include any reference to Edinburgh Trams. All relevant principal solicitors, the Depute Council Solicitor and the Division's Business manager, reported to me in relation to the legal work, business, staff and budgets within these teams and the Legal Services Division. Excellent relationships were in place.

The role of Council Solicitor was extremely demanding and challenging. I was highly committed and dedicated to providing a high quality legal service. I typically worked

between 55-60 hours per week and ensured that I was contactable by phone, text and email in the evening, at weekends and when on annual leave. One of the key management challenges of being Council Solicitor was delivering a balanced budget for the Legal Services Division and Department.

In terms of detailing the operating environment in Legal Services:

In addition to all the legal work within these teams in late 2007 and early 2008, key examples of additional legal work and challenges were placed on me in relation to:

- The transfer of District Court functions, staff and records to the Scottish Courts Administration as Edinburgh was an early adopter of Scottish courts unification.

  This included liaising with Scottish Courts administration, staff and unions in relation to the TUPE transfer of staff in my Division, effective and seamless transfer of all District Court business and current and past records of activities, fines and records.

  I was also required to manage the estate building of the District Courts as the property costs remained within my budget and to seek a tenant or income in respect of that building.

  Particular staff issues arose relating to staff terms and conditions, working conditions, alignment to new posts within Scottish Courts and matters of staff pensions, which required my direct involvement.

  Particular issues required attention as the Council had no previous experience of Scottish Courts unification and there was a lack of clarity in the detail of new positions and job descriptions and in relation to transfer terms and conditions of staff.

- In relation to Licensing, the relevant Principal Solicitor can confirm that all matters of strategic importance in relation to Licensing were brought to me for my attention and required involvement including during that period the strategic issue of Edinburgh's policy of restriction on the numbers of Taxi Licenses and the Salteri court decision (Court of Session appeal decision) and the implications for the Council's policy and legal determination of licence applications and the determination of unmet need and the Council's Survey of Demand.
  This issue had considerable strategic and legal and operational significance for Licensing within the City, for Licence holders, potential holders and customers.

  With the relevant Principal Solicitor, the matter was widely researched with guidance available for England and Wales examined as the guidance was not yet available from the Scottish Government, OFT guidance, Counsel's opinion sought in relation to applications and appeals, liaison with relevant persons and detailed reporting on the matter to the full Council meetings on 23 August 2007 and 25 October 2007 (Report Item 8.2) on the implications of retaining the existing policy and the implications of removing the restriction on taxi licence numbers and the

change in procedures considered necessary to continue with this policy following the appeal decisions.

- In relation to litigation, the strategic issue of Equal Pay and related litigation and advice in respect of both female and male employees was dominant through this period.
  This was a historic issue for local authorities with very significant HR, legal, staff and financial implications in relation to present cases, settlements and future actions on Edinburgh and other Local Authorities to ensure pay grades and systems were robust in the future and transitional and legal provisions were in place for relevant staff and staff grades.

- Review of Legal Services Division: consideration of staff, budgets and delivery and link with Council Secretary to make cost savings. Reports to Council on 29 May 2008 (GL/2008/94) and 12 March 2009 (GL/2009/30) acknowledge the high quality of legal services provided despite the extensive and acute budgetary pressure in 2008 and a moratorium on filling of vacancies.
  "The Council wide financial pressures resulted in a number of key vacancies not being filled for an extended period of time"

  "The current funding position has resulted in available resources for funding for core services being at a critically low level at a time when activity is rising"

  In respect of Legal Services staff, these Reports state that they "have continued to deliver a highly professional service" and "Their dedication and commitment has gone beyond what can be reasonable expected with many working long hours to meet client needs".

  Further statements include: "Feedback from Directors...has been appreciative of the dedication and commitment of staff and their availability to the Department and their successes against a background of acute resourcing particularly throughout 2008".

  Customer satisfaction was excellent in each of the four financial years from 2005 to 2009, notwithstanding the budgetary pressures and acute resourcing, with consistent customer feedback scores of at least 91% satisfaction based on the results of approximately 170 survey returns per annum. The results confirm "the commitment, ability and achievements of all staff in the Division throughout a difficult financial period for the Department".

Legal Services Budget and Resources:

In relation to Mr Inch's evidence that I was expected to delegate work and responsibilities throughout this relevant period, the budget for Legal Services Division was extremely

compromised with a firm vacancy freeze, reducing budget coupled with aggressive and increasing income targets.

