

**Scottish Hospitals Inquiry**  
**Witness Statement of Peter Reekie**  
**8 November 2022**

1. My name is Peter Reekie. I am the Chief Executive Officer (CEO) of the Scottish Futures Trust (SFT). SFT is a company wholly owned by Scottish Government, working with organisations across the public and private sectors to plan infrastructure investment; innovate in the funding, financing, and delivery of social and economic infrastructure; deliver major investment programmes and improve the management and effective use of existing assets.
2. I have previously provided a witness statement dated 28 April 2022 to the Inquiry following a Rule 8 Request dated 01 March 2022.

**Overview**

3. In this statement I will provide answers to questions relating to SFT's role and/or remit in the following:
  - Procurement phase of the Royal Hospital for Children and Young People/ Department of Clinical Neurosciences (RHCYP/DCN)
  - Design Development of RHCYP/DCN
  - Financial Close
  - Key Stage Reviews (KSRs)

**Procurement phase of the Royal Hospital for Children and Young People/  
Department of Clinical Neurosciences (RHCYP/DCN)**

4. Following the move from a capital funded project to that of a Non-Profit Distributing (NPD) funded project, SFT's guidance and advice on the use of the

NPD model was applicable to NHS Lothian (NHSL). This guidance included the use of Key Stage Reviews (KSR) for validation and value for money assessment. The guidance was in the form of the following documents:

- SFT Value for Money (VfM) Assessment Guidance: Capital Programmes and Projects, October 2011
  - SFT Value for Money Supplementary Guidance for projects in £2.5bn Revenue Funded Investment Programme, October 2011
  - SFT NPD Guidance Note on Approach to Tender Evaluation, update January 2013
  - SFT, Standard Project Agreements (hub DBFM & NPD Model) User's Guide, June 2011
  - SFT, Standard Project Agreements (hub DBFM & NPD Model) User's Guide, Version 2: June 2012
  - SFT, Standard Form Project Agreement (NPD Model), July 2011
  - SFT, Standard Form Project Agreement (NPD Model), Version 2: 2 June 2012
  - SFT, Mandatory NPD Articles of Association, July 2011
  - SFT, Mandatory NPD Articles of Association, Version 2: June 2012
  - SFT, Mandatory NPD Articles of Association, Amendments to standard form NPD articles of association, issued 9 February 2015
5. When referencing the above guidance, it is necessary to look at exactly when it was applied during the project, as a number of the documents were published or iterated during the project preparation and procurement period.
6. SFT has been asked about how integral SFT's input, expertise and influence was to the project overall, and whether in reality SFT partnered NHSL in terms of decision-making and direction. The project was a part of the NPD programme, which was managed on behalf of Scottish Government by SFT. I have included in my evidence (in this and in my first witness statement) reference to the roles that SFT undertook and these could be described as integral to the project. For example, SFT owned the standard form of the NPD

Project Agreement contract, and SFT operated the Key Stage Review (KSR) process with which NHSL had to engage as a condition of funding. SFT has stated (see, for example, paragraphs 4.2, 5.3, 6.3 of SFT's Response to Request for Information Number 1, Paragraph 3, SFT's Role) that in some areas, such as the standard contract derogation process and KSRs, NHSL and its team was required to accept SFT's position as a requirement of funding conditions. In addition, in other areas such as the design and implementation of the funding competition (not of the project itself), SFT worked closely alongside NHSL and its advisors in a role that could be described as a partner in decision-making and direction. In other areas, notably the design and technical development of the project itself, SFT was not integral and did not partner NHSL in terms of decision-making and direction. In these technical areas, and in the conduct of the procurement process, including developing the procurement documents, conducting the competitive dialogue and the various stages of evaluation, NHSL planned and undertook the necessary activities supported by its advisors. SFT had some oversight of this, as did senior NHSL personnel and Scottish Government through the Project Steering Board, and SFT undertook its assurance role through the KSR process.

### **Tender evaluation**

7. Part of the procurement process was the tender evaluation, in preparation for which I understand NHSL determined the elements that would make up the overall quality score, as well as the weightings given to the scored elements of that quality score. During this process I am told that NHSL held a number of workshops involving their broader management team and advisors, however I don't specifically recall SFT being involved in those tender evaluation workshops.
8. During this process there was a 60/40 split, for price and quality. This was as recommended to NHSL in SFT guidance, specifically the SFT NPD Guidance Note on Approach to Tender Evaluation, update January 2013. Paragraph 5 "Price/Quality" contains guidance on creating an evaluation methodology that

reflects an appropriate balance between price and quality. It includes the statement that "SFT requires that, in the absence of project-specific factors that might indicate otherwise, price carries a weighting of at least 60% and, correspondingly, that quality is weighted at no more than 40%." The 60/40 split was therefore not mandatory, but SFT would have taken some convincing, based on project-specific reasons, to move away from it. That was principally because it represented Scottish Government's funding condition that, across the NPD programme, cost was to be minimised within agreed project scopes, as set out in Scottish Government's NPD funding conditions letter to NHSL dated 22 March 2011 at section 6 (pg 386 of doc bundle 9 May 2022). The 60/40 split was thus the firm starting point. My recollection is that the majority of the projects in the NPD programme used the 60/40 split, though one healthcare project used a 10/90 split at interim submission stage subject to an affordability cap (before applying a 60/40 split for the final tender evaluation), and the transport projects used a split of between 70/30 and 85/15. I was aware of a view held by the NHSL team that the 60/40 split on this project potentially undervalued quality. NHSL would have required Scottish Government and SFT agreement to depart from the 60/40 split and were not free to depart from a 60/40 split of their own accord. The SFT NPD Guidance Note on Approach to Tender Evaluation also included a guide on how scoring might be undertaken during the tender process. Within the guidance, at paragraph 4 "Quality", were examples of what a score for quality of zero to ten might look like. The guidance was necessarily generic as to the development of an appropriate tender evaluation strategy, and it was the responsibility of NHSL and their advisors to identify those elements which would be a pass or fail and other elements that would be scored and weighted. I recall that SFT engaged with NHSL on its proposed methodology and scoring mechanisms to reinforce the purpose of the 60/40 split and to suggest to NHSL how it might make more items pass/fail to concentrate on the points that really mattered to them to differentiate between tenders. In this way, for items where compliance / non-compliance such as adherence to standards or mandatory requirements could be made into pass/fail points in the evaluation, scoring could be allocated to areas where a spectrum of quality was possible, differentiating between tenders

which were capable of acceptance. It was for NHSL to decide what those were. SFT provided input through that guidance and support, but SFT had no formal role in relation to the specifics of the actual tender evaluation exercise.

