SCOTTISH HOSPITALS INQUIRY

Hearings Commencing
9 May 2022

Day 6
Tuesday 17 May 2022
Iain Graham

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14:15

THE CHAIR: Mr MacGregor?

MR MACGREGOR: Lord Brodie, the next witness is Mr Iain Graham.

THE CHAIR: Thank you. Good afternoon, Mr Graham. As you understand, you are about to be asked some questions by Mr MacGregor, who is sitting on my right, but first, will you take the oath?

THE WITNESS: Yes.

GRAHAM, Mr IAIN FRASER

(Sworn)

THE CHAIR: Thank you very much. Now, I do not know how long your evidence will take, Mr Graham. If it is not finished by 4, we will probably break off then with the possibility of spilling on a little further if your evidence is not finished. But could I just say that if at any time you want to take a break, just tell me and we will take a break?

THE WITNESS: Thank you.

THE CHAIR: Right. Mr MacGregor.

MR MACGREGOR: Thank you, my Lord.

Questioned by MR MACGREGOR

Q Mr Graham, can you tell the Inquiry your full name, please?

A Ian Fraser Graham.

Q You have provided a witness statement to the Inquiry dated 20 April 2022, is that correct?

A Correct.

Q That will be found at pages 182 to 200 of the bundle. Now, Mr Graham, the content of your statement will form part of your evidence to the Inquiry, but you are also going to be asked some questions today. If you do want to refer to your statement at any point, please do just let me know. If I could begin with your background and experience, which you begin at paragraph 2 of your statement, you indicate that you qualified as a chartered surveyor in 1989, is that correct?

A Yes.

Q In 2015, you were elected as a Fellow of the Royal Institution of Chartered Surveyors.

A Correct.

Q You started your career working for Edinburgh City Council in the late 1980s.

A Correct.

Q Then after that, you moved into the private sector.

A Correct.

Q So in the 1990s, you indicate that you worked for a property consultancy firm on a range of projects, including in the education

sector. Can you just provide the Inquiry with a broad overview of the types of project that you were working on at that point in your career?

A In the education sector, the prime one was the new Edinburgh's Telford College at Granton I was the development manager for that and I was seconded into the college to deliver that.

Q You then tell us that you joined the NHS in 2007 as Head of Capital Planning and Premises Development, is that correct?

A Correct.

Q Then you became Director of Capital Planning and Projects on 1 June 2009.

A Correct, yes.

Q You have been involved in the project for the re-provision of the Royal Hospital for Children and Young People and the Department of Clinical Neurosciences.

A Correct.

Q I will just refer to that throughout as “the project”. So if I use the term “the project”, that is what I am referring to.

A Okay.

Q In terms of the two roles that you have had within the NHS, if we take firstly your role as Head of Capital Planning and Premises

Development, what did that involve?

A Both roles are very similar. It was just the reporting lines around them, but responsibility for delivering the board's capital projects across Lothian, the governance aspects of it, and making sure that we've got the team in place to support those projects.

Q Just so I am understanding you, in terms of whatever label we apply, whether it's “Head of Capital Planning and Premises Development” or “Director of Capital Planning and Projects”, was the rump of your responsibilities the same?

A The rump, yes, absolutely.

Q So, again, just in broad terms, you said something changed, you said your reporting line changed.

A Yes.

Q What changes from 2009 onwards?

A My original post reported to the Director of Facilities, who then reported to an executive director. In the director role, I reported directly to a board director.

Q So from 2009 onwards, you are directly reporting to a board director?

A Correct.

Q So am I correct in thinking, just in terms of the chronology, by the time that you join NHS Lothian, the initial agreement for the project, which was 2006, that'd been completed?

A Yes.

Q Has the outline business case, when the Children's Hospital was a capital project, been approved as well?

A That was underway. The business case was being written at the time.

Q Right, okay. If we think back to whenever you come into NHS Lothian – so you are coming in in 2007, the business case is being developed for the capital project – can you just explain to the Inquiry what are you doing on the project at that point in time?

A At that time, I was supporting the project director who was a clinical person. At the time we had a capital planning manager responsible for the building elements of it, and there was a project manager writing the business case, but the technical points, the building points, at that point were preparing the schedule of accommodation and suchlike. So I was managing the team that were doing-- or the person and their resources and, as I say, undertaking that work.

Q So if I could ask you just to have your statement in front of you and to look at paragraph 3, please. So at paragraph 3, you state that you were providing "support from a capital planning/built environment project management perspective". Do you see that?

A Yes.

Q Whenever you're talking about a "capital planning/built environment", is it that sort of technical role that you are talking about in terms of technical aspects of construction associated with the build?

A Yeah. Capital planning is a mixture of project management and translating what a clinical requirement might be into building speak.

Q In simple terms, were you a sort of link or a conduit between various aspects of the project?

A Yes, and being the link to board governance through reports to the directors and suchlike.

Q So, again, just in your own words, could you explain really the interactions that you were having at this point in terms of granular work that you were doing and then how you would be reporting that up the chain of

command?

A So the detail of it would be regular discussions with the project team, be it the Capital Planning Manager or Project Director, about the next steps, what was going into the business case, what gaps we had, how we were addressing things like gateway reviews, etc., engaging with the project sponsor, SRO, senior responsible officer, through either monthly meetings or reports, and similarly reporting to our Finance and Resources Committee with an exception report, just updating on progress, etc.

Q Would you be engaging with external advisors?

A We brought on advisors through Framework Scotland and I was part of that process to procure them, but day to day they were managed on site by the project managers.

Q Then would the project managers report in to you?

A Yes.

Q Then you said – again, if I am getting this correct – but you would then report in to the senior responsible officer, which I think also had other terms throughout the project. I cannot remember them all.

A Project sponsor, yeah.

Q Project sponsor. Thank you.

A But sometimes project owner.

Q I think just to make sure at the outset that we are just speaking the same language, you use a number of terms in paragraph 3 of your statement and I would like to just run through each of those and make sure that I understand them. So the first that you use is “Project Sponsor”. Who or what is the project sponsor?

A The project sponsor is the executive director on the board, it’s someone that reports directly to the chief executive but also reports to the board of NHS Lothian and is the owner of the project, accountable for the project to the board and the chief executive.

Q So at the point that you joined NHS Lothian, who was fulfilling that role?

A Jackie Sansbury.

Q Then you also use the term “Project Director”. What was the project director’s role?

A The project director was more of a hands-on role and at this point was, as I said, a clinical person, so actually able to bring the clinical brief, the requirements of the service into the project, managing the team

day to day, managing the business case day to day, engaging with the stakeholders, which for this project was a lot of people, a lot of different organisations from other health boards, parent council and suchlike.

Q Who was fulfilling that role?

A Isabel McCallum.

Q So it is Isabel McCallum whenever you come into NHS Lothian, and did that change?

A It changed. Brian Currie came into post. There was the need as we were starting to get into the construction phase for that expertise on the ground.

Q So a change whereby a clinical person was originally doing it and then a change is made. What was Brian Currie's background?

A He is an architect.

Q So someone with a more technical background comes in for a later stage of the project?

A Yes.

Q You mention that the terms "the NHS Lothian Board" and "the Executive Directors". Can just explain what they are? Are they the same thing or are they different things?

A The board of NHS Lothian is a governance body. The

legal entity is NHS Lothian Health Board and it's made up of executive and non-executive directors. The executive directors have the operational management responsibility through the chief executive, and a number of senior directors may be executive directors but are not board members. There's a little group of them that are board members and they're all appoint-- I think all board appointees come from Scottish Ministers.

Q Okay. If I can ask you just to look on to paragraph 9 of your statement, please, do we see at paragraph 9 that you state that:

> "Lothian Health Board's role in the Project was as the investment decision maker."

Can you just explain what you mean by that term?

A Yeah, that's a term that comes from, I think, the Scottish Finance Manual. It's just the corporate body that has overall responsibility in the sense of government and statutory obligations, etc.

Q So should the Inquiry understand that, within the chain of command that we've just discussed, there are people doing operational roles and then there is ultimately the board, as in the board of NHS Lothian,

and it is the board that is the ultimate decision maker in terms of the chain of command that you talk about within your statement?

A Yes, and we quite often do engage with third parties by saying "the board wants", and that's just the party that we'll be contracting with it.

