DESIGNED TO FAIL

– the truth behind the sham competitions to redevelop Perth City Hall

The Past Case: 2004-2010

Founding Member: British Council of Shopping Centres (1984)
Founding Member: Society of Property Researchers (1986)
Founder of Spifox (1983), the Scottish property and building industries' charity

Member: International Real Estate Federation British Chapter Management Committee (1982-86)
Chairman: UN 1987 International Year of Shelter Scottish Appeal Committee
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INTRODUCTION

In September 2004, Perth & Kinross Council launched a competition, based on the offer of a Lease for 125 years, to propose new uses for Perth City Hall, a 'B'-listed building in classical Beaux-Arts style, which was to be declared redundant and closed to the public following completion of the Concert Hall in 2005. Council officers devised and conducted the entire exercise in private: no national firm of surveyors was consulted. Designs and financial proposals from interested companies were submitted by the closing date of 21 January 2005, including two sets of proposals from my own company, Linacre Land Ltd.; but on 10 March a letter was surprisingly issued, inviting revised or alternative submissions by 29 April, when Linacre Land submitted two further variations. The five schemes selected for the short list and public exhibition comprised the sole entry from Wharfside Regeneration Ltd., two from Linacre Land (one each from the two submissions) and two from Henry Boot. Despite their full compliance and short-listed status, neither Linacre Land nor

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Henry Boot was interviewed or invited to make a presentation to councillors, who simply decided on 2 November 2005 to appoint Wharfside.

An Agreement for Lease was executed in May 2006 but was radically amended for Wharfside's benefit, following more than a year's confidential renegotiations, in July 2007. Likewise, the planning permission granted in September 2006 was not for the competition winner but for a drastically revised version, which was further amended and approved in March 2008. Yet no progress was ever made. Despite expiry on 31 May 2009 of the 3-years rent-free period under the Agreement, relations with Wharfside were not severed until September that year, nearly four years after their appointment. By then, having enjoyed a clear run in a favourable economic climate through 2006-07, the council could blame Wharfside's failure on the property market slump following the global financial crisis which broke in 2008. Yet the two reserve bidders, Linacre Land and Henry Boot, with fully funded schemes, were never invited to resubmit or even consulted.

Instead, the council decided in June 2010 to demolish the building and clear the site, with a view to creation of a new city square, subject to Listed Building Consent from Historic Scotland, for which an application was submitted following a consultancy report from Colliers, backed by a costly publicity campaign, to demonstrate that there could be no viable alternative use for the building whereas a civic square would create a major asset, public amenity and visitor attraction; but that was rejected by HS, which insisted on a remarketing of the building, whereupon with eminent colleagues I formed Perth City Market Trust whose proposal emerged as the only valid bid but was nevertheless rejected, leading to a second application to HS, based on another report for the same purpose, this time from Jones Lang LaSalle, which was again refused. That wasted nearly three more years. So the council's original failure to redevelop City Hall was compounded by repeated failures to demolish it.

Meanwhile, ever since 2006, in view of the many questions arising from the conduct of the preceding competition and realizing that the Wharfside scheme could never materialize, Linacre Land Limited (having already lost a six-figure sum in fees on its competitive submissions) had relentlessly pursued investigations at its own heavy cost, embracing Freedom of Information enquiries, Audit Scotland, the public service 'Ombudsman' and even the Court of Session. Despite fierce official resistance, numerous apparent irregularities throughout the competition and its aftermath were discovered, as detailed in this publication. But the council's motivation remains a total mystery, and can be revealed only by a full, independent Inquiry, or by Ministerial direction in response to publication of this chronicle. The immediate purpose, therefore, is to place a full account on record for future reference in the public interest. No commentary is necessary, as the plain facts, which are fully documented, will speak for themselves.

Part I asks the primary questions, that would arise from any review of the affair, yet still remain unanswered. Part II is a straight narrative that places all those questions into context while raising many more of a procedural or interpretative nature.

The five wasted years are covered, from the competition of 2004-2005 through the aftermath until the abject termination in 2009 and futile 'civic square' sequel. But neither the questions nor the history can explain or even suggest the policy directives or personal intentions of those responsible for the selection prolonged indulgence of Wharfside and its disastrous aftermath .

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We can only ask the questions which contemporary experience and retrospective researches threw up, while forever horrified at the incalculable, irrecoverable, unaccountable squandering of interested parties' financial resources and professional services, none of which ever elicited a word of explanation or official regret.

What was the aim of this lavish public competition, resulting in the appointment of a company, unknown locally, whose scheme was the only one of the five on the short list with no demonstrable funding capability, nor any retail demand or letting potential? Why did the council, with apparently compliant officers, back the one horse in the race that was extremely unlikely to get out of the starting-gate -- if it ever had a leg to stand on? The numerous irregularities detailed here in 'The Past Case' and in the forthcoming sequel, 'The Present Case' (2010-16), were not accidental: they must have been collectively devised and orchestrated -- but why?

What if the whole exercise was a sham, designed to fail, for no other purpose than to demonstrate that the private sector could not produce a viable, sustainable, compatible re-use for the building, in order to satisfy Historic Scotland as the necessary precondition to an eventual application for Listed Building demolition consent? That was always the declared preference of several prominent councillors, readily recalling that a past planning directorate had recognized clearance of the site for alternative civic use as a policy option. How ironic, then, that the building's survival was not secured until conservationists and interested parties had finally, at their own cost, defeated the Council's determined efforts to destroy it!

A complete record could not be produced, nor anything from it published, until all official channels had been explored and all essential material assembled, coherently and objectively. All of that has now been accomplished.

PART I

Short of an independent inquiry, the appropriate government minister's direction would reveal:

1. Why were no independent experts retained, consultant surveyors specializing in retail development, such as Montagu Evans or CBRE; why were PKC Officers so intent on keeping the project to themselves?