### **Reference design**

9. As the RHCYP/DCN was an NPD funded project, a decision was taken by NHSL to adopt a reference design approach, which would include information being issued to tenderers as part of the Invitation to Participate in Dialogue (ITPD) and Invitation to Submit Final Tender (ISFT) process. I have been asked by the Inquiry if the reference design would be superseded at Financial Close by the Preferred Bidder's design solution. An NPD contract contains technical construction matters in Part 6 of the schedule, which includes Board's Construction Requirements (BCR) and project company proposals (PCPs) and other technical information (**A33405670**- Schedule Part 6: Construction matters, section 3 (Board's Construction Requirements), Subsections A, B and C Excerpt pages 1 to 149) (**A41179262**- Schedule Part 6: Construction matters, section 3 (Board's Construction Requirements), Subsection D Excerpt pages 360 to 780) . This forms part of the contract, so any element of the reference design would only form part of the contract if it was included in that Part 6 of the schedule to the Project Agreement. I have been asked how developed, on a percentage basis, the design solution should be at Financial Close for NPD projects. I don't believe that it is really possible to give a percentage. The design at the point of Financial Close needs to be at a point where the procuring Authority is confident that as it is further developed for construction in line with a design development and review process set out in the contract it will continue to meet its requirements, and the bidder is confident that it will be able to deliver it to the necessary time, cost and quality standards.
  
10. I have also been asked to consider – if it is correct that the technical specification for the ventilation system was not fixed at Financial Close because of the volume of Reviewable Design Data (RDD), which included Room Data Sheets (RDS) and the Environmental Matrix (EM) – whether that would mean that something had gone wrong in the procurement process or whether such

issues are to be anticipated in this type of project/ contract. The following views are based on my knowledge of NPD projects generally, and of this project including through my review of the documents produced in this Inquiry rather than any specific knowledge of healthcare building technical specifications. My understanding is that the performance standards required for ventilation systems of hospitals are set out in Scottish Health Technical Memorandum 03-01 (SHTM 03-01) (**A33662233**- Scottish Health Technical Memorandum 00, Best practice guidance for healthcare engineering, Policies and Principles dated February 2013) , and the design and construction of systems must also to meet other technical standards including international and European standards etc. I also understand that there are a range of other SHTMs and standards covering other engineering systems in healthcare buildings. I would generally expect these standards to be specified as requirements in the invitation to tender and the contract documents, but I would not expect the ventilation or other engineering systems to be fully designed to the level of detail required for construction at the point of contract award. Other witnesses will be better placed to comment on whether the published performance standards in SHTM 03-01 could have been a sufficient level of performance specification detail for the ventilation systems at the point of Financial Close for NHSL to be confident that its requirements would be met, or whether the more project / room specific (and it seems potentially contradictory) information in the RDS and / or EM was genuinely required. In terms of the volume of RDD, I am unable to comment on that since it is a technical matter though I note that SFT sought, and received, assurance from NHSL that it was resourced to handle the expected volume of RDD in the pre- Financial Close KSR (**A33336933**- Pre-Financial Close Key Stage Review - 11 February 2015 – Bundle 9, pg.3) .

11. SFT has been asked about the potential of bidders to innovate and allow for improved value for money, and scrutiny of what design elements were mandatory and why. The Inquiry has specifically asked whether SFT had concerns that NHSL could undertake these reviews given that the Reference Design team had been dispensed with. SFT's concern around the bidders' ability to innovate was in respect of potential architectural and spatial designs.

SFT was clear, through the KSR process, that it was keen to see bidders able to innovate in respect of the shape of the building within the constraints imposed by operational functionality. SFT's interest was borne from an understanding that (i) altering the overall layout and massing of a building can significantly change the necessary floor area of the building, and things like its external wall to floor area ratio (and hence its cost) for the same operational space requirements and (ii) altering the shape of the building (for example changing curved elements to straight lines) can also have an impact on the overall cost. SFT did not express any desire to allow innovation in technical specifications (generally the engineering specifications) as SFT's general understanding was that these would not be well developed in the Reference Design, and the specification would rely principally on standards such as the Scottish Healthcare Technical Memoranda (SHTMs) (**A33662233**- Scottish Health Technical Memorandum 00, Best practice guidance for healthcare engineering, Policies and Principles dated February 2013) which each bidder would be free to design a solution to comply with.

12. SFT has been asked about SFT's concern with value for money aspects of the project, whether its remit included the inclusion of mandatory elements within the Reference Design, and who at SFT provided guidance and advice. I refer to my previous witness statement (**A37605865**- Witness statement of Peter Reekie - 28 April 2022, Bundle 10, pg.375) generally in respect of SFT personnel and their responsibilities, and also to paragraphs 123 to 156 (particularly 124 and 136) in respect of the relevance of mandatory elements to value for money.

### **Procurement timetable**

13. During the procurement phase, there were allocated timescales set, particularly during the Competitive Dialogue process where one full day of dialogue for each bidder during each dialogue cycle was the preferred option. The timescales and in particular the decision as to when Competitive Dialogue should be closed, and the contract signed rested with NHSL as the procuring authority, subject to the KSR and Full Business Case assurance processes. In

a procurement strategy which does not include a down-selection part way through the competitive dialogue, I would generally expect that any interim phases such as Invitation to Submit Outline Submissions (ISOS) and Invitation to Submit Detailed Solutions (ISDS) would include a high-level review of submissions and direction rather than a full evaluation and scoring of all elements, however SFT were not involved in evaluations as that was the remit of the procuring authority, NHSL.