Q Yes. Again, sorry to jump around, but if we could move back to paragraph 6 of your statement, where I think you really just cover off your views in terms of the governance structures. You say at paragraph 6:

> "The system of governance in place at NHS Lothian for the Project in the period up until the start of the procurement process was generally consistent throughout the early stages of the project development with the key pillars of governance being Lothian Health Board, one of its committees responsible for considering capital project business cases (Finance & Performance Review Committee), a Senior Responsible Officer ("SRO")/Executive Director lead, and a Project or Programme Board."

Do you see that?

A Yes.

Q Just to be clear, I think we have covered off a lot of those, but you mentioned that there is the Finance and Performance Review Committee. What was what was that committee and what did it do?

A It was a standing committee of-- subcommittee of the board made up of a non-executive-- chaired by a non-executive director, a number of other non-executives and executive directors with the responsibility for, at the time, the board's performance in terms of health outcomes and performance, finance performance, but also all the financial aspects of revenue and capital. So they scrutinised the business case, they received updates from myself or others about the progress of projects, etc., and sought assurance from the executives that all was in order or challenged as appropriate.

Q What was the project board?

A The project board was effectively the committee that-- chaired by the senior responsible officer with the stakeholders that might either be part of the client groups, the clinical side, or key stakeholders such as other health boards, university, etc., and they were looking after the business case assurance process,

making sure that everything-- all the stakeholders had been taken into account, any views from outside, etc.

Q Did you----

A Very much a communications tool as well with those groups.

Q Did you sit on the project board?

A Yes.

Q I'd like to ask you some questions about the design and technical specifications for the hospital. The Inquiry has heard that those were produced by a group called the reference design team. Does that phrase mean anything to you?

A Yeah. I am aware of them, yes.

Q So what was the reference design team?

A That came in post-the change to the revenue-funded project, the NPD, and it was the group within the project team and advisors that was pulling together the reference design, including designers, our project managers and the other key people party to the briefing.

Q Okay. We will come back to that then if the reference design team comes in for the revenue-based project. If we think back to whenever you come in and it's still a capital-based project, who is undertaking issues related to design at that stage in the project?

A We-- My capital project manager led that piece of work. We procured, through something called Framework Scotland, a Principal Supply Chain Partner and they brought a contractor and design team. We also procured technical advisors, client-side professional services companies who were project managers helping to pull together the briefing packs and specifications.

Q So, again, if we could just take that in stages: you mention that there is effectively a framework agreement, is that correct?

A Yes.

Q Can you just explain to the Inquiry what a framework agreement is and then, for this particular project, how one would actually go from just the framework to having an advisor in place?

A Yes. For the first time, NHS Scotland procured, through an open tendering process, five companies. We went through quite an extensive exercise to whittle down contractors and design teams into these five parties who were called Principal Supply Chain Partners, and that-- those five could then-- were on a

set contract to do any capital project across Scotland on the same basis for any of the NHS bodies such as NHS Lothian or Western Isles or wherever.

Q So, effectively, in terms of the framework, was this companies that were pre-approved to do capital projects for the public sector?

A Yes, pre-approved and contracted on a set of terms that were agreed and we have, effectively, a contract in place, and there would be an agreed form of construction contract for when we got to the construction stage of a project.

Q There are a lot of terms that have cropped up in the statements, things like “call-off contracts”, “mini tendering”. Can you explain, in as simple terms as you can, you have the framework agreement; how, if you want to get one of the entities that is on the framework agreement, how do you actually do that in practical terms?

A I'm going to have to use my hands, sorry. The framework is an overarching Scotland-wide basis. If any party, such as NHS Lothian, wanted to deliver a project, we would do a mini tender just to the five, we would issue what was called a high-level information pack, which was our outline brief, and the companies would

tender against that, but that's tendering against their time that they would expend on the project, and they would be interviewed by us. We would have, to all intents and purposes, an interview process and that would be scored for quality and then a commercial element would be added and the selected party would be the highest scorer on that basis. We would do the same for advisors as well, the same process with that mini tendering.

Q In terms of the mini tendering, again, this might be an oversimplification, but effectively, there is a competition on things like the price, but the standard terms would remain the same because they are set by the framework agreement?

A The price is set and the framework; it's the hours and time that varies and, again, that's a simplification of it.

Q Yes. So, if we hear terms such as “mini competition”, that is how we should understand it. So, what then, is a “call-off contract”?

A A call-off, we would use in the same way. We would describe it as calling off from the framework. In order to call off, we have to do the mini tendering. There are, however, some UK and Scottish Government framework contracts – not Framework

Scotland – where the parties on that, the companies on that, are ranked. So, you "call off" the first company, or a company from it. You don't necessarily have to do mini tendering exercise.

Q You had mentioned that that process was gone through for a Principal Supply Chain Partner. Again, can you just explain? We are still within the capital project, so who that was and what they were going to do.

A So, the successful PSCP – Principal Supply Chain Partner – was a company called BAM. So, they are a construction company and the design and build contract brings the constructor and all the designers for delivering the project. Part of the Framework Scotland approach was to bring those parties on board early in the business case and then have a staged process-- a staged contract with them for each business case element. So they might come in at the initial agreement and we would be engaging with a healthcare planner or a designer, or an architect, in the early stages. Or they might come in later in the business case, in the development timeframe and bring engineers and a whole range of services in. We would work collaboratively with them to develop the documents and then the instruction to construct.

Q So, you have told us in your evidence – and you outline it at paragraph 17 of your statement – that BAM are appointed as the Principal Supply Chain Partner for the capital funded project. Once they get appointed by way of the mini tender and the call-off contract, what are they doing? What services are they providing to NHS Lothian at this point in the project?

A Initially, it would be the briefing stage, of translating the information that we'd obtained from the clinical groups around what space was required to start developing into a coherent design and all the building blocks, if you like, in the right place. In area terms, so how many, for example, theatres we would require and in what location, how many outpatient clinics we would require, how many bedrooms, etc. So the design team are collating that and translating that into their brief and drawings.

Q So, whenever you say they are helping with the design, are they providing architectural services?

A Architects and engineers. Yes, principally.

Q Okay. So, if we are talking about the design team, we are really talking about – not just design in

terms of doing drawings – we are talking about architects and engineers for, really, a full service package?

A It develops, absolutely. They're going from that concept in stages and getting, if you like, more focused on the detail, as both time and business case moves on.

Q We will come on to talk about what happens when the revenue model comes in, but whenever BAM are in place, before there's a change in the funding model, how much work have they done on the design before there's a change in the funding model?

A There was considerable architectural design done and the engineering components that support that design were starting to be developed and written up into the detailed specification and design work.

Q This is all taking place in what I think you describe in your statement as, "a design and build contract". Can you just explain again in simple terms, what do you mean by a design and build contract?

A The responsibility, and the risk, for design and then construction are all under the control of the contractor. We do not directly control and brief the design team without the contractor being involved. So, in a traditional contract, you might

have the health board engaging an architect, an engineer, etc. They prepare the design from our brief and then a contractor tenders it, the design and build. That is all integrated with the contractor.

Q So, design risk sits with the contractor, as opposed to the other contracting parties, the health board?

A Yes. Ultimately, the health board is preparing the briefing and the specification, and the contractor is taking that on board to develop.

Q Okay. So, while BAM are working under that contract, are you involved in the day-to-day development of the design, or is that for BAM to take forward?

A The health board is involved in terms of guiding the clinical groups, doing that translation work between what the clinicians are asking for into what would be required in architectural terms, or design terms. The legwork has been done by the designers. At this point, Brian Currie would be on board and he would be the day-to-day lead on that from the health board side of things.

Q So, what input would either yourself or your team be providing?

A They would be principally

doing that process management, making sure everything happened in the right order and making sure that any questions from the design team and contractor were responded to and, indeed, ensuring that the contractor and designers moved things forward.

Q Okay. Before I leave the issue of the design and build contract, you mention within your statement the NEC3 contract and you mention that it is based on, what you refer to as, a "collaborative" or "partnership approach".

A Yes.

Q Can you just explain to those of us that do not work in that space, what do you mean by that?

A It's easier to explain the traditional route and then the difference. The traditional bit, where we have the design team working for the client and a contractor, it can be confrontational and issues can arise. The NEC contract is designed – I think it stands for "National Engineering Contract" – it is designed for all the parties to have no surprises. It's driven by programming, so a start date, an end date and all activities from it, but the collaboration comes with what's called "early warning notices". If one of the parties identifies an issue, they flag it, it is discussed

and resolved rather than left to the end of the contract, where the contractor asks for more money and the client says, "We don't have it". It's more dealt with at the time in a collaborative way. Similarly, the design process is supposed to be more interactive and collaborative between contractor and designers.