In the budget submission for Elected Members (GL/2007/42a, GL/2007/42b and GL/2007/42c), my correspondence with the Director states that resources within the Division are, in my words, "beyond critical" and my request for the Director to present this to Elected Members for their awareness through the budget process. The term "beyond critical" is not a term that I would have used lightly but reflected the significant budgetary and resource pressures on delivering legal services for the Council. My email to the Director of 29 November 2007 at 17.11 states:

"As advised at the meeting, I am concerned to note that information provided below for the budget pack has still largely not been included and the acute levels of current resourcing have not been highlighted despite my repeated requests to explain the positioning to members."

Please see comment on Licensing income and fee assumptions and the position of Elected Members. In terms of the Legal Services review I confirm:

"The next financial year will not bring both savings and improvements"...."No revenue funding or budget in place to fund core legal services."

The above concern was not presented to Elected Members by the Director through the budget process. It is a matter for individual Directors to determine their budget allocation within their Departments and to determine the information to be presented and discussed with Elected Members during that budget process. The allocation for Legal Services from within the Department of Corporate Services budget for the relevant period shows a 12% reduction in budget in relation largely to staff costs together with an increasing income target of 14% (GL/2007/42c). The majority of the Department of Corporate Services was fully revenue funded to cover all as the figures show.

The Legal Services Division was the only Division within the Council which was faced with such a reduction to compensate for smaller reductions or growth in the wider Department of Corporate Services Budget including supporting the E-Government/ICT Division.

The Legal Services Division was the only support service Division within the Council which had such aggressive income targets which were in place to support the budget of the wider Department of Corporate Services and increasing targets which resulted in the Legal Services Division requiring to tender externally to seek to win work in competition with other private sector providers to gain income.

The Legal Services Division successfully sourced work from other Local Authorities in respect of Court of Session Agency work, which required to be undertaken and billed and managed, in addition to all legal work from the Council and its Joint Boards with the reduced budget and staff numbers.

The Budgets for each Division within the Department of Corporate Services were set by Mr Inch, Director of Corporate Services, who was responsible for all communications to and from Elected Members in relation to budgets and who set individual budgets for each Division.

The requirement to reduce spend to meet reduced budget and increase income to meet increasing income targets was, following discussions within the Department, a non-negotiable and absolute requirement. The pressures of increasing work within the Division, the reduced staff numbers, non-filling of vacancies and increased income targets were such that the Director was well aware of the workload pressures within the Division.

It is incorrect to state that there was any capacity whatsoever within the Legal Services Division for me to delegate any of my work or responsibilities. The reverse is the case with more and increasing functional work requiring to be undertaken by myself due to demand and budget pressures. This was well known within the Department and Council and it was accepted by Directors that support services were vulnerable to difficult budget cuts when the Council required to make savings and support direct client facing services and Departments.

The requirement of service Departments themselves to make savings had the impact of increasing work within the Legal Services Division as new methods of creating savings and delivering services created additional demand for legal services.

External legal opinion was sourced regularly as required. Advice from external Counsel were sought regularly on a wide range of significant legal matters in the interests of the Council.

Position of Council Solicitor in the City of Edinburgh Council structure:

During my period as Council Solicitor, seven Directors (Finance, City Development, Corporate Services, Services for Communities, Health & Social Care, Education and Sports & Leisure) reported to the Chief Executive with these eight officers comprised the Council's Executive Management Team. Some CEC staff refer to these eight officers as the Directorate.

The position of Council Solicitor was as a Head of Service post reporting to the Director of Corporate Services. There were approximately 7 Head of Service posts in the Department of Corporate Services and approximately 40 - 50 Head of Service posts across the seven service areas above managed by the Directors.

All the Head of Service posts were equivalent in seniority and were not part of the "Directorate" and reported to their relevant Director. The Council Secretary in Committee Services within the Department of Corporate Services had very direct access to Elected Members as that role involved the direct provision of support to the Councillors of managing Council business and including IT facilities, staff and training.

In my interview for Council Solicitor, I had presented a strategy for closer and direct engagement of the Council Solicitor with the Elected Members. Although this proposed approach was viewed positively by the Elected Members on my interview panel, I was advised by the Director of Corporate Services following my appointment that contact with Elected Members required to be only through his post.

Elected Members did contact me directly with queries which I was pleased to assist with but in my role of Council Solicitor, I could not directly contact Elected Members regarding the Legal Services Division.