14. I have been asked if anyone was pushed by NHSL to extend the timescales for any part of the procurement process. There were discussions about timescales and pressures. The discussions were about making the timescales either shorter or longer at different stages of the project. NHSL were keen to maintain as close as possible to the timescale they originally had in place for opening the new hospital and therefore NHSL were looking to have as short a timescale as possible for the procurement. SFT and Scottish Government were keen that the construction activity that the project entailed was out in the marketplace and was adding to the economy, and so were keen for a procurement period that was as short as reasonably possible. However, all of the parties were keen that the stages had enough time to do the job that was required and to get to a robust contract, which led the project team to indicate at times that they would prefer more time for certain elements of the programme. There were tensions, as there always are on these projects, around whether timescales should be shorter or longer, but agreement was reached on the procurement programme. For some phases of the procurement, notably the competitive dialogue and the preferred bidder period, it became apparent that programme extensions were needed, and these were agreed.
15. On 29th November 2013, a Project Steering Board meeting was held (A32676816- Project Steering Board Action Notes 29 November 2013, Bundle 8, pg.5) , which I attended with representatives from NHSL and Scottish Government. The purpose of the meeting included a discussion about the recommendation that the Competitive Dialogue phase for the bidders should close on 06th December 2013 and the Invitation to Submit Final Tender should be issued on the conclusion of the Key Stage Review. I have been asked



whether any of the issues raised at the Project Steering Board meetings caused me concern and have focussed on this Project Steering Board meeting on 29th November 2013 (A32676816- Project Steering Board Action Notes 29 November 2013, Bundle 8, pg.5) . I have reviewed the Project Risk Register, updated to 29th November 2013, that was appended to SFT's copy of these meeting minutes. The Project Risk Register was part of the papers that were generally circulated to the attendees in advance of the Project Steering Board meetings. Having reviewed that document, I do not see anything that would have caused me concern in being able to close dialogue. That is not to say that I would not have had any concerns at all, but there is a difference between issues causing me concern, and issues causing me sufficient concern that I would not support a decision to close dialogue. I don't recall this meeting specifically, but didn't disagree with the decision to close dialogue and so it must have been the case that I had no overriding concerns about doing that, because I would have raised any such concerns and they would have been recorded.

16. I have been asked why it was deemed appropriate to close the dialogue phase given the outstanding issues. The Board was advised during the meeting, and it was reflected on the Project Risk Register, that there were various controls put in place for the outstanding risks. On the basis that we received assurances from those closer to each of these risks, we were content with the controls that had been put in place to close the outstanding risks. Section 5 of the meeting minute (A32676816- Project Steering Board Action Notes 29 November 2013, Bundle 8, pg.5) ,discusses one risk (29) which members of the Project Steering Board noted as a concern to closing Dialogue. The Board was given reassurance by NHSL (IG) that there was a process in place to achieve the necessary agreement and that this should not delay the close of dialogue. The Board accepted this assurance.
17. On 20th June 2014, a Project Steering Board meeting was held, and minutes taken (A32676819- Project Steering Board Meeting - 20 June 2014) . I attended this meeting along with representatives from NHSL and one of the issues raised, in the context of a report from NHSL on progress and pressure areas

with the Preferred Bidder programme to Financial Close, alongside design development and technical schedules, was the extensive payment mechanism discussion with Macquarie, Bouygues and the lender's technical advisers to be shared with SFT the following week. I don't recall this meeting or this specific agenda item. I have reviewed the minutes of the meeting which simply record that these discussions needed to conclude for the funding competition to proceed. I expect this referred to the level of performance by ProjectCo and its FM sub- contractor that would trigger defaults and warning notices under the payment mechanism, and how that was calibrated.

18. The outcome of these discussions was an agreed position on when warning notices could be issued and defaults triggered through the payment mechanism for poor performance and / or unavailability. This calibration would have needed to be concluded for the funding competition to proceed because funders would be interested in the triggers to understand the level of their risk during the operational phase.
  
19. On 22nd August 2014, a Special Project Steering Board meeting was held, and minutes taken (A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014, Bundle 8, pg.11) . I attended this meeting along with representatives from NHSL, Scottish Government and the preferred bidder IHSL. I have reviewed the meeting minutes. The purpose of the meeting was recorded to be to address significant concern that NHSL had about the project programme and their confidence in IHSL in delivering to it. The meeting minutes also record that, as a result of their concern for the Financial Close date, the NHSL Project Team had drafted a revised programme with slippage of 8 weeks, and IHSL had tabled its own programme in response, which was not a comprehensive programme of all activities but highlighted the critical path and challenging milestones. The challenges listed in the meeting minutes included the production of room data sheets and technical adviser due diligence. The meeting minutes (A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014, Bundle 8, pg.11) state that NHSL had reached agreement with IHSL on the content of room data sheets

the day before, and so the production of RDS could begin and was on track for completion by 5 September 2014. I have seen in the meeting minutes Brian Currie saying that NHSL were aware and comfortable that 100% of RDS would not be completed for Financial Close, although the prioritisation of what was definitely required was still to be agreed. I cannot recall if actions were put in place to address NHSL's concerns.

20. I have been asked if I recall any discussion about why 100% RDS would not be completed by Financial Close. I don't recall being part of any discussion about that. It was a technical matter in any event. I have also been asked why the agreement not to have 100% RDS was acceptable. I can't answer that because it was not something with which SFT was involved, being a technical matter. I understand, though, that whilst the RDS were not 100% complete at Financial Close, they focussed on key and generic rooms, as referenced by Brian Currie at that meeting. I expect that was intended to focus time and resources on the spaces whose design was considered most critical to the operation of the hospital and spaces where through their repetition, as single design specification could cover multiple important rooms throughout the hospital. Acceptability was for NHSL to determine based on technical and commercial advice on the practical implications of rooms having or not having RDS in place at contract award, noting in particular the relevant considerations for Operational Functionality. In considering the validity of that strategy, the Inquiry may be interested in whether the types of rooms in which it has a particular interest were included in the key and generic rooms for which RDSs had been developed at Financial Close.
21. The meeting minutes (A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014, Bundle 8, pg.11) show that there was extensive discussion about technical adviser due diligence and getting to a point where all parties agree that the design is sufficiently fixed to confirm Operational Functionality. The issues discussed includes engineering drawings not available yet, delayed ceiling and wall drawings, work to be done on PCPs, and sufficiency of resources. The minutes record that Ross Ballingall,

Brookfield Multiplex advised those in attendance that there was a genuine mismatch in NHSL's and IHSL's expectations, where IHSL were being asked to deliver much more than on other projects, and considerably more than was required for comfort of operational functionality. I don't recall that specific discussion.