Q So, a standard form contract, whereby everyone knows where they stand with the idea that parties work together rather than having partisan views on things?

A Absolutely.

Q Okay. Now, again, can you explain, why could that type of contract and type of approach not simply have been utilised whenever there was a change to a revenue funding model rather than a capital model?

A Yes. One of the aspects of the NEC contract we were using was the "risk transfer" and risk pot, it was called. We expected our target price to be agreed with the contractor at the time of the contract being signed for construction, but that target price could vary depending on risks that emerged or risks that were addressed. In an ideal world, you would end up with a share of any surplus at the end, between contractor and client, but a

part of that process is it's an ongoing dialogue all the way through.

In the revenue funded world, certainty is required and the contractor held to account to a price and a programme and a risk basis in order that the special purpose vehicle can get the contractors warranties and guarantees and get the funders behind the loans-- to satisfy them as well. So, of the two approaches, the NEC framework approach is less certain as time goes on.

Q So, again, just so I am understanding you correctly, you could not really take an off-the-shelf standard contract like the NEC3 and use it for a complicated, multi-party situation for revenue funding where there is the special purpose vehicle and a whole host of other arrangements?

A There is one other related issue, which was under Framework Scotland they're contracted to work for NHS Scotland and not third parties. So, the third party would have to procure those individuals, those firms.

Q You tell us within your statement, that BAM were appointed in 2009. If we could look to paragraph 17 of your statement, please. So, four lines down in paragraph 17, there is a sentence beginning, “The near completed design outputs…” Do you see that?

A Yes.

Q So, you say:

“The near completed design outputs in the Works Information comes from the work the PSCP…”

So is that BAM in this case?

A Yes.

Q

“…has collaboratively undertaken with the Health Board’s project team to develop the specifications and requirements in the earlier stages of their appointment. The Project got to the stage that the Works Information stage had nearly been completed, when the Scottish Government decided the Project should proceed under the NPD model…”

Now again, for the uninitiated, can you explain what you mean by “works information”?

A The works information is the specification, design and requirements that enable the contractor to fully price it and market tests – as in go to subcontractors to get elements priced – so that there's an internal tendering process that the

contractor would do as part of that. So, the works information is what they're going out to the market with.

Q At that stage, would that include technical engineering details having been started or completed? What stage would they be at?

A It could be either, depending on the nature of the project, but the majority of it would be under development with-- and, again, as the design has developed into more detail, it's really a matter of timing as to when that works information is finally completed and I honestly can't remember off the top of my head exactly which elements were outstanding.

Q The Inquiry at the minute isn't looking at the detail of the specification at any particular point in time. That will come later, but again, you say that the works information was nearly completed. Just as a generality, I think at this stage we are interested-- if we were looking for technical engineering detail, would there be a blank sheet of paper, completely completed specification, or would it be somewhere in the middle?

A It would be nearer the completed, but not quite.

Q Thank you. Again, just to try to drill into that, you say at paragraph 18:

> "To get to the completion of Stage 3 and the commencement of Stage 4, a "Target Price" is agreed between the health board and PSCP, with a proportion of supply chain packages having been priced up…"

Do you see that?

A Yes.

Q You are obviously using a benchmark, in terms of stage 3 and stage 4, but could I just ask you to explain it again for those of us that do not work in the industry, stage 3 and stage 4 of what process?

A So, stage 3 is the works information level, the agreement of that and stage 4 is the-- you are instructed to build. In order to transfer from one stage to the next, we have to agree that target price, that overall price for the works.

Q How is the metrics set, in terms of stage 1, stage 2, stage 3 and stage 4? Is that from the NEC contract or----?

A Yes, it's from the overarching Framework Scotland contract, which, in turn, is based on the NEC contract. It does refer back to-- I think, from recollection, it links back to the stages of design and construction work from the Royal

Institution of Architects and that sort of thing.

Q Okay. So you have explained in your statement to this point the work that has been done and you then tell us that in November 2010 the Scottish Government announced that there is to be a change in the funding model, that it is to change from a capital project to a revenue funded project. You tell us that from that point on Scottish Futures Trust become involved. So, why did Scottish Futures Trust become involved?

A They were the programme managers for the non-profit distributing model that was to be used.

Q Who introduced them to NHS Lothian?

A I believe it was their chief exec to our chief executive, or through Scottish Government.

Q Again, just to try and understand the role that they had, was this an advisory role or was it a mandatory role?

A It was an advisory role, but Scottish Futures Trust had responsibility for the overall programme. So, they had objectives that they had to meet for Scottish Government in terms of programming. Scottish Futures Trust created the

project agreement which was to be used when we went out to tender. So, we couldn't vary that without agreement. Then they also were the final party and financial close to say it's okay to proceed. I think they also had a role, say, in the capital investment group as well, for these projects.

Q Did they have an oversight role? You mention at paragraph 21, for example, that they established what you refer to as “key stage reviews”.

A Yes.

Q What were key stage reviews?

A The key stage review was a milestone review by Scottish Futures Trust. That was set up as the project developed. They developed the key stage review documentation in parallel with us because we were one of the first acute hospitals to go through. So, we had an allocated SFT associate director who went through the key stage review with us and then had it reviewed by someone else in Scottish Futures Trust. That then went to the Capital Investment Group and without a successful key stage review signed off by the health board as accepting all the points, we wouldn't be getting business case approval.

Q Did Scottish Futures

Trust have any role in the design of the hospital?

A Not directly, but they did do design review early on in their involvement, to review all the technical aspects and project size and cost.

Q So you say that they are not directly involved in the design itself, but they have a reviewing function?

A Absolutely.

Q In terms of that reviewing function, was that reviewing the design in terms of the revenue side, or in terms of the technical aspects of the design?

A The output was focused on programming and cost, but in order to get to the programming cost, they had to have an understanding of the detail and we did get challenges about bed numbers and healthcare planning type issues and how the building would be serviced, etc.

Q Was there interest in the design at a fairly high level of generality, as opposed to the real granular detail of things like technical engineering specifications?

A My colleague, the project director, would probably be best placed to answer the detail of it, but in principle it was an overall assurance process.

Q When you say "your colleague", are you talking about Mr Currie?

A Yes. He would have led the detailed discussion.

Q If I could ask you to have a letter in front of you, please. It's within bundle 3, volume 2, and it begins at page 108. So, this is a letter from a Donna Stevenson to you. Donna Stevenson, who was she and what was her role in the project?

A Donna was the associate director from Scottish Futures Trust who was allocated to be our reviewer from SFT.

Q Okay. So the letter of 8 December that we see, bundle 3, volume 2, page 108, that's a letter from Scottish Futures Trust to you dated 8 December 2010.

A Yes.

Q If we look within that, it refers to a meeting that had taken place and goes on to address a range of details. So, for example, paragraph 1.1 under "Project Scope":

> "You confirmed yesterday that NHSL's preferred option for meeting its clinical requirements is an integrated facility incorporating both the RHSC and the DCN in one building. You indicated that a check is being

done to ensure that a building to cover both facilities can fit within the envelope of the footprint of the existing design for RHSC…"

Do you see that?

A Yes.

Q Now, why was that an issue in terms of trying to see if you could squeeze everything in?

A Because we had a very constrained site. We didn't have an open, green field with lots of land available. There was lots of connection points needed to the existing Royal, so the description of "footprint" isn't about fitting into the building, it was in fitting on the site.

Q Okay, thank you. Then If we look on to page 109, please, paragraph 2 of the letter, there's a bold heading "Interface with Existing PFI Contract". Paragraph 2.1:

"We agreed that SFT would start to assemble some of the key issues associated with Consort and the existing PFI contract, for further discussion with the Health Board. We understand these to include resolution of a car park land swap, the potential removal of soft services from the contract, decisions with regard to any potential time extension to the contract and any reconfiguration of the contract required to accommodate the Project. All of these issues potentially do not require to be resolved ahead of the start of the procurement of the new contract…"

Do you see that?

A Yes.

Q Can you explain in general terms what problems are being discussed here?

A It's principally the issue that was created of putting a new revenue funded project into a site which is under the control of an existing PFI contract, with the land control lying with that PFI party, Consort, mentioned here, and some of the changes that were needed to allow that building to happen, and more particularly to work as a clinical service at the same time as we were running the clinical service in the Royal Infirmary.

Q Scottish Futures Trust are assisting NHS Lothian with those issues, is that right?

A Yes, they were identifying the issues that they thought would come up and needing to be addressed.

Q Again, we'll come back and cover this, but does that include issues such as not having control of

carpark B, which was one of the proposed----

A Yeah.