I sought again to have more direct contact at the commencement of the new Council Administration in 2007, to assist. Again the Director of Corporate Services clearly confirmed that the contact arrangements for Elected Members/Groups in the new Administration and arrangements were by himself personally in respect of his Department and he would seek attendance by a Head of Service at a particular meeting if he considered it was required. These were the reporting arrangements in the Department of Corporate Services.

Amalgamation of the roles of Council Solicitor and Council Secretary in 2009 in the post of Head of Legal and Administrative Services changed the above position and provided the postholder, Mr Maclean, with full and unrestricted direct access to Elected Members. This provided full opportunity to directly engage with the Council Leader, Leaders of the individual political parties and with all Councillors. I understand this post had a seniority amongst other Heads of Service within the Department of Corporate Services.

Period between 1 December 2009 and July 2010:

I recall receiving a personal letter from the Director of Corporate Services summarising my duties during this period but my recollection is that it was a short letter in Mr Inch's style. As the Alternative Business Models project was a project where the Programme Director was a member of Mr Inch's staff, I would expect this section to have more detailed comment. Review of the letter will be useful to assist if this document is that which I recall.

Notwithstanding the content of the letter from the Director of Corporate Services, my duties changed at commencement of this period by a highly significant issue regarding procurement evaluation and award of Health & Social Care contracts which arose in Mr MacLean's first day at CEC.

My recollection of the issue was that a joint Report to Council prepared by the Director of Finance (which provided procurement services at that time), the Director for Health & Social

Care and the Director for Services for Communities had been approved at a previous Council Meeting.

This approval of tender decision by the Council would impact the award of contracts for personal care services (covering 12 contracts from recollection) being sensitive and personal services for personal care. The Council received challenge correspondence containing detailed matters regarding the evaluation and a "re-evaluation" and had detailed knowledge of matters.

On my receipt I considered there was sufficient credible information and detail of a potential challenge and that, if the information was correct, there was a real concern that decisions could be unsound and contrary to law and the Council may well not be able to successfully defend a challenge threatened in regard to the selection of the successful tenderers and contract award.

I discussed the matter and these concerns with Mr Maclean who did not initially consider that this would present any issues for the Council. The provisions of public procurement are highly regulated at EU and domestic law and provisions require to be complied with to ensure fair selection and fair competition. We agreed that I should call Mr Inch as Director of Corporate Services and Monitoring Officer that evening to alert him and he requested a fuller briefing the following morning and for the Chief Executive to be updated the following day.

A highly intensive period followed of considering at a very high level the impact of the "re-evaluation" and use of a "confidence factor" during the procurement exercise to determine whether these difficulties had affected the selection decisions taken. The evidence quickly emerging was that this appeared to be the case. Difficult meetings at Director level and senior political level took place to consider and update and determine actions. The agreed way forward was for a further period to consider the evaluation material more closely in consultation with Senior Counsel and I was asked to directly undertake this role to assist.

This involved commencing an extensive and highly intensive exercise of legal review of evaluations and procurement, Elected Member reporting and a weekly Executive Group of all relevant three Directors, the Director of Corporate Services and myself. Mr Inch advised he required me to deal with the matter personally as Mr MacLean had just commenced in his role and had various introductions and commencement activities and as it related to a public sector procurement. Mr Inch also advised he required me to liaise with the Chief Executive and his office.

I was asked to provide particular support to the Chief Executive who wished me to take a personal role in the matter as this matter involved three of his Directors and I was asked to

co-ordinate all the Chief Executives' correspondence and actions on this matter with internal staff, Elected Members, external organisations with close involvement in supporting adults with care needs and the present and existing contractors and the new contractors who were expecting to be awarded the new contracts and have relevant transfer of staff to them and to commence preparations for contract award and commencement. This was a highly intensive, immediate and demanding role and was to be my immediate priority.

Addressing the Health & Social Care issue was agreed with the Chief Executive, Director of Corporate Services and Mr Maclean as my highest priority at the time due to the political and public profile and sensitivities and the potential financial and reputational damage to the Council (GL/2009/29, GL/2010/1).

Most of my time during December 2009 and January 2010 was spent addressing the significant Health & Social Care issue with the remainder on progressing the Alternative Business Models project which was also a highly internally sensitive project with three functional streams for large scale transformational outsourcing of Council services, the desire to facilitate other Local Authorities being able to draw from the awarded contracts and constant and expected challenge from relevant Unions on the process. External legal support for the project was being procured but not yet in place and timescales were urgent.

Nick Smith was continuing to work on the Trams project and had been reporting to the Head of Legal and Administrative Services since 1 December 2009 as expected. Mr Maclean took a significant role in the Edinburgh Trams Project from January 2010 as evidenced by email and meeting records which I was not copied on. It was not responsible to exclude this information from me.