22. There was no requirement for any escalation to Scottish Government, as Mike Baxter was at the meeting and the discussion was part of the process to reach a contract and the parties in that process were discussing and agreeing what work needed to be done and the timetable for doing that work. NHSL and IHSL clearly had an understanding of what the issues were, they were working through them, and they would only sign the contract when they were both ready to do so.
  
23. I have been asked whether and how the issues between the parties were resolved pre-contract, including mismatches in terms of expectations of what should be provided. I don't know exactly what went on in either of NHSL's or IHSL's teams to get comfortable with the positions. However, I do not believe that all matters of detail would have been resolved pre-contract as set out in paragraph 9 of this statement.
  
24. On 31st October 2014, I attended a RHSC/DCN Steering Board Commercial Sub-Group meeting (A32676832- RHSC and DCN Steering Board Commercial Sub-Group minutes - 31 October 2014, Bundle 8, pg.15) . I don't recall and have been unable to find the terms of reference for the Steering Board Commercial Sub-Group. It had been agreed at the Project Steering Board meeting on 22nd August 2014 (A32676824- Action notes RHSC and DCN Special Project Steering Board - 22 August 2014, Bundle 8, pg.11) that having IHSL attend that meeting had been necessary and positive, and that IHSL would be asked to attend subsequent Project Steering Board meetings up to Financial Close. The minutes of that meeting include a post-meeting note confirming that, at the following Project Steering Board meeting, it was suggested that a sub-group (composed of those attending that Special Project Steering Board meeting) meet with IHSL. My broad recollection is that the

group was formed for the purpose of this commercial dialogue with IHSL and that I was a member of the group as a commercially focussed member of the Project Steering Board.

25. The 31st October 2014 Sub-Group meeting (A32676832- RHSC and DCN Steering Board Commercial Sub-Group minutes - 31 October 2014, Bundle 8, pg.15) was attended by representatives from NHSL and IHSL. I have reviewed the meeting minutes and the focus was on the programme to achieve Financial Close, which at that time was targeted for 12th December 2014. My recollection of the meeting is that IHSL had a different opinion from NHSL as to what level of detail in the PCPs should be required. I questioned from a commercial perspective whether IHSL believed that NHSL had changed its requirements on the level of detail of technical information and design development required at the point of Financial Close from that which had been set out in the ITPD (A34697102- Invitation to Participate in Dialogue Vol 1, Revision B, Bundle 2, pg.942) , or whether IHSL had a different opinion as to what level of detail should be required despite what had been set out in the ITPD (A34697102- Invitation to Participate in Dialogue Vol 1, Revision B, Bundle 2, pg.942) . I did not have a detailed understanding of the ITPD requirement on this matter. I was questioning the commercial point as to whether the bidder was seeking to modify a requirement, set out in the ITPD, or whether NHSL was changing its requirements.
26. I was aware that there were concerns raised at the Steering Board Commercial Sub-Group meetings around the pace of progress to meet the programmed dates for Financial Close. I refer to the meeting minutes dated 21st November 2014 which state that Susan Goldsmith noted "in this programme IHSL were presenting their fourth FC target date, giving rise to questions of credibility for all involved." There were commercial tensions, as is often the case in the process of trying to agree a detailed contract of this nature. These tensions are reflected in the comments of George Walker of NHSL at the meeting on 31st October 2014 (A32676832- RHSC and DCN Steering Board Commercial Sub-Group minutes - 31 October 2014, Bundle 8, pg.15) regarding "losing confidence" in IHSL's ability to propose and deliver an honest and realistic programme. I was concerned that the commercial and technical matters

comprising the contract were properly agreed in a timely manner. It is normal to have a list of outstanding issues at that stage to be agreed between the parties, and I was keen to see progress made by the teams in resolving them. I advised the Board and IHSL to resolve these issues or ensure they were captured as RDD post financial close. I have been asked whether there were any concerns expressed about the volume of RDD. This is a technical matter and so I was not involved in any discussions between the technical teams regarding the volume and nature of RDD. My awareness of any concerns, and SFT's concern through the KSR process with respect to ensuring NHSL had sufficient resources available to deal with the level of RDD post-Financial Close, is set out at paragraphs 44-48 and 50-51 of this statement. SFT's concern was that the volume of RDD, whatever it was, could be dealt with.

27. I have been asked why none of the concerns NHSL expressed at the Sub-Group meetings were addressed. I am not in a position to say whether any or all of the concerns NHSL expressed at the Steering Board Commercial Sub-Group were or were not addressed. I can point to NHSL's stated position in Section 3 questions 2 & 3 of the pre-Financial Close KSR (A33336933- Pre-Financial Close Key Stage Review - 11 February 2015, Bundle 9, pg.3) giving its position on what appear on the face of it to be related matters at that time. Question 2 asks if NHSL is satisfied that the Preferred Bidder's solution satisfies its operational and functional requirements and delivers the project objectives, benefits and outcomes. The response is "Yes" with a comment that the detail of the design had been discussed with user groups to ensure clinical support and the Board confirms that it has received appropriate internal sign off. Question 3 asks for confirmation of the status of the technical documentation, and asks if NHSL and its advisers are satisfied that further development is achievable within the current project timetable. The response includes that the Board has confirmed that the technical documentation is at a level of development consistent with the current stage of the programme, that they are content with the documentation subject to further development through RDD following Financial Close and that the construction proposals are of sufficient detail to provide sufficient certainty to the Board as to what is to be

provided. The Sub-Group meeting took place on 31st October 2014 (A32676832- RHSC and DCN Steering Board Commercial Sub-Group minutes - 31 October 2014, Bundle 8, pg.15) and the pre- Financial Close KSR (A33336933- Pre-Financial Close Key Stage Review - 11 February 2015, Bundle 9, pg.3) is dated 11th February 2015, some months after NHSL's comments at the meeting. On that basis, the KSR states that the NHSL was satisfied and so I assume the concerns were addressed.