2. Why did they fail to obtain an expert open-market valuation at the outset, on the proposed basis of tenure and conditions, not for disclosure but to give the chief officers an estimate of the likely outcome, as required by European Commission regulations designed to ensure fair competition? Considering their own total lack of experience in this sector, why were the officers permitted not only to dispense with the appointment of professional advisers, but also to dispense with an opening valuation, thereby avoiding the proper precaution of a check against forthcoming bids?

3. (a) Why was the council's advertising campaign restricted to a level far below the requirements of those same EC regulations, thereby severely limiting the competition? Publication was limited to: one half-page in 'The Estates Gazette' on 9th October 2004, about one-sixth of a page in 'The Scotsman' on 12th and 19th October, and a tiny ad. in 'The

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Courier' on 27 October and 17 November. So one miserable insertion in only one property journal, nothing at all in the UK national press, nothing in the EU's Journal or other European media, and only in two Scottish newspapers? That was inadequate and incompetent.

(b) Why did these few advertisements appear far too late, only two or three months before the closing date for submissions of 21 January, with the festive season intervening? How were potentially interested developers, their agents, architects and surveyors, supposed to come to Perth (maybe from London or wherever), carry out market research, design and cost a scheme, consult lawyers and financiers, and prepare a bid, all within a few weeks? No wonder that, even in the favourable economic climate which then prevailed, this attracted such a low level of interest. Since keeping it kept so quiet was against the public interest, in whose interest was it?

4. But beyond these preliminary questions there are two which are crucial. Firstly: why select a developer with no funding and, even worse, why persist in a public pretence that funding was in place when it was not? Had funding been in place, then there was nothing to prevent Wharfside from going ahead; but it could not, as the officers surely knew very well.

Why, some six months after the appointment, when it was already obvious that Wharfside had made no progress, did the council chief officers nevertheless proceed to execute the Ground Lease Agreement, committing the council to a contract which the other party could not fulfil, while still assuring the public that it would?

Secondly: why did the Officers defer to Wharfside's insistence on incorporation of a "Suspensive Condition" which was not merely abnormal but unheard of, to be fulfilled entirely at the developer's discretion, thereby making a mockery of the competition, rendering the Agreement for Ground Lease worthless and effectively aborting the whole project? This was Sub-Sub-Clause 3.1.2 in the Agreement stipulating that it was subject to:

"the Developer obtaining heads of terms from prospective tenants of the Development for the letting of the Lettable Units comprising not less than 50% of the net lettable floor space of the Development (as measured in accordance with the Royal Institution of Chartered Surveyors Code of Measuring Practice 5th Edition) and all those on terms satisfactory to the Developer."

The longstop date for purification of this suspensive condition was deferred until "6 months after the grant of Planning Consent" (7 November '06 – i.e. 7 May '07) but extended to 11 months, i.e. to 7 November '07, and then postponed indefinitely. But why in the first place were six months spent in negotiating and drafting the hundred pages of legal documentation comprising an 'Agreement' and 'Ground Lease' in order to produce no more than a crude Option in Wharfside's favour, binding the Council while leaving Wharfside free of any obligation, that could have been typed on one sheet of A4? Why was there no effective opposition within the Council – and how could the chief officers take part in what was no more than an elaborate masquerade?

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The only reason why Wharfside had to demand this outrageous concession was because, until at least half the units were pre-let, they could never obtain funding. That was self-evident to all the officers concerned. Therefore, could any sense be made of statements by councillors and officers assuring the media and electorate that Wharfside's scheme was fully funded and expressing confidence that the project would proceed – a pretence maintained over the whole period from appointment in November 2005 to execution of the Agreement in May 2006 and then throughout the three years until the final longstop date for discharge of all conditions at the end of May 2009? Is it because those responsible were too well aware of the contrast between their long-held public posture and reality that these public deceptions have never been exposed, neither then nor since?

5. Why, even as late as 11 September 2008, was the Head of Legal Services still asserting, in a letter to me, that **"the Council remains of the view that despite the difficulties in the current economic climate, the Wharfside scheme will be delivered and will be a successful project for both the developer and the City of Perth",** when he must have known that, after two-and-a-half years of total inertia, the scheme was dead? Indeed it had been still-born: for there was no sign or prospect of a pre-letting of one square foot. Then why and by whom was the Head of Legal Services instructed to express such confidence on behalf of the whole council?

   So there were these two distinct proofs, each on its own absolutely conclusive, that Wharfside's scheme was unfunded: (a) the simple fact that Wharfside could make no progress – could not afford even to proceed from a sketch design to working drawings – and (b) the incredible precondition of 50% pre-lettings. An Inquiry is imperative, if only to discover why such a worthless offer was accepted in the first place and why was it justified and sustained for years afterwards by systematic public deception?

6. How, furthermore, could the council acquiesce in Wharfside's propaganda, designed to shore up false confidence during this long period of stagnation? Why, with no intervention or correction by the council or its press office, was Wharfside free to have a series of stories published in 'The Perthshire Advertiser' [PA] and 'The Courier' [C] bearing such headlines as:

Work on hall's revamp to start within 'weeks' [C]	28 July 2007
Work finally set to start on City Hall [C]	9 October 2007
Funding secured for the City Hall [P]	18 January 2008
Green light for £4m city hall revamp [P]	30 May 2008
Work set to start? [P]	8 July 2008

   This last piece quoted the laughable announcement by Wharfside's 'project manager': "all we are waiting for is for the client to get the funding in place and the contractor can start towards the end of the month" – when Wharfside had not even produced detailed drawings to submit an application for building warrant! So there was Wharfside's own admission that

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it never had funding. Were not council-tax payers entitled to know why official assurances were given to the contrary?

7. Why, apparently, did it suit the council to let Wharfside create this smokescreen of lies? Why was the council happy for the public to be continually misinformed on a project of immense commercial and civic importance affecting the everyday lives of the entire population?