These include the "Trams Potted History" email from Nick Smith (reviewed by Alan Coyle) to on 8 January 2010 (CEC00473789) and correspondence between Mr Maclean and others between 21-22 January 2010 (CEC00473835). Several other emails evidence Mr Maclean's considerable involvement in the Trams project from January 2010.

The Inquiry records also show that although I sought information to assist the internal team as I had been asked to do, information was often not shared and I was not included in the internal legal team's communications and actions, including seeking a Dundas & Wilson opinion on termination and on enhancing the internal team with an additional Solicitor and former colleague of Mr Smith.

With regard to Mr Maclean's written evidence that he had no role whatsoever in the Edinburgh Tram project between 1 December 2009 and August 2010, this is entirely inconsistent with the Inquiry evidence and the position. Mr Maclean's responsibility related

to all work including legal work within the new Division from the date of his appointment in accordance with his contract of employment.

I did raise concerns with the Director of Corporate Services that I was receiving little information about the Trams project and he asked me to continue to try to keep a watching brief on the project which I did. The records show that I was largely not included in relevant meetings and correspondence by the internal legal team at that time.

I remained in regular contact with Mr Maclean regarding the Tram project and he was updated on all activities by Mr Smith and our discussions. In terms of the IPG, I continued to attend the IPG meetings between 23 December 2009 and 12 May 2010 with Nick Smith as requested by Mr Inch. The Action Notes of meetings during this period indicate that there were few Actions assigned to Nick Smith and myself during this period compared to the larger number of Actions allocated to the Directors of City Development, Finance and Corporate Services, the Tram Monitoring Officer and Finance (Alan Coyle) and City Development staff (Andy Conway) in respect of all relevant contract management and related issues relevant at that particular time.

In my opinion, I consider that Mr MacLean is not accurate in the comments regarding myself in his statement and seeks to deflect for his own reasons and I believe he is not in good faith or good leadership in so doing. I do not recognise the comments in his statement and it does not accord in any way with the evidence or the thanks and very kind feedback I received from my extensive and intensive role in respect of the Health & Social Care arrangements, the thanks received from each and every workstream and staff at all levels and Departments and the Programme Director for the Alternative Business Models project. The Legal Services Divisions internal staff member working with me on the Alternative Business Models project expressed her thanks and appreciation constantly for my help and support to her and transfer of skills and knowledge. Excellent relationships were in place.

Clearly I sought to undertake my role within the internal legal team constantly and in the utmost good faith. At the time we had a very good working relationship without issues and I do not recognise any presentation by him at the time of any issues whatsoever. Mr Maclean's evidence seeks to disassociate himself and undermine others. Rather he could have advised that he had chosen to exclude me in this particular project, that I was very fully engaged on business matters and continued to assist and support the team constantly and immediately on all activities. There were no actions requested by Mr Maclean which were not immediately actioned.

In terms of balance, I am not aware of any difficulties which may have been experienced by Mr Maclean in relation to Edinburgh Trams or any matter since December 2009.

Mr Maclean did not exhibit or advise of any difficulties whatsoever. He regularly sought me out to discuss and assist him with various matters in his role. I am certain that if there was any additional support which he did or did not wish, he would have said so. That was the relationship displayed to me.

I provided every support and assistance to Mr MacLean when he commenced on 1 December 2009 in the role of Head of Legal and Administrative Services, as I would have done for all or any new colleague. This was a promoted post and I provided total support recognising his post and position and providing every assistance with handover and all work matters.

Costed Risk Review for Edinburgh Trams

I had no role in the costed risk review for Edinburgh Trams nor whether that should be undertaken by a consultant or OGC. These were matters for the client Departments of City Development and Finance and the relevant staff and Directors.

No Role in Respect of Business Case or Affordability of the Edinburgh Trams project

I had no role in respect of business case or affordability of the Edinburgh Trams project. There are no documents detailing that role to me. All the evidence is to the contrary. At no time did I report to the Directors of City Development or Finance. There are no documents detailing that role to me. My reporting structure was to Mr Inch, Director of Corporate Services.

Finance staff (Rebecca Andrew, Alan Coyle) reported to the Director of Finance, the Statutory Finance Officer. City Development staff (Duncan Fraser, Andy Conway) reported to the Director of City Development.