Q -- sites where the hospital would be built----

A Yes.

Q -- and a requirement to do significant enabling works?

A Right.

Q If we could look on to page 110, please, to paragraph 3.6, it states:

> "There is the option of concluding the existing PSCP arrangements and tendering the RHSC/DCN project using a traditional NPD DBFM procurement route. (Option 1) In that case NHSL could provide bidders with an exemplar design to show the adjacencies etc which it has worked through internally including with clinicians to date. NHSL will want to be satisfied from its legal advisers that, as was indicated yesterday, the existing framework arrangements can be concluded without penalty, except for payment for work to date."

Do you see that?

A Yes. Could I just ask, is there any way to zoom in on this slightly? Sorry.

Q Okay.

A Thank you, that's fine. Thank you.

Q We can always print things off if required as well, so----

A Times New Roman, it's not very easy to read. Thank you. I'm sorry, could you repeat the question?

Q Please do just take a minute to read-- I just simply read it out to you, so please do take a minute to read that, if that would be of assistance.

A Yep. Thank you.

Q So we see mention in there of an exemplar design. What's an exemplar design?

A In procurement of a revenue funded project, up to this time an exemplar design was used as a-- I believe as a test against the public sector comparator it was called, so a design was compare-- was prepared to say that's how much it would cost in capital terms, but it's a very high-level design; it may include some of the key adjacencies and key aspects of the services to be provided with it, but it's not a detailed design in any shape or form. It would then be used to compare with the PPP/PFI pricing mechanic that was-- offer that was coming in.

Q So exemplar design,

quite a high-level design?

A Yeah, that would be my understanding.

Q Almost sometimes perhaps called a concept design?

A Probably slightly beyond that, but certainly, you know, not something that you could go and tender and build.

Q So, if we have the exemplar design at a high level of generality, in what respects does a reference design differ from an exemplar design?

A The reference design was taken to a further stage, and the-- In general high-level terms, the reference design allowed us-- in the context of the relationship with the existing Royal Infirmary and a PFI contract, allowed us to work out how we could build it, you know, how we could get in and connect, etc. to the adjoining site. So, from my point of view, there was an awful lot more addressing the constraints of the site on the reference design compared to the exemplar-type approach. The detail of, if you like, the insides of it, my colleague Brian would be much better talking through that.

Q Again, just so I'm understanding this, a reference design is quite a detailed design at least as

compared to an exemplar design.

A It created-- It allowed us to identify where the fixed points were and what the constraints were around the site. So how we connect to the Royal Infirmary, for example.

Q In your experience, is there a difference in terms of, for example, timescales to go out and have a procurement exercise for an exemplar design as opposed to a reference design?

A Yes. My understanding would be the exemplar would allow you to go to open market procurement for a green field site type development, whereas the reference design allowed us to do that same exercise but on a very constrained site. It also had a considerable advantage of maximising the benefit from all the work that had been done before with the clinical groups around understanding how the building could work or should work whereas the exemplar design would just be, "We'll have outpatients there and we'll have theatres there", not how those two departments move around and connect to one another.

Q Again, just drawing on your experience, in terms of a procurement exercise, if you had a reference design where you're more detailed in terms of what you're telling

the market you want, would that be a shorter procurement exercise as opposed to a concept or exemplar design where you simply say, "I want a hospital"?

A That was our understanding at that point, that it would allow us to proceed through the procurement stages a lot quicker. However, the challenge with that and the balance that's slightly alluded to here-- the balance there is that the private sector bidders have got to be able to own the design and, if you like, bring innovation, bring their expertise in order to differentiate themselves between one party and another.

Q Thank you. If I could ask you, still within the same letter, to move on to page 111, please, to section 4, which has "Role of SFT". Do you see that?

THE CHAIR: Sorry, I missed that.

MR MACGREGOR: It's page 111, my Lord, section 4: "Role of SFT". (To the witness) It states:

> "We thought it would be useful to set out what we believe SFT's role to be both in the short term, but also more widely during the procurement process.
>
> 4.1. Procurement Strategy – SFT can assist the Board in determining the approach that should be taken. In addition SFT could provide ongoing support to the project via representation on the project board."

Do you see that?

A Yes.

Q Now, you obviously sat on the project board. Was there a representative from the Scottish Futures Trust that also sat on the project board?

A Principally, Donna Stevenson; occasionally, Peter Reekie would come and represent SFT, but Donna Stevenson sat on the programme board.

Q When you say she sat there, did she sit there in an advisory capacity or a decision-making capacity?

A We never got to a situation where there was a vote so I can't really answer your question, to be honest.

Q Effectively, there were meetings and she attended those meetings. Is that----

A She attended and participated in the conversation, and quite often followed up afterwards with the correspondence.

Q Paragraph 4.2 continues:

"Market Interface – SFT's role is to coordinate the wider programme of NPD projects and to communicate the opportunity to private sector bidders to encourage a strong market response."

Do you see that?

A Yes.

Q It continues, 4.3:

"NPD Terms - SFT has a role as the guardian of the commercial position as it relates to the Non Profit Distribution principles contained within the contract. As part of this role we could consider with the Board and its advisers any changes required to the NPD structure ahead of the procurement"

Do you see that?

A Yes.

Q So am I correct in understanding that there's a standard form contract retained by Scottish Futures Trust, and anything that was to be changed from that would have to be agreed?

A Correct. I think there is an element where-- what was called "project specifics", where the board was allowed to make a decision on-- but the basic contract, absolutely, we couldn't make any amendments, and-- The "we" in that case wouldn't just be the health board, it might be the bidders etc.

Q Okay. So, again, just a basic level, we've got a very specific contract here.

A Yes.

Q We're not talking about something like an NEC3 that you'd use for a design and build.

A Correct.

Q If we return, then, to paragraph 4.4:

"Existing PFI Contract - SFT can assist the Board with the development of a strategy to resolve any outstanding issues and seek the necessary variations to the existing PFI contract with Consort. The negotiation will be for NHSL."

Do you see that?

A Yes.

Q So, again, that's back to they were assisting with the discussions with the existing revenue funder on the site in Little France.

A Yes. SFT could say provide comment and suchlike, but I don't believe they carry professional indemnity insurance to give us advice.

Q Then it continues at 4.5:

"Financing Structure - SFT can support NHSL and its

financial advisors in developing the optimal financing structure for the project in order to minimise the financing cost of the project."

Do you see that? It continues:

"Validation – SFT is likely to have a role in project reviews at key stages during the procurement process."

Do you see that?

A Yes.

Q Again, just looking at what's set out in paragraphs 4.1 to 4.6: advice, guidance, assistance, but it doesn't appear that there's any form of technical input that's being provided by Scottish Futures Trust. Was that your understanding?

A Apart from the design review, yes.

Q Then the letter continues, section 5, "Other Issues in Preparing for Procurement":

"5.1. Consideration will be needed at an early stage of how much the design should be progressed in-house and how much in competition through the NPD procurement. There is an opportunity with recent accounting rules changes to undertake more design – especially overall massing, adjacencies and even layouts in-house; with the preferred bidder taking on detailed design for construction."

Can you just explain what's being set out there in the letter?

A I suppose this is where there is a challenge between no input into the design and looking to make sure that the design meets with the accounting rule requirements and the procurement. So what's coming in there is the challenge of whether we use the reference-- what turned in to be the reference design versus any other sort of exemplar design type approach, progressed in-house, meaning within Lothian or with our advisors, and how much is passed to the NPD contractors to bid on; that point I was making earlier about the need for the private sector to bring innovation and design development so that there was a line to be judged as to where that transfer would take place.

Q Again, at this point, trying to work out just how detailed the reference design would need to be?

A Yes.

Q Then it continues in the final line of page 111:

"Such a move will involve more design work ahead of the procurement, but is overall likely to save time to a start on site."

Do you see that? Again, is that the point that I've already discussed with you whereby the more detailed you make the design, potentially the quicker the procurement exercise could be?

A Yes, and there was a lot of focus on how much it would cost in-- for bidders to design up and make bids because there's a wish to not deter any bidder by them having a large cost to design before they were the preferred bidder etc., and then a very short preferred bidder period to allow them to develop the design.

Q Then we see, still within page 112, if we look down to section 6 programme and resourcing, paragraph 6.1:

> "A dedicated project team will be needed in NHS Lothian to take forward the project. Given the move towards a large revenue funded project involving private capital and the complexity of the interface issues with the existing PFI contract, we would strongly recommend that individuals are found who have the necessary skills and have experience of PPP procurement. As discussed, NHS Lothian will need appropriate advisory support – financial, technical and legal to bring forward a complex NPD procurement. I know that you are looking at existing framework arrangements. SFT is in the early stages of the establishment of a NPD programme wide advisory framework to support those procuring bodies who wish to participate. This is likely to take until the early summer 2011 to put in place."