8. Fulfilment of the special suspensive condition in Clause 3.1 was in any event hopelessly impracticable because, as any commercial property surveyor or lawyer would have advised, no prospective tenant could ever agree to enter into "Heads of Terms" for an occupational Sub-Lease in a proposed new development with no commitment whatever from the developer! Wharfside could give no indication as to a date for handing over the shop units, ready for fitting-out by the tenants; nor could they supply detailed drawings or information on service-charges – nor even give an undertaking to proceed with the project at all! How could any trader sign up for a unit if the developer, having failed to sign up however many more were still needed to achieve the necessary 50%, was free to walk away?

9. **So the developer was expecting, having secured an option from the council, then to secure options on a large number of lettings. An option from the council on one hand and options from potential tenants on the other – all gratis and with no obligation – a developer's Utopia! Yet that is what the officers recommended for the council's approval, which was duly granted. But retail traders are not so stupid: consequently, after three-and-a-half entirely wasted years, there was not the faintest sign of any pre-lettings.**

10. Meanwhile, once Wharfside realized that the "winning entry" could not work, and with no sign of interest from any potential investors or tenants, why did the council grant planning approval in September 2006 to a radically different scheme, instead of reopening the competition? Why, when the revised design was shown not to work either – and still with no sign of interest from investors or tenants – did the council in March 2008 approve yet another major amendment without demur?

11. Instead, why did the council not invite the other two short-listed companies to resubmit? That was the proper course of action, for Linacre Land and Henry Boot were the 'reserve bidders', each with two alternative schemes – fully funded! Reverting to the runners-up, if the 'preferred bidder' fails to perform, is the normal practice in any such competition. Why was that not done?

12. Why did the council not even think of demanding, in consideration of those revisions to the scheme, the waiving of Clause 3.1, but instead once again meekly acquiesce? Did the relevant council officers not even realize that, since Wharfside had to keep modifying the design, a start on site was still years away? Why were they happy to see the local media continually proclaiming news of a start within weeks!

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13. Why, throughout all these years of inactivity, did the officers not even attempt, at the very least, to exact some contribution from the appointee towards the continual costs of maintenance, heating, lighting, cleaning, security and insurance of the building?

14. Why has the council never admitted that selection of Wharfside's scheme had been an enormous blunder and apologized to council-tax payers for the colossal waste of time and public money?

15. Then why did councillors and officers retrospectively blame the project's all-too predictable demise on the 'credit crunch' and property slump, which was not on the horizon of the UK market until March 2008 with the failure of Bear Stearns in New York and did not loom overhead until Lehman Brothers collapsed six months later – following more than two years of continuing bullish market conditions after Wharfside's appointment? Had funding been available, the building programme would have been far advanced before any repercussions of the banking crisis were felt. Besides, the contract was for a Lease of 125 years, to create a long-term investment, which is not so susceptible to short-term market fluctuations. For this was, as the council and all interested parties purported to believe at the time, the most beneficial means of preserving the building well into the next century.

    "Public consultation" as a means of justifying council decisions is always misleading, for memories are short and popular preferences – expressed as instant answers to opinion surveys – are largely governed by current conditions, by what people want *today*; so that the popular consensus, and hence retail demand and investment market rating, fluctuate between maximum appeal and untouchable within a few years; but that should not have deterred the Council from taking a long-term view in the interests of the whole electorate.

16. So why, soon after finally abandoning Wharfside in September 2009, was the Council suddenly arguing that demolition must go ahead urgently?

17. Finally, did the Council fail to recognize the tragic irony in taking a decision to demolish City Hall while celebrating the Burgh's 800th anniversary and while pressing the case for City status?

The scandal of Wharfside's misbegotten bid for City Hall could not be buried beneath its rubble. Even without a full, independent inquiry, there is no reason why answers to these 17 principal questions should not be demanded by competent government ministers. The questions are all perfectly clear, factual and straightforward, arising directly from the sequence of events. Many more will occur to readers of the detailed and fully documented narrative that now follows in Part II.

PART II

1. Upon learning from the local press of Perth & Kinross Council's proposed competition for appointment of a company to redevelop the City Hall, I made a direct enquiry and was invited to an informal meeting with the principal Officer concerned at Pullar House on 27 February 2004. He helpfully explained that a brochure ("the brief) was being prepared to be issued to applicants in response to forthcoming advertisements in the national press and

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professional journals. I met him alone again, at his request, on 11 and 16 March, followed by formal meetings on 22 September and 19 October, at which he introduced two colleagues who seemed to comprise the rest of the team, while I brought in my company's architects, the firm with whom in 1978 my own company had won the Highland Regional Council's open competition to design and develop the Eastgate Centre in Inverness and with whom I had worked in the 1960's on the original Overgate scheme in Dundee.

Discussions were friendly and enthusiastic, but rather one-sided, because these were middle-ranking officers, in charge of the project yet with no expertise in commercial property development, so there was little interchange or sense of collaboration. The council did not then employ an Estates Surveyor or Property Director of executive rank, which was very odd. Yet, odder still, they were embarking on this major project without a qualified principal officer and without engaging a firm of specialist consultants. Even large authorities with qualified staff who are experienced in this sector will commonly engage appropriate consultants for an important project, as much to protect the Council by demonstrating independence and transparency as to provide expert guidance; so who decided that this spectacular competition, of immense public interest and complexity, required no special competency, neither in-house nor *ad hoc*?

2. Our architects and I were also perturbed that the official team included no representative from the Planning Department, especially as this was primarily a design competition – indeed, we never met a planning officer – but we were assured that the brief would contain all the planning advice required.

3. In September the prospectus duly appeared, lavishly produced yet comprising only twelve pages, featuring several largely irrelevant photographs – either historical or exotic, such as one of the "Rockerfeller [sic] Centre, New York" – while the glossy text gave scant information on programme or procedure, which was what interested parties wanted, but did prominently identify approved potential "Land Uses", including:

   "**Residential** – There has been significant growth in housing in the city centre in the last twenty years and there is support for further development in appropriate locations where residential amenity can be sustained and parking provision can be met either on or adjacent to the site."