Review of Council Companies (Report to Council Meeting on 1 May 2008)

Clarification in relation to Council Companies and governance is provided in the Report to Council of 1 May 2008 on the Review of Council Owned, Arms Length Companies and Joint Ventures by the Director of City Development (GL/2008/93).

The Report clarifies that the Companies Strategy Group, set up and chaired by the Chief Executive and attended by the Directors of City Development, Corporate Services and Finance, currently oversees the strategy for all Council Companies. The Council owned companies and joint ventures within the scope of the review were:

- CEC Holdings Limited
- The EDI Group Limited
- Waterfront Edinburgh Limited

- New Edinburgh Limited
- PARC Craigmillar Limited
- Edinburgh International Conference Centre Limited
- Edinburgh City Centre Management Company Limited
- Shawfair Developments Limited

TIE and TEL were not regarded nor operated by the Council in a similar way to the Companies detailed above. TIE and TEL were wholly owned companies to deliver and oversee the procurement and operational delivery of Edinburgh Trams as agent for the Council as Statutory Undertaker. The objectives were aligned. The requirement to create and deliver the project through this structure was a funding requirement placed on the Council by the Scottish Government. The Council remained the owner of the infrastructure. All consultants were required to be procured with a duty of care to the Council, recognising the delivery structure.

A letter from Rees and Freres, solicitors and parliamentary agents, of 15 December 2003 (GL/2003/1), in considering the identity of the Promoter of the Bill for the Tram Acts and the commissioning and contract for solicitors and parliamentary agents, states:

"TIE is not an independent entity, and should be treated for what it is, namely a creature of the Council and one whose functions is to assist the Council in delivering the Council's Transport Strategy including the two Bills."

It further states:

"The Consultants so far engaged for the promotion of the Bills should be re-engaged by the Council as the Council's consultants having a duty of care, and being accountable, to the Council. However TIE, as project manager, would manage the consultants on behalf of the Council and they would, unless the Council should otherwise decide, receive and act in accordance with instructions given by TIE."

Design Risks

In respect of design, I was not advised of Mr Fraser's view that a risk premium or allowance of £25 million in the Council Report in December 2007 should be in place nor that he had suggested such to his Director, The Director of City Development (Andrew Holmes), nor that the Director of City Development had considered the matter, not agreed and/or instructed its removal from a draft Report to Members.

I was not aware that this information was known by Colin MacKenzie and Nick Smith and discussed at their Legal & Property meeting with colleagues from City Development and Planning on 20 November 2007 until receiving document CEC0137445 via the Inquiry. I am not aware if this was advised to Mr Inch, Director of Corporate Services and Monitoring Officer, for his awareness of matters and risk profile and in relation to the role of Mr Holmes as a Member of TPB and Council Director, for transparency. I would have done so had I

CEC0137445 should be CEC01397445

known or been advised in relation to both its recommendation by Mr Fraser and its potential removal by Mr Holmes, for awareness and information.

Briefing of Elected Members

For clarification, I was not involved in or responsible for briefing Elected Members on Reports in relation to Edinburgh Trams. Council and Inquiry records show that this was the role and responsibility of the Director of City Development, Director of Finance, the Chief Executive, various staff within the Departments of City Development and Finance and by Tie and TEL.

I was not involved with briefing of Group Leaders or Elected Members on the Edinburgh Tram Project although the records show that other female members of staff such as Rebecca Andrew (Finance) and the communications role (Corporate Communications) were involved.

I did not author, submit or present any Reports on the Edinburgh Tram Project to Council Meetings. The records show that Reports to Council on the Edinburgh Tram Project were presented by the Director of City Development and the Director of Finance and authored by staff in their Departments such as Alan Coyle, Andy Conway and Duncan Fraser.

For reference in terms of general Reports to Council, there was no mandatory requirement for Directors to obtain advice from Legal Services or to incorporate advice received.

I was not a full member of the Internal Planning Group (IPG) and Legal Services. Myself, Colin MacKenzie and latterly Nick Smith, attended these meetings solely in a support capacity to the Directors and Chief Executive. Duncan Fraser and Andy Conway collated and presented the Reports to the IPG meeting.

TPB meeting on 1 May 2008 (am)

For disclosure, I had no knowledge of a TPB meeting on the morning of 1 May 2008 nor an approval to pay the sums detailed in that minute to SDS. I have no knowledge if Council approval was sought or received. My awareness of this was on reviewing the Inquiry database of documentation.