28. SFT has been asked about SFT making the final decision as to when Financial Close should take place. Once the commercial agreement is reached on a project-financed transaction, and all documents are ready for execution, a process known as Financial Close is undertaken whereby the cost of finance is settled by reference to the financial markets and, through the use of the Financial Model, the unitary charge payable is settled. This role is set out in SFT's letter to NHSL dated 26th May 2011 at page 4. As Scottish Government was responsible for providing funding for the element of the unitary charge which included the financing costs, SFT had a role in agreeing that cost of finance on its behalf. Had there been any unusual activity and pricing spikes in the financial markets at the point that the parties were ready to reach Financial Close, then SFT could have required that process be delayed whilst the markets stabilised. In that way, it could be said that SFT inputted to the final decision on when Financial Close should be reached. It should be noted that this point could only ever come when commercial agreement on all matters had been reached by the parties to the contract, NHSL and IHSL, and when both of those parties had the necessary approvals in place to execute the contract.

### **Design Development of RHCYP/DCN**

29. SFT developed the standard form of NPD contract used for the project and maintained control over the use of elements of that contract which were not project specific by way of a "derogations" process.
30. SFT has been asked about SFT's derogation process. SFT developed and maintained the standard form of NPD contract. In common with practices

developed for previous forms of PPP contract, the owner of the standard form (in this case SFT) managed a process of requiring agreement for derogations (or changes) from that standard form. These were generally only accepted by SFT where there was a project-specific reason provided. The reason for the process was to retain the balance of risk and commercial positions established in the standard form which had been developed with lawyers and tested with the marketplace, unless there was a specific reason why a different approach was needed for a particular project. Legal advisors acting for NHSL reviewed the standard form before putting it to bidders in the ITPD (A34697102- Invitation to Participate in Dialogue Vol 1, Revision B) and required to seek SFT's agreement to any derogations which they and NHSL considered necessary due to the specific circumstances of the project. Any derogations were either accepted or rejected by SFT. It may also have been the case that different bidders sought bidder-specific derogations during the procurement. Finally, it is possible that preferred bidder negotiations led to further derogations requests. At each stage, these were carefully considered and accepted or rejected by SFT. It should be noted that SFT's derogation process only applied to the elements of the contract included in the standard form. The blank elements were not included in the standard form or the derogations process. It should also be noted that this contractual derogations process was entirely separate to any process for the project, or bidder's proposals, derogating from technical standards which SFT has seen referred to in Inquiry documentation. That technical derogation process was managed by NHSL.

31. The allocation of design risk in the contract is derived from elements of both the standard form drafting, which sets the overall intent for the risk allocation, and the technical parts of the schedule to the contract – in particular Part 6 (“Construction Matters”) (A33405670- Schedule Part 6: Construction matters, section 3 (Board's Construction Requirements), Subsections A, B and C Excerpt pages 1 to 149) which provides the project specific detail and was completed by NHSL and its technical advisory team.



32. The following paragraphs are a high-level explanation of my understanding and I cannot provide a detailed commentary on the interpretation of the whole of the contract including elements of the project specific drafting in Part 6 of the Schedule, for example the operation of the “Hierarchy of Standards” at paragraph 2.5 of sub-section 3 (General Requirements) of Section 3 (Board’s Construction Requirements) of Schedule Part 6 (Construction Matters) (A41179262- Schedule Part 6: Construction matters, section 3 (Board’s Construction Requirements), Subsection D Excerpt pages 360 to 780) and the “Grounds for Objection” at paragraph 3 of Schedule Part 8 (Review Procedure) (A33405351- Schedule Part 8: Review Procedure Excerpt pages 236 to 248) .
33. From the below, it can be seen that SFT developed and maintained some control over the standard elements of the contract but SFT did not control the overall design risk allocation as we did not have ownership and oversight of the whole of the contract. The Inquiry may wish to seek a lawyer’s analysis of the contract on how it operates in full.
34. The “front end” of the contract is generally taken to mean the clauses of the standard form agreement and the “back end” of the contract is generally taken to mean the various parts to the Schedule. SFT’s standard form NPD contract comprised principally the “front end” clauses but also included elements of the “back end” parts to the Schedule which are not project specific. For example, the standard form contract included the Schedule Part 8 “Review Procedure” (A33405351- Schedule Part 8: Review Procedure Excerpt pages 236 to 248) paragraphs with numerous blanks and square brackets for project specific information to be added. Certain parts of the Schedule, including the Board’s Construction Requirements (BCR) (A41179262- Schedule Part 6: Construction matters, section 3 (Board’s Construction Requirements), Subsection D Excerpt pages 360 to 780) , Project Co’s Proposals (PCPs) (A41491821- Schedule Part 6: Construction matters, section 4 (Project Co’s Proposals) (Disc 1 of 6: Project Co Proposals) , Reviewable Design Data (RDD) and Room Data Sheets (RDS) in Schedule Part 6 “Construction Matters” were blank in the standard form and

entirely project specific, to be developed by the Project Team and their advisors.

35. I have been asked how precisely the front end of the contract deals with the transfer of design risk. In the front end:

- Clause 12 "The Design Construction and Commissioning Process."
- Clause 12.1 requires the design and construction to satisfy both the BCR and PCP.
- Clause 12.3 requires Project Co to use a reasonable degree of skill and care in designing the works.
- Clause 12.5 confirms that at the date of the agreement the Board agrees that elements of PCP that it has initialled satisfied its requirements in respect of Operational Functionality.
- Clause 12.6 requires Project Co to finalise the design and specification of the works in accordance with the Agreement and in particular produce RDD.