   This was welcome, because (a) the comparatively large residential element in central Perth is one of the city's traditional benefits and (b) the height of the building would lend itself to a mixed development incorporating upmarket duplex apartments within the roof-space. The officers were keen on this concept, even inviting the Council Roads Engineer to join our October meeting in order to advise on car-parking provision for the housing, while we introduced the residential agency partner of a leading firm of Perthshire surveyors.

   But of course, as every surveyor and estates manager in Scotland should have known, Part II S.8(1) of the Land Reform Act 1974, prohibits residential occupancy within a property held

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on long lease, yet according to the brief the Council was offering only a lease of the building for 125 years! The actual wording of the sub-section reads:

"It shall be a condition of every long lease executed after the commencement of this Act that, subject to the provisions of this Part of the Act, no part of the property which is subject to the lease shall be used as or as part of a private dwelling-house."

So this one pamphlet, which constituted the entire guidance for potential developers, approved residential use while inviting offers based on a 125 years lease which prohibited residential use!

However, we supposed that the apparent conflict had arisen from the very sketchy form of brief and would be resolved by preparing alternative schemes, bidding to purchase the freehold on the mixed commercial-residential option, at a price far more attractive to the council than a premium for a lease on the purely commercial composition.

On 6 December we had our final meeting, only weeks before the closing date for submissions on 21 January. By then it was safe enough to show the meeting the design drawings of the two alternative schemes – 'A' and 'B' – which were nearing completion. Both were discussed and highly commended. So then I sprung the query about the conflict with the 1974 Act, of which they had evidently never heard, as was confirmed when I read out the relevant passage from the statute, a copy of which I had brought with me. Our hosts were aghast. Both parties at the meeting were speechless, for different reasons! They could only confirm that (a) in principle, residential use was indeed acceptable and (b) drafts of the brochure during its course of preparation had been vetted by Legal Services Department (among others) but nevertheless (c) only a 125 years lease was available and any offer for the freehold would be rejected.

4. So it was a false prospectus and should have been withdrawn or reissued with a correction; but the officers could not face such humiliation, so they did nothing, confident that the blunder could be glossed over. They also knew that if I wished to stay in the competition I had no choice but to persevere in silence. Besides, by then we were committed to the dual submission. Indeed, we had even commissioned an expensive architectural scale-model of the mixed scheme 'A' in order to exhibit in section the complex multi-level design to best advantage. Yet it was not until receipt of a letter dated 10 March 2005 that I was informed:

"For avoidance of doubt, [implying that there might have been some doubt] the property will be made available to the successful bidder on the basis of a long lease and not on the basis of an outright sale". But what was the use or the sense of telling me that – eight weeks after lodgement of our two offers!

5. However, while scheme 'A' was already eliminated, scheme 'B' had hugely impressed them. The responsible officer wrote on 11 February 05:

"Dear Vivian – Thank you for your submission and scale model received on 21 January.....Your submission has now been considered by officers in Property Management and Planning & Transportation Services. It is intended a report will be

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submitted to the next meeting of the Strategic Planning & Resources Committee on 16 March recommending a short list of parties whose submissions are to be taken forward. I will therefore make contact with you again after the meeting on 16 March.....I would confirm that meanwhile the scale model is being kept in a secure store in Property Management – Yours sincerely"

That could not have been more precise or more encouraging. Note there was no suggestion that scheme 'A' had been discarded or that the model should be taken away!

6. **But on 10 March, only six days before the scheduled Committee Meeting, the following letter** [*mentioned in the Introduction*] **was issued from the same office as was the letter of 11 February, yet effectively countermanding it – and without making any reference to it! What was even more astonishing, it made no reference to the forthcoming Committee Meeting either:**

"Thank you for your proposals for the redevelopment of the City Hall. One of the Council's important aspirations was to try to improve the interface of the building with St John's Kirk. Unfortunately, an initial review by the project board has concluded that none of the several submissions received has dealt with that particular aspect of the brief. Accordingly, prior to completion of the first stage of the formal appraisal exercise, which has been extended for that reason, you are invited to consider whether or not your proposals can be amended to address that point, or to submit alternative proposals having regard to that issue. You are not obliged to submit alternative or revised proposals. Your existing submission will continue to be considered along with any new proposals which will be appraised on the same criteria. The closing date for any such submissions is Friday 29th April....."

This was a complete reversal, both of the current situation and of our relationship. It made no sense and remains totally unaccountable. Whatever the cause, the letter certainly seems to have been fabricated at very short notice in order to forestall the planned report to the SP&R Committee Meeting.

7. **This is indeed the heart of the matter – the "inside story" – which has defied all our years of investigation and which only a full, independent Inquiry can now expose. What happened during late February into early March that induced the officers concerned so abruptly to tear up their public time-table and increase costs for all concerned by reopening the competition?**

For as late as 2nd March, this appeared on the Council's website:

"The future options for Perth City Hall became clearer today as Perth & Kinross Council mapped out the process and time-scales for marketing the site as follows:

January 2005	Deadline for submission of initial proposals
February 2005	Short-list of viable options drawn up – more detailed proposals
March/April 2005	Public consultation on viable options

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April/May 2005 Recommendations to Council Committee – final decision"

The pretext for postponement was plainly spurious. In the first place, according to the earlier letter of 11 February, the submissions had already been studied with a view to presentation of a report to the Committee on 16 March; therefore it is impossible that those same officers could have failed, **four weeks later**, even to have "completed the first stage of the formal appraisal exercise", and equally unbelievable that, **six weeks after the closing date** within a tight time-table, the "project board" had only conducted "an initial review"!

Besides, the prospectus and associated correspondence had constituted an "Invitation to Tender", which we and others had accepted in good faith and with which we had complied in accordance with a closing-date of 21 January. So what was the real reason for reopening of the competition, with no clear remit, no individual advice on specific requirements for amendment and no opportunity for consultation, but clearly with every opportunity for leakage and exploitation of information on the original submissions?