Do you see that?

A Yes.

Q In terms of this new revenue funded project, what was your views in terms of whether NHS Lothian had individuals with the right skillset to take it forward?

A We felt that, as a team, we had enough skills and knowledge and experience. We did feel that we would need good advisory support into some of the detailed work that would be required, and good legal and commercial input into that as well, but as a group, we had experience of operating, managing PFI projects and relatively smaller scale developments of PFI contracts. We knew the site and the issues, and we had good project managers in the team as well.

Q Were external advisors brought on board?

A Yes, we required-- and this paragraph alludes to it, you know, there is a need for legal, technical and financial advisors. Legal and financial, we wouldn't have used previously to the same extent, so we had to procure those from scratch. The technical advisors, we needed a broader-- there was a broader requirement from them from just being project manager and engineering support, etc., most advisors being PFI/NPD-experienced individuals able to advise on the project mechanics, the project agreement mechanics.

Q So, again, just to work out where we are in terms of the chronology: BAM have been appointed, there has been design work that has been completed, there is the change to the revenue-funded model, you are not going to be able to use the design and build, there is a recommendation and an acknowledgement, I think you've said, of a need for external advisors. What does NHS Lothian do in terms of getting on board technical advisors?

A There was a need to move very quickly, but we clearly had the constraints of procurement rules and Board Standing Financial Instructions. So you couldn't go out and just pick someone off the street,

so to speak. We had a process to go through. So we looked at the frameworks that were available to us because SFT hadn't got their framework in place by the time that the programme started, so we needed to utilise our own. The legal profession-- the lawyers, we did a tendering exercise for, and I ran that exercise. The financial advisors were procured from a framework and the technical advisors were also procured from a framework with a number of sub-consultants reporting.

Q So who was engaged as the technical advisors?

A The technical advisors were principally Mott MacDonald.

Q What was your understanding of the services they were going to provide?

A Sorry, could you say that again?

Q What was your understanding of the services they were going to provide?

A They were providing both the technical input into the project specification, but also drawing up the technical pack to go into the tendering documents to go out to the marketplace at that time.

Q Are we talking about architectural design services?

A No. No, the architectural design services, we-- Sorry, I should have said that in connection with the other bit. The design element, we had to review within the Framework Scotland framework to see whether we could utilise that existing design that had been undertaken and to engage with the designers through-- what ended up being through technical advisors, I believe.

Q So Mott MacDonald are in place, you say, as technical advisors. Who, if anyone, is providing technical assistance in relation to engineering issues?

A Mott MacDonald brought technical expertise, engineering expertise. We also had a number of our wider resources from within NHS Lothian. Our hard facilities management, estates management colleagues as well were providing input as well.

Q I think earlier we had been discussing the term “reference design team”, and I had said we would come back to it. So, now that we are within the revenue-funded project, can you explain what you mean by that term “reference design team”?

A That would be the architects, engineers and technical advisors pulling together the reference design output to go into the tendering documents, and that would be managed by the NHS Lothian project team.

Q In terms of a link between the reference design team and, for example, the project board, who is providing that link?

A Principally through the Project Director, Brian Currie.

Q Did you have any involvement at that stage as a link?

A I was probably more a helping-and-supporting-type role rather than directly involved.

Q Because within your statement you do mention that whenever Brian Currie becomes involved, you say that you almost take a step back. Again, so that I am understanding exactly what you were doing: Mr Currie comes in, we are within the revenue-based project, you are still within Capital Planning. How active a role do you have?

A At this point, more around governance-type roles and supporting roles in terms of the help to move to the NPD mindset that’s required, the whole change of focus that’s required. In the legal and commercial context, the business case had to be refocused and rewritten, so I was helping and support on that side

of things.

Q So, for example, you were sitting on the project board, but is it Mr Currie that is really dealing with the day-to-day operation of the project?

A Correct, yes.

Q If I could ask you to look, please, within bundle 3, volume 2 to page 399, this is a letter from Peter Reekie of the Scottish Futures Trust to Jackie Sansbury of NHS Lothian dated 1 June 2011. Do you see that?

A Yes.

Q In preparing your statement, did you review this document?

A I was certainly aware of it and had seen it previously.

Q If we could perhaps pick matters up within the letter on page 400 at the first full paragraph beginning, "As part of an updated Key Stage Review process". Do you see that?

A Yes.

Q So page 400, first full paragraph:

> "As part of an updated Key Stage Review process, that will be applied uniformly on NPD projects in the health sector, we propose to engage in the ongoing design process of the Project and provide an independent review and challenge to the overall size of the facility and its specification on behalf of the ultimate funder of the project. To do this we are likely to employ an external adviser. This should provide independent validation of some of the key high level metrics of the proposed design and a valuable external benchmark on value for money."

Do you see that?

A Yes.

Q Do you have any observations in terms of Scottish Futures Trust providing an independent review whenever they were also involved in the project board?

A Many of us wear multi-hats. You would have to respond-- You would have to take that up with SFT.

Q If we could look on, please, to page 405, and at the bottom there is a heading, "Capacity and Governance". Page 405, and then the heading, "Capacity and Governance". Do you see that?

A Yes.

Q It states:

> "As is set out in the SGHD letter, we believe that the skills

and experience of the Project Director and the wider project team are of vital importance in delivering the Project successfully. A key part of this is experience and delivering revenue funded projects, as this brings significant additional demands to the project team over and above those required on capitally funded construction projects. These include developing a services specification and payment mechanism, attracting and retaining the engagement of equity investors in a project during the bid period and managing the demands of senior debt funders. Given the size of the Project, it is critical that this experience comes from the client team, as the project team have to be able to manage the advisory input to the project, both in terms of cost and strategic input – both of which become very difficult if the advisers themselves are the sole source of experience on key parts of the project."

Do you see that?

A Yes.

Q So, again, is this SFT saying that there really needs to be people with experience in revenue-funded projects? I think we have already discussed your views in terms of whether NHS Lothian possess those skill sets.

A And we had experience of a number of these areas between the team members already.

Q But if we look down on page 406 in the paragraph just above Supplementary Agreement 6, we see Scottish Futures Trust stating:

"Overall we do not believe that the current project team has sufficient experience of PPP project delivery and would look to agree with you a change to this resource at the earliest opportunity and certainly well before the commencement of procurement. We have offered some part time support over the next 3 months to temporarily mitigate this concern."

Do you see that?

A Yes.

Q Would you disagree with the concerns that are being raised there?

A We did, yes.

Q Was anything done subsequent to this letter to mitigate those concerns?

A We did have a secondee

into the project for a short while, and then at the same-- around the same time I was asked to, and my colleague in the Finance Directorate was asked to allocate more time to the project, so I ended up 50 to 80 per cent of my time on the project.

Q What time is this? If we just go back up, the letter is dated----

A It'd be mid-2011.

Q Yes, so the letter is dated 1 June 2011.

A Yeah.

Q So you are saying from approximately the middle of 2011 you started to take a more active role in the project again?

A Yes.

Q If we could then just look on, for completeness, to page 407, again, we see the role of the Scottish Futures Trust being set out. I will not read it all out but, again, do we see the headings "Assurance and Approvals" and "Project Governance"?

A Yes.

Q Again, is that all consistent with your understanding of Scottish Futures Trust's role?

A Yeah, I think this was the-- this was very early in the NPD programme, so a lot of these areas were being developed at the time by SFT. So we absolutely recognised the

key stage reviews and the programming attached to it, the content in those key stage reviews. We didn't have guidance in advance. We had guidance as we were doing it.

Q I think a number of witnesses have said to the Inquiry that this was really the first time that a revenue-based hospital had been put within another revenue-based project. Was there an element of learning as you went along on this project?

A Yeah. We had to get to a situation where we had a thorough understanding of what we were expecting to be tendered to go to the market to procure for the new project at the same time as we needed to have a thorough understanding of the leverage and commercial position of the PFI, the existing PFI. So we had a practical in situ PFI and theoretical NPD to be delivered and, as things developed, we had to make changes. But the reference design, to an extent, helped us, as I mentioned earlier, having some fixed points, but there were two or three things that absolutely changed as we went through this phase, such as under the Capital Project, we'd made an assumption and we were heading towards agreeing a single energy centre on the site. Under the NPD, we

had to create a separate energy centre for the new hospital because of the risk transfer issues for the NPD. But, for the PFI, we had to create and pay for what was colloquially called the "docking station", a new build added to the Royal Infirmary that allowed the Royal Infirmary PFI to separate itself from the risk of the NPD. Those emerged after this time, but the reference design helped us get to a fixed point on it.