36. In the back end:

- Operational Functionality is defined within Schedule Part 1 to the Project Agreement and relates to spatial elements of the design as opposed to any environmental or engineering aspects (I would refer the Inquiry to my earlier witness statement at paragraphs 130 – 132) (A37605865- Witness statement of Peter Reekie - 28 April 2022) .
- There is a limited further transfer of design risk at the point the Board returns a piece of RDD as set out in Appendix 1, Table A of Schedule Part 8 (A33405351- Schedule Part 8: Review Procedure Excerpt pages 236 to 248) . Such a response confirms that the Authority is satisfied that the design and other information in the relevant submitted item satisfies Operational Functionality. The effect of the Board's confirmation is to allow Project Co to either proceed to construct or proceed to the next level of design of the part of

the works to which the submitted item relates, but other than as set out above, it does not relieve Project Co of its obligation under the agreement, nor acknowledge that Project Co has complied with such obligations (Clause 4.5 of Schedule Part 8) (A33405351- Schedule Part 8: Review Procedure Excerpt pages 236 to 248) .

37. SFT has been asked about who was responsible for ensuring that all of the contractual provisions interacted as intended in the final form of the Project Agreement, and what input SFT had in that regard. NHSL and its advisors were responsible for ensuring that all of the provisions – including the standard form drafting with any agreed project-specific derogations and the parts of the Schedule developed separately for the project – interacted together as intended. SFT also expected that the contract counterparty (IHSL) and its advisors (legal and technical), and the funders and their advisors (legal, financial and technical), would have reviewed the contract in detail to ensure that it all operated together as intended.

## **Financial Close**

### ***Delay to Financial Close***

38. Early programmes suggested that the project was due to reach Financial Close in Summer 2014, however this was not achieved with Financial Close for the project being achieved in February 2015. The Inquiry has asked me why there was a delay and one contributory factor which I was aware of was design development. I was not close enough to the day-to-day activity to be aware of the timeliness and linkages between all of the workstreams and will not speculate on what ended up being the critical path through the programme leading to the eventual date of financial close.
39. I have been asked if there was a need to achieve Financial Close by February 2015 and whether there was pressure from Scottish Government and NHSL. All of the parties involved wanted to reach Financial Close as soon as was

reasonably possible. The contractor would have had commercial pressures and it was known before the procurement process that NHSL, SFT and Scottish Government wanted to move things on as quickly as possible. This is often the case. The parties wanted to get to Financial Close as soon as they reasonably could.

40. I have been asked about the impact if the project had failed to proceed to Financial Close in February 2015, including any implications for funding or the NPD model. It would be speculation for me to say what would have happened. The project did not meet its original programme to Financial Close and it still went ahead. The principal potential commercial consequences of any delay to Financial Close would be in relation to the contractor's pricing, and the funding package pricing and potentially availability, along with the status of the preferred bidder depending on the cause of the delay.
41. I can't recall when IHSL's construction sub-contractor's price was held until. With inflation, contractors will not hold their prices forever and so this would be one of the key commercial issues that create the general environment of all parties wanting to reach Financial Close as soon as reasonably possible. The contractor could withdraw from the project at any point in time before the contracts were signed, but that would be unlikely because of the costs incurred in tendering. Alternatively the contractor would seek to change its pricing or other commercial terms. Contractors tends to change price because of inflationary pressures. If the contractor did withdraw, the procurement process would need to be re-visited to find a replacement. If no replacement contractor could be found, the project would not be able to go ahead.
42. I cannot recollect the date as to when the funder's commitment was held until but that would be another key commercial issue in terms of the implications of not reaching Financial Close at a particular date. The funding issues would include pricing, and whether the funder would hold its terms until Financial Close if delayed. The funder could withdraw; as could any party involved in the project before the contracts were signed. Other than funder withdrawal, the

funder could change its commercial terms, on pricing or otherwise. Withdrawal might be unlikely because costs would have been incurred during the tender stage. Withdrawal would be the most extreme and least likely consequence of a delay to Financial Completion. A change in pricing would be more likely.

Funders tend to change their prices because of market movements. I have been asked about the impact of funder withdrawal. In that situation, the funding competition would need to either be re-run or revisited to find another funder. I don't recall the details of this project's funding competition in terms of unsuccessful parties that could have been re-engaged. Funder withdrawal would of course lead to further delay, the extent of which would depend when in the process it happened. If no replacement funder could be found, the project would not be able to go ahead.

43. Under the terms of the Preferred Bidder letter (A36382455- Preferred bidder letter from NHSL to IHSL - 5 March 2014) , it is possible that a delay to financial close may have led to IHSL losing their Preferred Bidder status. The outcome would be dependent on the relevant documents and why the delay occurred. The Preferred Bidder letter (A36382455- Preferred bidder letter from NHSL to IHSL - 5 March 2014) permits the Board to terminate the Preferred Bidder Appointment and treat IHSL's Final Tender as withdrawn if it fails to comply with the conditions of the Preferred Bidder Appointment, as set out in the Schedules. Schedule Part 1 (Terms of Preferred Bidder Appointment) at paragraph 1.1 (Programme) (A33405351- Schedule Part 1: Definitions and interpretation Excerpt pages 137 to 188) says that IHSL shall diligently use its best endeavours to diligently progress the Project to Financial Close on 2nd October 2014, that IHSL is to further develop and agree the Preferred Bidder to Financial Close Programme, and that IHSL can amend that programme subject to the Board's approval, which is not to be unreasonably withheld or delayed where the amendments are required for reasons out with the control of IHSL.