In terms of balance, I was not aware of the extent of positioning emails sent by Colin MacKenzie to his colleagues just prior to important project steps. In my opinion, these actions may not be consistent with working in good faith. Mr MacKenzie did have a particularly extreme reaction to my promotions to Depute Council Solicitor and Council Solicitor. I remained entirely professional throughout and sought to provide leadership and sought effective communication and saw challenge as positive. Mr MacKenzie supported my role in the Division in part. He rejected my request for more regular internal legal meetings, considering and advising that this was a waste of his time and importing dual reporting mechanisms as himself and City Development and Finance colleagues were producing regular briefings for the Chief Executive's IPG meetings, as they were.

Further and Final Thoughts

To assist and in terms of further and final thoughts, in my opinion:

The element of control required to be provided to Tie/TEL and that retained by local and central Government should have been a factor in the decision and implementation protocols to require the delivery to be outwith the Council, rather than a decision based on delivery confidence. In particular the requirement for private sector contractors to have financial guarantees and not contract solely with a delivery company could and should have been anticipated and again considered as a factor on the suitability of determining the project was to be delivered outwith the Council. The unexpected withdrawal of support by the Scottish Government created some instability and loss of assurance and left a remaining structure determined by Central Government for a project with a dual Central and Local Government role.

The Edinburgh Trams project was publicly funded whether and to what extent by Central and Local Government and there could and should have been more joined up working in the interests of the project. Rather there were constraints by structures and timetable dates which did not provide overall benefit as they should have done.

The strategy and implementation of mediation does not appear to have been founded on or consistent with the external legal QC advice of both Tie and the Council to require the contractor to work to and enforce the contract by robust contract management to gain grounds for termination or leverage in a negotiated situation.

It is not clear that the mediation recognised the impact of not agreeing a negotiated settlement of being the offered solution of the contractor at the cost offered at an earlier meeting. It is not clear nor in the public domain of how and why the figure emerged so quickly at the mediation arrangements and at that scale.

It is not clear why matters proceeded when cost consultants, Faithful & Gould, detail costs as being "grossly inflated". It is not clear what evidence there was that the contractor would submit costs which were not so inflated having regard to the profile of sums claimed to date. This was a particular matter when the advice of the two QCs was to seek to enforce the contract even as a means of leverage. It seems inconsistent that those that sought further external legal review then appeared to ignore the advice of two QCs at such a critical stage in the project.

The summary by Ashursts, solicitors, within the Inquiry evidence shows a risk profile no better than the previous contract with the contractor not taking the risk of utilities and delay nor design delay. A key difference appears to be the ability to work at demonstrable cost, to the benefit of the contractor, within 21 days or costs/delay in excess of £750,000.

Additional References

Reference	ETI Filename	Details
GL/2003/1	WED00000609	Letter titled "Edinburgh Tram Bills" to Colin Mackenzie from Rees & Freres (Solicitors and Parliamentary Agents) on 15 December 2003
GL/2004/1	WED00000610	Council Item no 9.1 (Report no CEC/158/03-04/RC) dated 19 February 2004 presented at the Committee Meeting (14) of The City of Edinburgh Council on 19 February 2004
GL/2007/42a	WED00000595	Email from Mandy Wilson on behalf of Gill Lindsay titled "Budget Pack/Prioritisation" on 29 November 2007 (17:13)
GL/2007/42b	WED00000595	Email from Mandy Wilson on behalf of Gill Lindsay titled "Budget Pack – Text re Review of Legal Services" on 29 November 2007 (17:24)
GL/2007/42c	WED00000596	Appendix Table titled "Corporate Services Budget Allocation" linked to above email (GL/2007/42b)
GL/2008/93	WED00000598	Report entitled "Review of Council Owned, Arms Length Companies and Joint Ventures" presented at the Committee Meeting 1 of The City of Edinburgh Council on 1 May 2008 (Item no 8.7; Report no cec/004/08-09/CD)
GL/2008/94	WED00000599	Report entitled "Review of Legal Services" presented at the Committee Meeting of The City of Edinburgh Council on 29 May 2008 (Item no 9.4(b); Report no cec/033/08-09/CS)
GL/2009/29	WED00000600	Online article titled "Edinburgh care contracts suspended pending inquiry" published on CommunityCare.co.uk on 3 December 2009
GL/2009/30	WED00000601	Report entitled "Review of Legal Services and Council Secretary" presented at the Committee Meeting of The City of Edinburgh Council on 12 March 2009 (Item no 8.4; Report no cec/161/08-09/CS)
GL/2010/1	WED00000602	Online article titled "Edinburgh may be sued by disabled people over contracts saga" published on CommunityCare.co.uk on 2 February 2010

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