Q Again, perhaps to summarise the questions I was asking before, in terms of everything that is happening in this project from procurement through to governance, am I right in thinking that there is no precedent to draw upon because this is the first time this type of project has been done in a healthcare setting?

A Sorry, I should have just said yes.

Q One of the issues that you mention within your statement is site constraints. Term of Reference 10 for the Inquiry is to examine whether the choice of site was appropriate or gave rise to an increased risk to patients of environmental organisms causing infections. Now, in terms of Term of Reference 10, notwithstanding the difficulties that you outline in your statement, did you consider that the

choice of site was appropriate for the hospital?

A Absolutely, given the key driver was to co-locate the children's services with the adult services. The alternative would have been to up sticks and remove from the Royal Infirmary as well and build two new hospitals in one somewhere else, but that wasn't feasible.

Q So, again, correct me if I am wrong, but in terms of summarising the issues that you set out in your statement, tight site, quite a bit of enabling works to be done, but not an impossible task.

A Well, we did it.

Q If I could ask you just to look, please, within paragraph 31 of your statement, there's a diagram there. Do you see that?

A Yes.

Q This is called "SA6 – land and access", and right in the middle, we see Car Park B. So, just looking at the site here, what are the buildings that we see effectively just at the top of the page, just up from Car Park B? What is that that's being shown?

A The large building?

Q Yes.

A Yeah, that is the Royal Infirmary of Edinburgh, the existing acute site for Lothian and the existing

PFI contract. To the left, the large round circle in the middle is the link to what is then the Chancellor's Building and university facilities.

Q We see Car Park B in the middle. What was to be built in Car Park B?

A That's the site of the Children's-- the project.

Q Now, you mention within your statement both Supplementary Agreement 6 and Supplementary Agreement 7. Could you just explain to the Inquiry what had to happen in terms of Supplementary Agreement 6? Why was it important?

A What we did with Supplemental Agreement 6 was to remove the land from the existing PFI for that theoretical NPD structure coming in and also all the rights of access. By that, I don't just mean the roads and the way into the building, but the drainage connections where the telecoms are, the gas for the power, the electricity, etc. All those rights had to be excised or created with Consort.

Q Because, again, another witness to the Inquiry said, really, in terms of Supplementary Agreement 6, that was about getting control in particular of the land for Car Park B because, quite simply, if you did not

have Supplementary Agreement 6, you did not have the land that Car Park B sat on and you could not build the hospital. Is that correct?

A It is, and in order to create Car Park-- in order to ensure that we had both an operating hospital with carparking and an operating PFI with carparking, we had to create a new carpark first. That was already underway, but the principle of having somewhere to build a hospital absolutely needed to be agreed. That site was chosen simply because of-- well, not simply – the connection to the Royal Infirmary Accident and Emergency was the key adjacency.

Q In terms of Supplementary Agreement 7, you explain that that involved quite significant enabling works. Again, could you just explain what that involved?

A Yes. We ended up with two supplemental agreements, which is just an amendment to the existing PFI contract. One for the land, separately from the enabling, because the land was done before procurement and the enabling construction works were done by the time the construction started for the procurement. That was things like the flood defences. It wasn't that the Royal Infirmary was a

flood risk, but it's the planning requirements had changed over time, that we needed to upgrade that. We needed to divert the bus routes and create new bus stances; we needed to move the medical gases; the VIE plant and suchlike; as well as doing works inside the Royal Infirmary. That created a larger Critical Care Unit to cope with the Department of Clinical Neurosciences coming in and we had to create the connection for an increased pharmacy and pneumatic tube system. I've missed one of the drains – we had to move them as well.

Q Thank you. If I could ask you to, please, look within bundle 3, to volume 2, and page 672, please. So, that should be the outline business case from 2012. Do you see that?

A Yes.

Q Did you have any input into this outline business case?

A Yes, there would have been some sections that I drafted for Sorrel Cosens to incorporate into the document.

Q So, the Inquiry heard evidence from Sorrel Cosens earlier today. She described herself as being, effectively, the editor of the outline business case, so there was a whole range of individuals that provided information, which she would then collate and synthesise into the outline business case itself. Is that consistent with your understanding of how it was created?

A Absolutely. Part of my two hats in this was, I was providing input into certain sections, but also as part of the governance process, helping review.

Q Ms Cosens stated that the outline business case was produced in line with the Scottish Capital Investment Manual. Is that a document you are familiar with?

A Yes, SCIM.

Q Again, just to be clear, you mentioned “SCIM”. What do you mean by SCIM? Why is it important? What is it?

A In order to satisfy the funders, Scottish Government, we have to create the business case and the Capital Investment Manual is our guidebook for that.

Q At this point, if the business case is 2012, Ms Cosens indicated that the guidance that you would be looking at would be the 2011 version of the Scottish Capital Investment Manual. Is that correct?

A Yes.

Q Did that require there to be a design assessment process that was completed?

A Yes.

Q Do you know if – for this project – whether a design assessment process was completed?

A It was, of a form. It didn't follow the exact template that was developing at this time of the National Design Assessment Process, and that was partly because of timing – the project had started beforehand – partly due to the programming of the NPD not wanting to delay anything and partly because there were other assessments being done. You mention the SFT and that's an example of it. It wasn't that the project wasn't being reviewed, it just wasn't following the template.

Q I think, at the minute, all I am trying to establish is, if we look within the Scottish Capital Investment Manual it says that there has to be a design review process that's carried out and certain witnesses have told the Inquiry that their understanding is that that process wasn't carried out. So, we can come on and discuss other things that were done, but if you were simply looking at the terms of the Scottish Capital Investment Manual, there wasn't the review, set out within that document, completed for the project. Would you agree or disagree with that?

A Because the project had started prior to the instigation of the NDAP process----

Q Yes, but----

A -- that was the prime reason that didn't happen.

Q -- to be clear. Do you agree or disagree? Did it take place or didn't it?

A An NDAP, in the form that it was envisaged by SCIM, did not happen.

Q Okay. Now, can you explain, who made the decision that what you refer to as an "NDAP" would not take place?

A I believe that would have been through the programme board.

Q So, were you involved in that decision?

A Yes.

Q Okay. Again, could you assist the Inquiry with when that decision would have been taken by the project board?

A Not off the top of my head. It would have been around the time of the consideration of the reference design discussions, I would have thought.

Q If we look back through the minutes of the project board, would you anticipate that there is a minute that addresses that, there being a

formal decision that what you refer to as the “NDAP” wouldn’t be done?

A I believe so, yes. I couldn't say for 100 per cent.

Q Okay. Can you remember if the project board would have escalated that issue to the actual board of NHS Lothian?

A I wouldn't have thought so. It was a technical aspect of the business case.

Q If I could ask you to look within the business case itself, if we could look on to page 685, please, and to the bottom at paragraph 1.70. Do you see that?

A Yes.

Q So, at 1.70 it states:

> “The reference design and development of the final design with the preferred bidder will both be subject to a range of reviews as work progresses. To date these have included the following, and findings from each have influenced the ongoing design development.”

Do you see that?

A Yes.

Q At the bottom it says, “Health Facilities Scotland NDAP – design assessment”. Do you see that?

A Yes.

Q Now, from what you’ve said, should the Inquiry understand that that is simply an error?

A I think that relates to the process that was wrapped around the equivalence of the NDAP, as I would describe it, so it's not clearly stated, it’s not correctly stated. They would have a design assessment process.

Q Again, I just want to make sure that I’m absolutely clear that whenever it says “Health Facilities Scotland NDAP – design assessment”, from what you’ve said previously, there was not a Health Facilities Scotland NDAP design assessment. Although you have gone on to say that there was an equivalent, if we are just talking in clear terms, there wasn’t a Health Facilities Scotland NDAP design assessment that was done?

A That is correct.

Q So, you said that you thought there was an equivalent.

A Yes.

Q What was the equivalent?

A From recollection, I think the equivalent that we had at this time, was both the SFT design assessment and the feedback that we got from that from Health Facilities Scotland into the business case consideration at the Capital Investment Group, just responding to it from a design

assessment review.

Q So, when we are talking about the Scottish Futures Trust assessment, are we talking about a report produced by Atkins?