### ***Risk registers at Financial Close***

44. I have been asked about the technical risks that were raised in the "Technical Risks to Financial Close" by Mott MacDonald on 30th January 2015 (A36308810- Technical Risks to the Board at Financial Close - 31 January 2015) , and in particular about the risk that there was more RDD than was expected by the Board. I have no recollection and have seen no evidence suggesting that I saw this document at the time. SFT had general concerns over whether the Board felt it was staffed sufficiently to deal with the amount of RDD within the timescales. At the next stage of a project after Financial Close, Project Co would generally be developing its design rapidly and could be expected to submit a substantial amount of information and documentation to be reviewed. It is normal at this phase of the project for this to be considered as a resourcing risk to Authorities and their technical advisory teams. It was good that this was identified so that the team could resource appropriately within the timeframe. That idea of whether there were sufficient resources to undertake review of RDD was generally covered in the KSRs.
45. The Project Risk Register version 14, updated to 23rd January 2015 was the Risk Register Report that was available to SFT at Project Board level and the one that we used and referred to when preparing the Pre-Financial Close KSR (A33336933- Pre-Financial Close Key Stage Review - 11 February 2015) . The only red risk noted in that Risk Register Report was insufficient space in RIE to support RHSC/DCN clinical models. There were no RDD risks identified in that Risk Register Report. These were the only risks identified to us at a whole project level.
46. I have reviewed the risk documents provided by the Inquiry (A36308801- Design Risks to the Board to Financial Close) and (A36308810- Technical Risks to the Board at Financial Close - 31 January 2015) of my documents bundle. I have no record of having seen these documents at the time and I don't believe I would have done. Had we been aware of those risks at Project Board level, I expect they would have caused additional questions to be raised.

47. Following Financial Close, it is very common for there to be reviewable design data (RDD) and for the detailed design process to occur in parallel with the construction phase. RDD tends to occur in peaks after Financial Close, and so the resourcing of RDD between NHSL and its advisors is something that I would have expected to be on NHSL's mind and concerning it at that stage.
48. From SFT's point of view, we were not involved in the technical side of the project on the design side, nor the technical specification for the hospital in the contract at Financial Close. I was aware there was an ongoing RDD process to finalise the design for construction, as is generally the case at this stage in a project of this nature, but I was not directly involved in that.

### **Full Business Case**

49. The Inquiry has asked me if it is usual for the pre-Financial Close KSR (A33336933- Pre-Financial Close Key Stage Review - 11 February 2015) to be finalised before CIG's recommendation for approval of the full business case, or whether CIG would want sight of this KSR prior to signing off the full business case. The full business case for a project of this nature tends to have an addendum phase associated with it, which can't be completed until after Financial Close. It is my understanding that while the dates for the finalised Pre-FC KSR (A33336933- Pre-Financial Close Key Stage Review - 11 February 2015) and CIG's recommendation for approval of the FBC (9 February 2015) are different, the completion of these stages were essentially contemporaneous. I would consider this to be ordinary practice in a project of this nature.

### **RDD timescale**

50. SFT had no involvement in the Board's Construction Requirements. I understand that the Board's Construction Requirements require compliance with both the Room Data Sheets and the Environmental Matrix (paragraphs 3.6.3 and 8 of the BCRs at section 3 of schedule part 6 to the Project

Agreement) (A41179262- Schedule Part 6: Construction matters, section 3 (Board's Construction Requirements), Subsection D Excerpt pages 360 to 780) . I have been asked by the Inquiry to what extent did I understand these to be an approved basis for construction. I did not have any understanding of this at the time as the reference design and technical review, including matters such as RDS and the Environmental Matrix, were outside of SFT's remit; as was any subsequent review after Financial Close under the procedure which applied to RDD.

51. I am told that the time period allotted to the Board for comment on RDD submitted to it for review was 15 business days. This period was agreed between the parties to the contract, and was left blank to be completed as a project-specific matter in one of the back end parts to the Schedules to SFT's Standard Form Project Agreement NPD contract. I have been asked by the Inquiry if I was aware of consideration being given, either before or after Financial Close, to the sufficiency of that period. I do not recall there being a particular discussion around the sufficiency of the time period, but in the Pre-Financial Close KSR (A33336933- Pre-Financial Close Key Stage Review - 11 February 2015) , at section 7 question 25 (resourcing strategy) it is addressed whether the Board had enough resources and they confirmed that they did.

### **Key Stage Reviews (KSRs)**

52. The KSRs represent a point in time for the Authority to reflect on certain points which SFT considered in designing the document to represent best practice for the relevant stage of the project and confirm them with input from NHSL's experienced advisors as required. The KSR process was not and was never intended to be a detailed audit where SFT staff would seek technical and documentary evidence for every statement made and / or question members of the project team and its advisors to verify the information provided and contributions of the senior team members that SFT generally interacted with.



53. With regards to assurance in respect of the design development, the KSRs conducted during the procurement process included questions that prompted NHSL to reflect on whether it believed the design was sufficiently developed for it to move on to the next stage. That was the purpose of the KSRs. In circumstances where SFT had genuine concerns about the project's readiness to proceed to the next stage, this was discussed as the KSR was completed, and we sought with NHSL to resolve those matters such that we got to a position where SFT felt, following review by a secondary reviewer in SFT, that it could approve the KSR and the project could move onto the next stage. The final KSR document was only completed and signed off when that point had been reached. If there were issues that SFT felt were not material enough to prevent the project from proceeding to the next stage, we recorded recommendations in the KSR document to be considered by the project team as the project progressed.
54. To my knowledge, having been asked about this, I do not believe that the results of a KSR have ever resulted in CIG not signing off on a project, and it not progressing to the next stage as a result. The KSRs ensure that matters are resolved prior to moving to the next stage and prior to (or at least contemporaneous with) any submission to CIG.
55. The Inquiry has asked me when a matter would be escalated for the attention of the Scottish Government and whether would this be done by SFT. This very much depends on the nature of the matter; however, one example would be around funding. One of the elements that went with the funding conditions was around the construction phase cost cap. If there had been an unresolved issue in relation to the construction phase cost cap for affordability purposes, then that is something that we would have expected to raise with Scottish Government. To resolve this matter would have required the project team making adjustments, so that the cost cap was achieved, or an agreement with the Scottish Government to increase the cost cap if that was necessary. I do not recall material changes to the cost cap on this project.

56. On 25th August 2014, the following items were amongst those considered 'high risk' and 'medium risk' on the register of 'Technical Risks to Close (A36308781- Technical Risks for Financial Close - 25 August 2014).