8. It could not have been the reason given, moreover, because this juxtaposition of the front of the Kirk and back of the Hall had in fact always been the focus of both Scheme designs 'A' and 'B'. This enhanced space we actually named 'City Square' – indeed, it was adopted as the title for the whole development in order to maximize its prominence. So to include our submissions within that blanket condemnation was absurd. But once again we were still obliged to 'play ball', so made use of the enforced delay by submitting on the new closing date of 29 April 2005 two more variations of design, schemes 'C' and 'D', rebuilding the architectural model of scheme 'A' for the new scheme 'D'.

9. In contrast, Wharfside publicly announced (as quoted in the September issue of 'Prospect' and local press) that they saw no reason for "extra public realm" and so were taking no further action. How were they so confident that there was no need to respond to this invitation, despite their one scheme having been officially condemned with the rest?

10. Proof of the absurdity of including our 'A' and 'B' within the "Project Board's" blanket ban lay in the Minutes of that SP&R Committee Meeting on 16 March, commending our original two schemes: "Both schemes envisage refurbishment of Kirk Close and the adjoining Vennel and the creation of an enhanced public square between the building and the St. John's Kirk."

    So the letter was sent to developers on 10 March, condemning all the submissions for having failed to "improve the interface of the building with St. John's Kirk", but the report from the same officers to the Committee Meeting less than a week later emphasized that our submissions had fulfilled that requirement conspicuously! The implications are obvious.

    Furthermore, the Minutes of the SP&R Committee Meeting on 15 June, finally reviewing all twelve rival sets of proposals, repeated that commendation in respect of all our four entries:

    "All schemes envisage refurbishment of Kirk Close and the adjoining Vennel and the creation of an enhanced public area between the building and the St. John's Kirk."

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So that again gave the lie to the pretext for reopening the competition. Is there any possible explanation other than that it was a crude device for extending the closing date to serve some entirely different purpose?

11. In any event, as our lawyers discovered by letter from the FOI Officer dated 6th April 2006, the "project board" did not exist! They were told: "The Project Board to which you refer is the Council's Executive Officer Team who in turn report to the Strategic Policy & Resources Committee. The EOT consists of the Chief Executive plus four Executive Directors....The constitution of the EOT is not recorded." What right had the EOT to call itself the "Project Board" and why did it need such a pseudonym? In any event, the EOT is mentioned in only one of the many sets of Minutes that we obtained by FOI enquiry, while the "Project Board" is mentioned nowhere.

So the crucial, game-changing letter of 10th March had been written on behalf of an unconstituted body which had no proper authority.

12. Equally anomalous constitutionally is the following from the Minutes of the SP&R Meeting on 16 March: "Each of the submissions has been formally scored by a team of officers from the Property Management and Planning & Transportation Services in accordance with the criteria set out in the brochure.....The outcome of the formal appraisal exercise has been considered by the Central Area Development [sometimes 'Redevelopment'] Group"; thereby creating the impression that this Group was independent of the appraisal "team" – but were they not actually the very same people?

Was not the "team of officers" simply that same Group acting anonymously – effectively fabricating authority for its own actions?

13. The decision resulting in the letter of 10 March seems to have been trumped up on 17 February at a meeting of the Group, which was an ad hoc body loosely composed of half-a-dozen or so middle-ranking officers; for the following fragment of its Minutes was salvaged by FOI: "A draft report to the Strategic Policy & Resources Committee on 16 March on offers received and the proposal that bidders be asked to reconsider the terms of the Council brief with regard to improving the setting of St John's Kirk was tabled and agreed following discussion." That was all: no reason given, no indication of the source of this "proposal" – i.e. whose proposal it was – nor any indication of its authority.

FOI enquiries revealed that the Central Area (Re)development Group in fact had no constitution. Furthermore, in response to our request for "information as to the identity of the persons authorizing, ratifying and adopting the recommendations referred to in the Group Meeting's Minutes dated 17 February 2005" we were simply told that "....the Council does not hold that information. However, I am advised that the personnel listed in the Minute as present would have authorized, ratified and adopted recommendations made at that meeting." Fait accompli – they were a law unto themselves! Evidently, it was this small, unconstitutional group of officers, with no Council representation, who effectively decided the outcome of the competition.

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14. Further proof that the three months postponement – the second-round of competition – had little or nothing to do with the setting of St John's Kirk but was a complete waste of time and money and was purely an artifice to serve some other purpose altogether, was revealed by a Report (obtained with great difficulty under FOI) dated 15 June 05 which was stamped "EXEMPT – not for publication by virtue of para. 6 & 9 of Part I of Schedule 7A of the 1973 Act", from the Directors of Corporate Services [a post later scrapped] and of Planning & Transportation, in which Para. 5.2 states:

    "Notwithstanding the concerns relating to the interface with St John's Kirk in the initial submissions, the appraisal team were of the view that the alternatives in the supplementary submissions, to a greater or lesser extent, compromised the overall development proposals and they were not persuaded that partial demolition to create an open area between the building and [the] Kirk should be an over-riding consideration in assessing design when selecting their short list."

15. Hence, by three months after the letter of 10th March announced that the "interface" issue necessitated a reopening of the competition, the real purpose, whatever it was, had evidently been accomplished and so the truth – that the "interface issue" was irrelevant – could safely be admitted.

16. In its report to the full Council for the conclusive meeting on 2 November 2005, the SP&R Committee devoted section 2.0 to 'Background'. Having outlined the history up to submissions on 21 January in section 2.1, it proceeded directly to 2.2 which opened: "The Committee at their meeting on 15 June 2005....." So the entire episode of the extension to the competition – all the machinations over those three months – never happened, it was simply air-brushed out of history. Evidently it had served its purpose.

17. But the ultimate proof that the "interface" exercise was a smokescreen is that the eventual winner had ignored it and that the effective runner-up, our scheme 'B', had likewise been one of the original submissions, all of which were disqualified for having failed to address this "important aspiration"!