A Right, that would be it.

Q Now, you mentioned that there was input from Health Facilities Scotland. Can you recall who was at Health Facilities Scotland that was providing input?

THE CHAIR: I think you used the word “feedback”. Could you----?

A Yeah, they provided feedback through to the Capital Investment Group and us. The NDAP process was managed by their principal architect, Peter Henderson, but I couldn't say whether he was directly involved with it. I can't recall.

MR MACGREGOR: Again, just so I can understand, you said that there was, I think it was “feedback” from Health Facilities Scotland. Who, or what, are they feeding into at NHS Lothian? Is it an individual or is it a body?

A I can't recall seeing that feedback directly, but it went to the Capital Investment Group at Scottish Government as part of the business case, which is where the NDAP process would end up anyway.

Q So, if the Inquiry wanted

to ascertain what feedback, if any, was provided by Health Facilities Scotland on the design for the hospital, what bodies do you think would be able to assist? You mentioned the Capital Investment Group, I think.

A Yes. It's in one of the bundles, the document. I couldn’t tell you which one, but----

THE CHAIR: (After a pause) Mr Graham, was there a passage you wanted to draw attention to?

A I was just wanting to check what was on the next page, in case there was another line that was relevant to----

Q Always a good idea.

A It's like, “Do not press go, comma, change page, unless you've done…”

MR MACGREGOR: If I could ask you to have in front of you, please, bundle 8 and page 63. So, this should be the Scottish Capital Investment Manual, Supporting Guidance: Design Assessment in the Business Case Process. Do you see that?

A Yes.

Q Again, were you familiar with that from the time that you were working on the project leading into the outline business case?

A Yes, and my broader work in capital planning, yes.

Q Yes. So, if we look on to page 64, it begins at the introduction:

"From the 1st July 2010 an assessment of design quality will become part of the business case approval process."

Do you see that?

A Yes.

Q Then in the final paragraph, just above "Contents", three lines up from the bottom it says:

"…it is intended and expected that Boards will develop 'design statements' and utilise the self-assessment methodologies described below on all development projects."

Do you see that?

A Yes.

Q Then if you look over the page, to page 65, "Section 1 - Design Assessment in the Business Case Process". If we just read three lines up from the bottom of that paragraph, it says:

"These are brought together in this process, and in the collaboration of HFS and A+DS in the NHS Scotland Design Assessment Process, by the means described below."

So, whenever you would refer to "an NDAP", is that really what we should read it short as?

A I apologise. We use acronyms all the time.

Q It's not a complaint. It's just to make sure that we are on the same page. Then, section 1.1:

"A Policy on Design Quality for NHS Scotland requires that: 'The SGHD must provide guidance on compliance with those aspects of statutory and mandatory requirements which are particular to the procurement, design and delivery of healthcare buildings and guidance on best practice. This will be effected through the support to be provided by Health Facilities Scotland and Architecture and Design Scotland under the tripartite working partnership with SGHD.'"

Do you see that?

A Yes.

Q Then the next paragraph:

"Accordingly projects submitted to the Capital Investment Group (CIG) for business case approval will be assessed for compliance with current published guidance. To facilitate this, Boards will be requested to submit a comprehensive list of the guidance that they consider to be

applicable to the development under consideration (see inset on next page), together with a schedule of derogations that are required for reasons specific to the project's particular circumstances."

Now, within the outline business case itself, is there a comprehensive list of guidance set out anywhere?

A I cannot recall. If it was, it would be in one of the appendices.

Q Okay. Would you accept that there should be, given what we see stated at page 65 there?

A Yes. We normally provide a list of the guidance. In the outline business case it normally runs to several pages.

Q So, if that had not happened in the 2012 outline business case, would that be a mistake?

A It would be covered elsewhere, either in dialogue with the parties – Scottish Government – or some other reason.

Q Okay. If it wasn't included in the outline business case, would that be a mistake?

A I don't think it would necessarily be a mistake. I'm not being defensive, but it might have been agreed that we weren't putting it in for some reason, or it wasn't a

requirement from the Capital Investment Group.

Q So, this guidance states that boards will be requested to submit a comprehensive list of guidance, but there might be scenarios whereby you simply wouldn't provide that comprehensive list of guidance?

A We weren't following that NDAP process for this project because of the timing issue.

Q So, is that the reason why we don't see it – it's a timing issue?

A I think the timing issue was whether we were following the NDAP process, yes.

Q Okay, because if we look over the page on page 66, it says:

"Projects submitted for the business case process will be assessed for compliance with the following…".

It states, "Healthcare guidance", such as "Scottish Health Planning Notes" and "Scottish Health Technical Memoranda". Do you see that?

A Yes.

Q Then if we look on to page 67, at the bottom, paragraph 1.3:

"Health Facilities Scotland (HFS) and Architecture and Design Scotland (A+DS) will provide support to Boards in

considering design matters in the Page 67 business case process. Staff from HFS and A+DS, supported as necessary by a broader panel, will have the following roles in relation to all projects that are to be assessed:"

The first bullet point:

"… to advise the project team if the standard of benchmarks and self-assessment process being established for the project are in line with policy objectives; to provide an assessment of the design aspects of the project to support the Board in their consideration of the business case; to provide a verification, to the Capital Investment Process (CIG), of the opinion previously given to the Board to support the CIG's consideration of the business case."

Is that really the whole purpose behind what you refer to as the NDAP?

A It's part of that process, yes, absolutely.

Q If we look on page 69, to the bottom of paragraph 1.4, which is the "Transitional Arrangements", which I think you said in your evidence, you thought that the NDAP did not necessarily apply because of the timing of the transitional arrangements. Is that correct?

A Yep.

Q Paragraph 1.4 states:

"This guidance shall apply to all projects submitted for approval of the Initial Agreement (IA) after 1st July 2010. Projects that have not received approval of their Outline Business Case (OBC) by 1st July 2010 shall be considered for the assessment process on a case by case basis, as part of the initial pilot phase, however the development and demonstrated application of a Design Statement should be considered as good practice for all projects from publication of this guidance."

Do you see that?

A Yes.

Q So again, you explained that you did not think that the guidance applied. Why not?

A I think timing-wise, because we were working off the initial agreement for the Sick Kids. There was a project specific dialogue with Scottish Government just to square that away as part of the business case process. So, we got, if you like, an exemption or an exclusion.

Q So did Scottish Government agree that there would be an exemption?

A Yes.

Q Who at Scottish Government provided that exemption?

A At that time it would probably have been Mike Baxter, because at this point of the business case that you're dealing with, we were just into the NPD process. So there was the dialogue as to SFT's role, HFS, NDS, etc.

Q Okay. Just going back to the discussions that you'd had on the project board, would you accept, given what is stated here, that it's got to be decided on a case-by-case basis? Is that an internal NHS Lothian decision, or is that something that needs to be agreed with Scottish Government?

A I think it's a Scottish Government decision because they've got to consider the business case, but it's NHS Lothian's, if you like, application. We've got to consider what it is we're doing for the business case.

Q Do you see that if we looked back, though, to the business case, within the business case, you're being told that the NDAP process has been completed?

A Yeah. I think the error

that you were identifying there is that we didn't add "or equivalent process" to the business case words. The architect-- The principal interest at the time on the design statements was very much about the environment, as in the place making and the quality of the building.

Q If I could ask you to look on to page 75, please. In the middle of the page, you'll see "OUTLINE BUSINESS CASE". Do you see that?

A Yep.

Q So it states:

"STAGE : Early in the OBC process an informal consultation on site selection and strategic briefing considering…"

And then there's a whole range of things. If we could perhaps look to the last two bullet points, do you see that the second last one says: "List of relevant design guidance to be followed –SHPNs, SHTMs, SHFNs, HBNs, HTMs, HFNs, Activity Data Base." See that?

A Yeah.

Q It continues:

"Evidence that Activity Data Base (ADB) will be fully utilised during the preparation of the brief and throughout the design and commissioning process."

You see that?

A Yes.

Q Again, just thinking back to the entry within the outline business case that states that the full NDAP's been completed, it would be reasonable if someone read the outline business case to assume that those issues, such as evidence that Activity Data Bases will be fully utilised-- that that was going to be done for this project.

A If someone had a detailed understanding of this, then yes.

Q If I can ask you to look at the Atkins review, please, which you'll find in bundle 3, volume 2, page 567. So, when you refer to the review completed by the Scottish Futures Trust, is this what you're referring to, the Atkins Review?

A Yes.