Issue	Risk Impact	Current Mitigation Measures	Final Position	Potential Further Mitigation Required post FC.
Project Co proposals insufficiently developed to required level for FC	High	<ol style="list-style-type: none"> <li>1. Comments fed back on the PCP structure.</li> <li>2. Comments fed back on draft 1 of the PCP's.</li> <li>3. PCP workshop held setting out the Board's expectations.</li> <li>4. Individual workstreams setting out the Board's expectations.</li> </ol>	TBC	Increase the length of the RDD list. Focus on specific design risks. Fast track the legal review
Lack of review time for the PCP strategy documents	High		TBC	
Lack of review time for the PCP drawings	High		TBC	
Due to the current status of the PCPs the RDD list could be Extensive	Medium	Monitor the development of the PCPs in line with the PCP programme	TBC	Long list of RDD due to further iterations of drawings etc. to be made etc. Board requires to both resource the requirements rights of comment they have within the Review Procedure reviewed). This should then (which is where RDD is mitigate risk of

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				Project Co claiming changes
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57. The Inquiry has asked me why these risks were not flagged in the KSRs. I cannot answer that question directly as I do not believe that this risk register had been seen at the time by SFT. However, I expect that NHSL was comfortable that, whilst there were risks, these were risks that were reasonable at this stage of the project and it understood how it was going to take them forward. The focus for the Board would have been working on reducing those risks before the next KSR – which was signed off in February 2015, some months after the date of this risk register. I have been asked how significant SFT concerns had to be to prevent sign off at KSR. If those reviewing the KSRs felt that, based on the information within a KSR, there would be a detriment to the project outcomes if it progressed to the next stage then either the KSR would not have been approved; or, if the issue appeared to be remediable, a recommendation would be put in the KSR for the next stage. If a risk had been resolved, even if high risk, it would not necessarily appear in the KSRs. Once a concern had been addressed or fixed, I wouldn't expect it to be included in the next KSR. The KSR is a snapshot point in time review, focussing on the current stage of the project.
58. As I stated in my first witness statement (A37605865- Witness statement of Peter Reekie - 28 April 2022) , in the run up to each KSR point, the reviewer considered the status of the project against the relevant pro forma list on the basis of information obtained in his or her day-to-day dealings with the project team, and sought where required contributions from the project team to allow completion of the KSR document which, once completed, would comprise a written draft KSR report with comments and recommendations. SFT would have been privy to information that was contained in meeting packs for meetings that SFT attended, and derived from discussions in the meetings and otherwise that SFT were part of. However, SFT did not have access to, for example, the project's document management system.

59. As I stated in my first witness statement (A37605865- Witness statement of Peter Reekie - 28 April 2022) at the KSR, the primary reviewer prepares a short report and makes recommendations as to whether in his/her view the project is ready to proceed to the next stage of procurement, or what actions were required to achieve the appropriate state of readiness, either to proceed to the next stage or in advance of the next KSR. These were amended as they saw fit by the secondary reviewer as the KSR report was finalised by SFT. The primary reviewer would follow up on any actions and recommendations by including a statement in the next KSR as to how the recommendations of the previous KSRs have been addressed.
60. At the time of the Pre-Close of Dialogue KSR (A33337058- Pre-Close of Dialogue Key Stage Review - 13 December 2013) being completed on 13 December 2013, it was a recommendation (against Section 3, question 2) that the Board received and copied to SFT final copies of the financial, legal and technical advisor letters prior to the Close of Dialogue. We did receive drafts of all of those letters, and we hold signed final copies of the financial and legal advisor letters, but we do not hold a copy of the signed letter from the technical advisor. We have the draft version from Mott MacDonald dated 11 December 2013. I would expect the signed letter to have been received following the KSR. If a signed version cannot be located by the Inquiry, it must either have been mislaid by all of the parties, or SFT became sufficiently comfortable that the draft letter represented the view of Mott MacDonald and, for a reason that I do not know, a signed version was not produced. I have been asked to provide further detail on the letters including what Mott MacDonald were confirming. I refer the Inquiry to the terms of the letters provided. My understanding of their meaning is based on their terms, on which hopefully the authors can assist the Inquiry by providing any required clarifications.

61. It has been put to me that there were a number of questions asked of NHSL in the KSRs which NHSL answered positively despite there being outstanding issues.
62. I have been asked about the bases for these responses and whether they were fair assessments. It is not for SFT to comment on the basis of a statement/response made by NHSL. As I said in my previous witness statement (A37605865- Witness statement of Peter Reekie - 28 April 2022) (paragraphs 37 – 53, particularly paragraph 44) the Key Stage Reviewer would seek contributions from the Project Team to allow them to consider the status of the Project against the relevant pro forma list and prepare a draft KSR report for comments and recommendations. The Project Team was required to provide the Reviewer with the necessary information or confirmation to allow them to complete the report. The Reviewer would consider the context of discussions at the time and accept NHSL's statements and the views of its project team and advisers.
63. I have also been asked if SFT tested or interrogated any of the information provided by NHSL, or whether it was simply taken at face value and recorded. If any of the information provided by NHSL had seemed obviously inaccurate or had been contrary to either documents that SFT had seen, or meetings that SFT had been party to, SFT would have discussed this with NHSL in order to clarify these points. SFT's reviewer would ask questions of NHSL who would be required to provide answers. From that, SFT trusted that NHSL would provide full and frank answers and accurate representations of its and its technical advisor's views.
64. SFT's published guidance "Validation of Revenue Funded Projects: The Key Stage Review Process" provides that:

*"No formal submission, as such, will be required from the Procuring Authority, but the project team will be required to provide the Reviewer with information to allow him/her to complete the list and compile his/her report. The Reviewer may*

*also ask the project manager to specifically confirm certain points or that there are no outstanding issues that would impede the progress of the project to the next stage of the procurement process.”*

*and*

*“Once all relevant information has been made available the Reviewer will complete the list and outline any areas where further action may still be required. Once the Reviewer’s report has been scrutinised by a member of the SFT’s senior management team, it will then be submitted to the Project Sponsor and/or SG and copied to the Procuring Authority. The Procuring Authority will also be asked to confirm that they are not aware of additional information that would materially change the report or recommendations made therein.”*

I believe that the facts stated in this witness statement are true. I understand that this statement may form part of the evidence before the Inquiry and be published on the Inquiry's website.