18. Perhaps one clue to the real reason given on 15 March when the local press (and the Council's own 'Herald & Post' on 17 March) reported a statement by the Council Leader, seeking to justify the postponement, in which he announced that nine sets of proposals from six developers had been submitted on 21 January, ranging from a mere letter of intent to a "detailed scale model", which of course was ours. (He neglected to point out that it was the model for a scheme which his officials had eliminated owing to their blunder in the brochure.)

    So here was the Council Leader publicly disclosing confidential information from one of the developers' submissions, concerning an exclusive feature of that submission; disclosing it, moreover, while announcing the invitation to all interested developers to prepare fresh submissions!

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19. So what a surprise that, come 29 April, Wharfside presented a brand-new model! That was quietly commissioned while their spokesman was announcing that they would not be responding to the official invitation because they saw no need to modify their submission. We knew nothing about the Wharfside model until it appeared as the centre-piece on their stand at the public exhibition held in City Hall from 23 to 25 June – fait accompli! FOI enquiries later revealed that it was presented at the SP&R Committee Meeting on 15 June.

20. Five schemes were displayed by three developers at that exhibition: Wharfside's one, Henry Boot's two and Linacre Land's two – schemes 'B' and 'D', from the first and the second closing date respectively. Throughout, the competition was ostensibly judged solely on design and competition: financial criteria were never mentioned by officials and never queried by the local press – or even, apparently, by councillors.

21. The final decision was taken by the council without any of its members officially meeting any of the short-listed developers, neither at committee nor at party group level. No interviews and no presentations: the officials in charge kept tight control.

22. A fragment from the Minutes of an EOT Meeting (one of the few on record) held on 13 September 2005 consists of only one sub-paragraph, "2 – Matters Arising – (g) Perth City Hall" which reads simply: "J Irons indicated that it was his intention to proceed with negotiations as far as possible in relation to City Hall and then assess the situation to decide the best way to proceed. It was noted that it was essential to keep Leaders advised on progress with this matter."

    It appears, therefore, that the Depute Chief Executive was already in advanced negotiations secretly with Wharfside seven weeks before the council was due to take a decision at its meeting on 2nd November. When were these negotiations initiated and on whose authority?

23. The SP&R Committee report to the fateful Council Meeting on 2nd November advised: "There has also been consultation with local and national representative bodies including Perthshire Chamber of Commerce, Perth Civic Trust, Perth City Partnership, Perth City Centre Action Group, St John's Kirk, Historic Scotland and the Architectural Heritage Society of Scotland." But two of these are imposters, slipped in between the Civic Trust and St. John's Kirk as if they were independent consultees rather than mini-quangos created and monitored by the Council, with no independent existence. A diagram obtained under FOI illustrates the relationships:

    City Centre Action Group is accountable to Perth City Centre Partnership Coordinating Group which is accountable to Perth City Partnership Steering Committee which is accountable to Perth & Kinross Economic Partnership which is notionally accountable to the Council. Simple! No, I did not make this up!

    To pad out the list of genuine consultees with these stooges, simply to inflate apparent support for Wharfside, was clearly a public deception and abuse of the competitive process. For of course their contributions to the consultations were identical, simply rubber-stamping Wharfside's nomination without troubling even to mention any of the other four schemes

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on the short list. So another component of the 'inside story' is the answer to the question: who arranged for their inclusion and who gave the instructions?

The genuine consultees' responses are in stark contrast. (Scarborough Property Holdings plc is the major property development and investment company whose Scottish director co-signed Linacre Land's application forms to guarantee its funding.)

Two of the genuine consultees, Historic Scotland and the Architectural Heritage Society of Scotland, were bound to support Wharfside, irrespective of commercial content or viability with which they were not concerned, but simply because they wanted minimal work on the existing building. But once Wharfside had scrapped its 'winning scheme' as unworkable in August 2006, and substituted another that would have removed most of the listed interior features – yet which likewise proved unworkable and was heavily amended even further by a third scheme in March 2008 – the AHSS Case Officer wrote to me (as a Member myself) advising that: "As far as the AHSS is concerned, the City Hall is now a thing of the past, since the qualities that gave it listed status are to be destroyed." So AHSS's endorsement lasted only as long as Wharfside's original scheme. The other genuine consultees' responses were summarized:

Perthshire Chamber of Commerce "Scarborough Development Group plc and Linacre Land Ltd. 'Option D' proposal does most to satisfy them [i.e. the Chamber's priorities]"

St. John's Kirk "Of the five options presented, the preferred one is Scarborough Property Holdings plc and Linacre Land Ltd. Scheme 'D'".

Perth Civic Trust "The preferred choice is Scarborough Linacre 'B' or Wharfside. Our next preference is for Scarborough Linacre 'D'".

Therefore, even crediting the initial support from HS and AHSS, only a minority of the genuine consultees supported Wharfside. Therefore the two puppets were evidently brought in as makeweights, so that the Council could claim a majority of consultees favoured Wharfside. They didn't miss a trick!

24. The Council published a full-page advertisement in the (since defunct) magazine 'Perth Life', all in the Council's livery and bearing its crest, headlined "Praise for City Hall Consultation" (i.e. praising itself at public expense) which condensed the responses, giving prominence to the puffs from the Perth City Partnership and Perth City Centre Action Group. The Chamber of Commerce's views were confined to two sentences:

    "The Board identified three essential elements – an enhanced experience for the visitor to Perth city centre, improved environmental and aesthetic impact, and minimal adverse retail impact. The Board were also attracted to the proposals by Wharfside Regeneration Limited".

    So, for public consumption, that looked like a straight vote for Wharfside, contradicting the summary in the Officers' Report for the Council Meeting. But under FOI a copy was obtained of the Chamber's complete response, dated 4 August 2005, signed by the President, from

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which – while each of those two sentences was quoted correctly -- the crucial passages both before and after the second sentence had been cunningly excised in order to reverse the original meaning.