Q So bundle 3, volume 2, page 567, top left-hand corner, "Royal Hospital for Sick Children/Department of Clinical Neurosciences, Independent Design Review, Scottish Futures Trust, 12 Dec 2011". If we look on to page 571, please, do you see the "Summary and Recommendations"? Do you see that?

A Yep.

Q It states:

"The purpose of this Independent Review was to assess the design brief for the project to replace the Royal Hospital for Sick Children and the Department of Clinical Neurosciences (RHSC/DCN) on the Little France site. The review assessed the capacity of the project to deliver value for money by meeting the strategic aims of the programme; by making best use of space and opportunities for maximising sharing with other assets; and by minimising the whole-life costs."

Do you see that?

A Yes.

Q Is this report not aimed at value for money – I think what you refer to in your report as "bankability of the project" – as opposed to looking for a design review in terms of compliance with technical standards?

A That's certainly what you would take from that summary and recommendation. As you go through the report, you'll see that there are other links to the technical information, but it is at that high level assessment.

Q In terms of what we looked at, in terms of the Scottish Capital Investment Manual and the guidance that it's putting forward,

things like schedule of technical guidance that you're going to comply with----

A Yeah.

Q -- that there's going to be an interaction with Activity Data Bases, do we see anything like that within the Atkins review?

A Not to that level of detail, no.

Q So whenever you said that the Atkins review is really the equivalent of what would have happened in terms of the NDAP process, are they not completely different things?

A They're coming at it from a different perspective, but the end product is an assessment of the design; and in order to build a hospital facility, an acute hospital facility, you can't do that design development without reference to all those technical memorandum.

Q Is the Atkins review not really looking at it from the point of view of financing----

A Yeah.

Q -- and the Scottish Capital Investment Manual looking at it from ensuring that there's technical compliance with relevant guidance?

A I think from the NDAP process, it's looking at it from the placemaking and architectural side of things, principally, although it does reference those documents, yes.

Q If we could look on within the Atkins review to page 576, please, whereby it analyses the reference design. Do you see that approximately two thirds of the way down the page, the bold heading "Reference Design"?

A It's just coming up.

Q Thank you.

A Yep.

Q So page 576, "Reference Design":

> "At the point of our review the Reference Design was relatively under-developed considering the stage of the project. There was no clear and settled building diagram. This means that:-
>
> - The clinical adjacencies are not yet wholly resolved,
> - There is not an understanding of how departments can be developed in detail within the current blocks.
> - There is no resolved strategy which can be expressed in supporting diagrams for

communication routes, segregation of flows or FM servicing.

Clarity about these issues will be crucial to the NPD design process to ensure that the facility delivers the desired clinical efficiencies and patient satisfaction.

As previously noted, a stated requirement for the Emergency Department to be adjacent to the Outpatient Department for the purposes of Major Incident Planning is not currently being achieved."

Do you see that?

A Yes.

Q So, at this stage of the review, really the assessment is that the reference design is underdeveloped for this stage of the project.

A That's certainly what it was saying. I----

Q Did you share that view in 2011?

A I think when we were discussing this, it would have been in the context of the work that was in hand, but the-- as in what the next stages of the design development was to be or how far we were to take it, my colleague, Brian Currie, would be better placed to talk about the detail of what was involved here.

Q Thank you. If I can ask you to look on to page 637, please. So, section 7.2.2 on page 637, do you see that?

A Yeah.

Q If we look to section F in the turquoise colour, do you see "Engineering"?

A Yes.

Q Engineering scored "0 out of 5"----

A Yes.

Q -- you see that?

A Yes.

Q Then below that, 7.2.3, "Scored and Un-scored Elements":

"A number of elements are unable to be scored at this stage because the design is insufficiently developed. In particular performance, engineering and construction cannot be scored at this stage."

See that?

A Yeah.

Q So the insufficient engineering detail for whoever did the report-- review, and it continues, "However, some of the elements which have not been scored are surprising…" and then there's some particularly specific examples that are given thereafter.

Effectively, what I was really seeking your views on is: there's no review in terms of the technical engineering requirements for the hospital within the Atkins reviews, is that fair?

A Yes, because the design hasn't developed that far, because the reference design hasn't developed that far; it wasn't a detailed design so the-- they'd-- I wouldn't have expected to have addressed engineering matters.

Q Okay. I think you'd asked-- you'll maybe find it helpful to see the comments that HFS had provided on the Atkins report. Within bundle 3, if we could look to volume 2, and to page 883. So you see the top of the page: "HFS comments on the RHSC/DCN Independent Design Review carried out by Atkins for Scottish Futures Trust". Is this the document that you were thinking of?

A Yeah.

Q So, bundle 3, volume 2, page 883, and below that bold heading it states:

> "The following comments relate to the Atkins Independent Design Review Dated 12th December 2011. The drawings and detailed information on which the Atkins report was based were not available to HFS other than a set of proposed reference design drawings dated June/July 2011, previously submitted to A+DS for their design review."

Do you see that? Then there's various comments that are made. For example, on page 884, we see comments that are being made on the single room issue in relation to Recommendation 5. We then see further comments in terms of page 885; you see there, supporting various recommendations that are being made, and again, over the page onto page 886.

A Yes.

Q Would you agree again that the comments that are provided there is not providing the level of prescription or analysis of technical issues in terms of what we looked at in terms of the Scottish Capital Investment Manual?

A Correct.

Q Thank you very much, Mr Graham. I don't have any further questions, but Lord Brodie may have questions or there may be applications from core participants but thank you.

Lord Brodie. I understand that there may have been a Rule 9 application that one of the core participants would like to discuss. I'm conscious that it's nearly quarter-past four and the witness has been giving

evidence for some time. Perhaps if we were to adjourn for five minutes so I could have a discussion, I'd be confident that I could deal with any issues in that time scale.

THE CHAIR: Very well. First of all, can I confirm that Mr MacGregor is right, that an issue does arise? I'm getting an affirmative from the back of the room. Mr Graham, we're going to rise for about 5 minutes. The outcome may be you may be asked another question----

THE WITNESS: Yeah, that's fine.

THE CHAIR: -- or maybe more than one question, but that's the purpose. So, we'll rise, but we'll not go too far. So, if Mr Graham could be taken to the witness room.

(Short break)

THE CHAIR: Now, Mr MacGregor?

MR MACGREGOR: Thank you, my Lord. Mr Graham, I've just got a couple of supplementary issues to raise with you. The first would relate to Settlement Agreement 6, which we discussed, which was the requirement to effectively obtain the land. Am I right in thinking that Settlement Agreement 6 and all that entailed would have been required regardless of whether the project was capital funded or revenue funded?

A Correct, yes. We----

Q Again, in relation to Settlement Agreement 7, the enabling works that you've addressed, that would have still have been required whether or not the project was capital funded or revenue funded?

A Yes.

Q Thank you, Mr Graham, I don't have any further questions.

THE CHAIR: If I could just ask you one matter, Mr Graham. It really is for the sake of my notes. You were-- Well, if you have in front of you again bundle 8, and it starts at page 63. Mr MacGregor was asking you about this maybe half an hour ago. Mr MacGregor drew your attention to the transitional arrangements at page 69, and that indicates that the guidance in this document did not necessarily apply to the Children's Hospital. It's just the second question:

> "Projects that have not received approval of their Outline Business Case… by 1st July 2010 shall be considered for the assessment process on a case by case basis…"

It was just to see I've got a correct note. Now, what I've noted you

as having said was that there was a specific dialogue with Scottish Government and the health board got an exclusion. Did I note that correctly or not?

A Correct, yes.

Q So I take from the word "dialogue" that that might just be a-- literally a conversation as opposed to something that was documented.

A I think we would have confirmed it in email correspondence or written correspondence, but I can't recall 100 per cent.

THE CHAIR: Thank you very much, Mr Graham. That's the end of your evidence, and----

THE WITNESS: Thank you.

THE CHAIR: -- thank you very much for coming to assist the Inquiry.

THE WITNESS: Thank you.

(The witness withdrew)

THE CHAIR: Now my understanding, Mr MacGregor, is that we have witnesses tomorrow, but only after 11 o'clock.

MR MACGREGOR: Yes, my Lord. The timetabling had indicated that Mr Graham might have spilled over, but we've managed to complete his evidence today. Mr Currie can make himself available from 11 o'clock tomorrow.

THE CHAIR: Right. Very well. Well, we'll sit again tomorrow, but not until 11 o'clock. So we'll see each other then, and wish you a good evening until then. Thank you.

16:20

(Session ends)