Here they are reproduced in full:

"Having identified these three principal requirements, the Board conclude that the Scarborough Development Group plc and Linacre Land Limited Option D does most to satisfy them. It is recognized that the design of this particular proposal is perhaps the most radical and dramatic of those being considered and therefore likely to be the most controversial. It is, however, conceptual at this time and we would certainly be interested to see the design detail if this project is to proceed – for instance, in the finish to the large area of glazed elevation on three sides of the project. The Board were also attracted to the proposals by Wharfside Regeneration Limited. **However, whilst these retain the essential external fabric of the building (and may be less controversial), they do not meet so many of the required conditions detailed above. In particular, the number, size and layout of the smaller retail units causes concern, and the Board would like viability of those, and their impact on the existing retail sector in the area, considered before (and if) this project finally proceeds."**

So the bulk of the Chamber of Commerce's response to the Council's public consultation – comprising the conclusion advocating my company's scheme 'D' and the grave doubts about Wharfside's scheme – was entirely deleted and the remaining fragments stitched together to read as if expressing opinions diametrically opposed to reality. Such flagrant manipulation goes far beyond textual tampering, for by turning the Chamber's stance about-face it changed the outcome of the consultation exercise as publicly advertised. This manipulation alone cries out for a full Inquiry if not legal proceedings.

Who devised it and who approved the layout and on whose instructions was it done? Also, who vetted the drafts and the proofs?

25. The reason for the concern shared by the Chamber of Commerce and Civic Trust was that the Wharfside scheme essentially comprised some thirty small shop units, which was precisely what the City Centre did *not* need. The glaring demand was for no more than three or four large, modern fashion stores. Having realized which way the competition was heading, I wrote personally to the Council's Chief Executive on 22 October 2005 – just two weeks before the decisive Council Meeting – to warn her that:

"If your Council wishes to revitalize the city centre, restore it to its former status relative to its rivals in the hierarchy of shopping destinations, and enjoy the huge economic and social benefits that will follow, then the retail content of the City Hall redevelopment must be confined to no more than three or four large units on two or three floor levels.....The alternative, to fill the building with a lot of small shop units, might be a superficially attractive 'soft option', but the effects would be disastrous."

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But of course my letter was given no consideration. Nothing was going to deter those in charge from their pre-determined outcome. Hence, the catastrophe resulting from Wharfside's appointment was entirely self-inflicted.

26. Having no understanding of town centre retail development, councillors were afraid that a successful redevelopment of City Hall to provide two or three large high-quality stores would undermine their own ambitious proposals for a redevelopment of the old Woolworth store and on Mill Street behind, to be undertaken by KW Properties Ltd. For they imagined that the cake was fixed in size and a slice taken by one project would necessarily be at the expense of the other; whereas what was wanted was a substantial enlargement of the cake, which had shrunk so much in the previous thirty to forty years, as Perth exported increasing volumes of consumer spending power to Dundee, Stirling and Dunfermline, not to mention Inverness and Edinburgh. So there was plenty of scope for both projects. They were not in conflict, but complementary and would have been mutually beneficial, because the Woolworth frontage faced straight down King Edward Street to the front of City Hall on one side and a main entrance to the St. John Centre on the other, creating an axis with a two-way flow – a reciprocal pull between twin poles – and reinforcing the ancient street pattern by forging a strong link between High Street and South Street.

    The Chairman of KW Properties Ltd., an old friend, wholeheartedly agreed, writing to me on 31 August 2005 (two months prior to the Council's decision) deploring the Officials' blinkered "misconception that the two schemes will compete against each other rather than be complementary" and adding that they "would be very keen to work with you" – but even his expert intervention was to no avail.

    So Perth city centre could have enjoyed a massive boost from coordination of both projects, but – those in charge knowing better as always – ended up with neither. Following the collapse of the Woolworth-Mill Street scheme, the need for a high-quality City Hall redevelopment was obviously all the greater. But no such realization would ever shake the complacency of those responsible.

27. With equal complacency, when Wharfside substituted a further revised scheme in August 2006 and was requested by the Planning Office to make a few minor modifications, the developer's architect replied on 7th September 2006: "As you know, Brian [the Planning Department's Case Officer] and I have spent a considerable amount of time and effort over the past fifteen months working up the scheme with officers of the Council and various consultative bodies, to ensure that there is not only a high-quality scheme that is understood by all but also that it has the same look and spirit as our original competition submission. We do not intend to alter anything in the scheme."

    Wharfside was obviously outraged at the Planning Committee's temerity in suggesting any improvements. They evidently knew that he could safely ignore the request, as they seemed to have known that they could safely ignore the invitation in that letter of 10 March the previous year to submit revised proposals. The consequence was, of course, that the Committee duly capitulated and granted approval to the inferior scheme with no public comment or consultation. Once Wharfside realized after eighteen months that its 'Mark II'

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scheme would not work either, 'Mark III' was submitted as a planning amendment in March 2008, showing additional design degradations, and yet again was hastily approved without demur.

28. **Note that the "fifteen months" prior to September 2006, as mentioned by the developer's architect, takes us back to June 2005; which means that they were working on the scheme with Planning Officers some five months before the Council's decision on the outcome of the competition. This could relate to our earlier reference to the Meeting on 13 September 2005 of the Executive Officers Team at which the Deputy Chief Executive reported on his advanced negotiations.**

29. On 15 October 2009, the Head of Legal Services, having again refused to release vital information on Wharfside's financial offer (even though by then the Council had severed relations with them) wrote: "I am of the view that the Council has now dealt with all the queries that you have raised in respect of the appointment of the preferred lessee of Perth City Hall carried out in 2004-05....so do not propose to enter into further correspondence on this matter again." He may have hoped that this was the end, but in vain, for only three weeks later I received a letter dated 6th November from the Council's Head of Shared Support Services (of whom I had not previously heard) advising:

"The FOI Team continued to maintain the exemption under Section 30(c) of the Act, stating that disclosure of the financial proposals would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This was in connection with the future use of City Hall, and the possibility that releasing the details may affect the bargaining position of both the Council and third parties in future negotiations. You argue that the economy has been transformed since 2004-2005 to such an extent that none of the requested information can have a bearing on any decisions the Council may take in the future. It is my opinion that the decision to continue to withhold the redacted information was incorrect."

30. This opened the door to all the financial information that I and our lawyers had been fighting to extract, against the Council's implacable resistance, for more than three years. Of principal concern is para. 5.0 of the SP&RC report to the decisive Council Meeting on 2nd November 05, headed "Detailed Appraisal of Schemes", which reports on the Linacre-Scarborough scheme 'B':

"The company is offering a £1M capital payment and 5% of the actual net rental income (which officers estimate at around £40,000 per annum) or a lesser capital payment with an increased percentage of the actual net rental income. They are also offering £150,000 for environmental improvements in the vicinity of the building and a rent-free art gallery for occupation by a public body....The actual net rental income is likely to be net of void property costs, irrecoverable rents/service charges, promotional costs, etc....."

Now contrast with the report on Wharfside's scheme:

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"Wharfside are offering the Council 10% of the rents received for the units, subject to a minimum annual rent of £30,000. A conservative estimate of the maximum rent achievable by the Council, assuming all the units are let, would be £50,000 per annum."

What is the meaning of a conservative estimate of a maximum, and why quote a maximum for Wharfside's scheme but not for ours?

What use is an "Appraisal" that shows no workings of calculations, gives no indication of rental values per square foot (whether zoned or overall) and no comparables or other market evidence – but merely their opinion to the nearest £10,000 p.a.?

Any analysis would have exposed the grotesque hyperbole of their projection of a net rentroll of (100/10=10) x £50,000 = £500,000 p.a. from the Wharfside scheme – equivalent to say £17,000 p.a. rental income from every one of these very small units, assuming they were all let – because any expert firm of commercial property surveyors, if the Council had not avoided appointing one, would have at least halved that estimate.

Note the ridiculous notion that there is more risk of empty units in a scheme comprising only three or four large stores than in one consisting of thirty small shops – i.e. that the income from ours should be subject to a void allowance but no such deduction applied to Wharfside's, which they could safely assume would be fully let!

Likewise, Wharfside's scheme was somehow immune to "irrecoverable rents/service charges, promotional costs, etc." – whereas in reality, of course, a development containing thirty tenants, many of them sole traders, is infinitely more difficult and expensive to manage than one comprising only three or four blue-chip national retailers.

Wharfside offered no contribution towards environmental improvements and no premium payable on grant of the Lease, but the officers failed to take this capital payment of £1M into account in presenting their comparisons of council revenue; whereas they should have rentalized that sum, i.e. expressed its annual equivalent of say £30,000 p.a. (a modest return in 2005 when interest rates were very much higher than today) which, added to their extremely low base "estimate" for our rentroll of £40,000 p.a., would total £70,000 p.a. – far in excess of the inflated Wharfside estimate.

31. Their report on our scheme 'D' is even more flagrantly distorted:

"The company is proposing capital payment of £1.5M as opposed to the £1M offered for Option 'B' but otherwise their offer for Option 'D' is identical to the Option 'B' offer. Officers consider the estimated rental income to the Council for this scheme is around £30,000 per annum."

This derisory estimate is quite breath-taking! If the gross rentroll were only (100/5 = 20) x £30,000 = £600,000p.a., then, allowing for the £1.5M premium plus the various benefits in kind, the project would not have been viable and therefore could not have been submitted. Also, the officials had excluded altogether the rental income from the restaurant which was planned to occupy the whole of the extra floor in the roof-space and,

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once again, they ignored the rental equivalent of the premium, which @ 3% was worth £45,000 p.a. on top of their abysmal "estimate" of £30,000 to total £75,000 p.a. for the Council, though in fact it would have been much higher still.

The inescapable conclusion is that they could easily have produced their "Detailed Appraisal" without studying the schemes at all, merely putting an arbitrary value to the Council for Wharfside's scheme of £50,000p.a. against £40,000 for my 'B' and £30,000 for my 'D' – what could be simpler?

32. In that final report the Officers emphasized Wharfside's "experience" but specified none. At a presentation to the Civic Trust the only project for which they claimed credit was the conversion of the former Corn Exchange in Leeds; but strangely that was not mentioned in their CV whereas it was cited in the CV of their architect, John Lyall, which might suggest that it was done on behalf of a different client. Predictably, no reference whatever was made to my own experience (see professional qualifications on front cover) of over forty years specializing in development of shopping centres, including several won in local authority competitions, such as the original Eastgate Centre in Inverness, won in open competition conducted by the former Highland Regional Council and completed by Vivian Linacre Estates (Inverness) Ltd., and others in partnership with Renfrew and Midlothian District Councils as well as in England.

33. The crudest and most damning of all these manipulations was revealed, however, only when persistent FOI enquiries at last yielded Minutes of the CARG Meeting on 16 August 2005, referring to our scheme 'D'. This concluded**:**

"The projected income would be in the region of £80,000 per annum." Excluding the annual equivalent of the capital payments, that was actually quite a reasonable estimate, but evidently to be disclosed only to that meeting. In contrast, for the purposes of the final report to the full Council Meeting eleven weeks later, which was to decide the outcome of the competition, that estimate was slashed from £80,000 to £30,000. Of course, no explanation was given: how could any explanation possibly be given of such an outrage? Short of a full, independent Inquiry, only direction from the appropriate government minister will reveal who was responsible and why.

The enormous contrast between those two "estimates" of council revenue accruing from our scheme 'D' is matched by the contrast between the "conservative estimate" of council revenue to accrue from Wharfside's proposals and the actual outcome – a total loss. Yet the council remained imbued with self-satisfaction, despite all those wasted years, despite the continuing loss of potential use of the building and potential social and economic benefits from it, despite the huge abortive costs to all concerned and the incalculable damage done to Perth as a shopping destination and as a place to do business – and despite the many patent irregularities relating to the conduct of the competition and its aftermath. But did not those responsible sometimes worry that eventually it would all have to come out?

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