

Questions for Councillors August 2016

This questionnaire has been designed to gather evidence about Councillors' involvement and knowledge of the Edinburgh Trams Project. The questionnaire contains 12 questions and, for guidance, a list of issues that may assist you in answering these questions. Please ignore any questions and issues which you feel do not apply to you, for example, questions that relate to a period when you were not serving as a Councillor of the City of Edinburgh Council.

Your details

In order for the evidence to be analysed and taken forward by the Inquiry we require some information about you.

As you are responding as a Councillor (or ex-Councillor) your name and ward will be published, but your postal address, postcode, telephone number and email address will not be published.

Ward	Forth
Period that you were a Councillor	November 2008 to present time
Surname	DAY
Forename	Cammy
Postal Address	[REDACTED]
Postcode	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]

What will happen to your response

Your answers will be considered by the Inquiry and will form part of the record of the Inquiry

All of the written evidence, unless deemed offensive or inappropriate, which is submitted through this process will also be published on the Inquiry's website at some point, either during the Inquiry proceedings or when the Inquiry Report is issued.

The Inquiry team may wish to explore the evidence you have provided in more detail. They may wish to contact you following completion of this questionnaire to take a

statement from you, and you may be invited to give evidence at an oral hearing. However, not everyone who submits written evidence at this stage will be invited to provide more information, and participation at any oral hearings would be by invitation only.

Questions

Please refer to the guidance to assist you in answering these questions.

1. Please provide an overview of your duties and responsibilities as a Councillor? Please also provide an overview of any duties and responsibilities you had in relation to the Edinburgh Trams Project.

I was elected as a Scottish Labour Party Councillor to represent the Forth Ward on 7 November 2008.

I am currently a member of the following committees:
Education, Children and Families (Convener)
Sub-Committee on Standards for Children
Committee on Pupil and Student Support
Corporate Policy and Strategy Committee
Edinburgh Licensing Board

Previously I have been a member of the Transport, Infrastructure and Environment Committee (2009-2011), Health, Social Care and Housing Committee (2011-2016) and the Police Board (2012/13).

I am currently a Board member on the following outside bodies:
One City Ltd
John Watson Trust
WEA Scotland

Previously I was also a Board member of Lothian Homes Trust (2012-2016) and Lifecare (2012-2016).

I have never been a member of the Tram Project Board, TIE Ltd or TEL Ltd.

As a Councillor I have had briefings on the future of the tram project prior to Full Council meetings.

2. Do you have any comments on the trams project during the initial proposals stage (i.e. between 2000 and 2006)?

N/A I was not elected to the CEC prior to November 2008

3. Do you have any comments on the trams project in relation to events between May 2007 and the signing of the infrastructure contract in May 2008?

N/A I was not elected to the CEC prior to November 2008

4. Do you have any comments on events after May 2008, including, in particular, in relation to the dispute that arose with the infrastructure consortium?

I became a Councillor in November 2008. From that time on regular reports were submitted to the full Council. There is public access to all of these reports and to the minutes of each of these meetings. My understanding of each of the points raised in this questionnaire was based on the content of these reports and on briefings to the Labour Group. All decisions on the tram project were subject to the Labour Group whip.

In answer to your specific points:

- 12 March 2009 – My understanding of the nature of the dispute between tie and BSC and of the dispute on track laying works was based on the content of the report to the Council on this date.
- 30 April 2009 - A Council report advised that the Dispute Resolution Process had been initiated. The Labour Group noted the deterioration of the project and expressed their serious political concerns over its fiscal and political management.
- 24 June 2010 - An update report which covered the dispute was considered. This advised that a number of problems had arisen with the lump sum, fixed price Agreement with BSC, and that tie had accepted that some work required additional payments. The Labour Group submitted an amendment which noted that all political parties had supported the original plans which were predicated on tram line 1a running from the airport to the seaport, noted that the Audit Scotland report carried out in June 2007 concluded that “arrangements in place to manage the project appear sound” (and that since then the project appeared to have totally unravelled), proposed that the contractual negotiations between tie and Bilfinger Berger conclude as a matter of urgency and that any report on the outcome of those negotiations should include a refreshed Tram Business Case.
- 16 December 2010 - The refreshed Business Case was considered. The Labour Group amendment expressed regret that the Business Case only covered the Airport to St Andrew Square and regretted the failure of the Liberal Democrat/SNP Administration. This amendment was supported by all political groups except the SNP Group. The Liberal Democrats therefore supported an amendment which explicitly criticised them.

5. Do you have any comments in relation to the settlement agreement reached at the Mar Hall mediation in March 2011, and finalised later that year?

- 18 November 2010 - Council was advised of the intention to go forward with mediation by way of an emergency motion which instructed the Chief Executive to make preparations with tie. The Labour Group supported a proposal instructing the Chief Executive to report back on the broad terms of any agreement on the mediation process prior to any sign-up but this proposal was defeated. The emergency motion had not been on the Council agenda but had been submitted at a later stage, meaning opposition groups had limited time to consider its content/implications.
- 16 May 2011 - My understanding of the initial key outcomes/changes from the Mar Hall mediation was based on the report to the Special Council meeting, which had been called specifically for this purpose. My understanding from

the report was that negotiations had been successful enough to allow work to continue. Council noted the outcome and a number of further instructions were given to the Chief Executive. One of these instructions was that future reports should be in the public domain in plenty of time. There was concern that papers were being issued too late to allow proper consideration.

- 30 June 2011 – Four options for the future of the project were presented, all of which would have resulted in extra expenditure. At this meeting the Liberal Democrats proposed the option of the Airport to St Andrew Square/York Place, subject to funding. The Labour Group view was that no commitment to additional Council funding be entered into, that the proposal with least construction risk was to build from Airport to Haymarket and that consideration would be given to extend to York Place once more information about risks and funding became available. The SNP Group and the other opposition groups moved alternative proposals. On a final vote between the Liberal Democrat and Labour proposals, the Liberal Democrat proposal gained the most votes and was therefore carried.
- 25 August 2011 - The Labour Group noted that the St Andrew Square/York Place option had not been sufficiently de-risked and once again proposed that the proposal with the least risk should be agreed and that the tram line should be built from the Airport to Haymarket. On this occasion, the opposition groups supported the Labour Group proposal in the final vote and, because the Liberal Democrats didn't have the support of their Coalition partners, it was approved. According to the Council's Standing Orders at the time this decision should not have been changed for 12 months unless there was a material change of circumstances.
- 2 September 2011 - A Special Council meeting was called at which the Lord Provost ruled that there had been a material change of circumstances to allow the matter to be reconsidered. The Council was advised of the likely consequences as a result of the decision to stop the tram line at Haymarket, including the reaction of Infracore and of the Scottish Government. The Labour Group viewed this decision as "a belated and aggressive tactic which forced the Council into an intolerable level of risk and financial commitment". However, the Group accepted the Scottish Government's ultimatum that the tram line go to St Andrew Square but remained greatly concerned that this would further increase the Council's overall debt and lead to an ongoing reduction in services.

6. Do you have any comments on the project management or governance of the trams project?

During 2007-2012 the Labour Group expressed their disquiet on a number of occasions in Council meetings on the management and governance of the project, particularly in relation to Transport Scotland and the effect of the split within the ruling Coalition.

As at March 2007 (when the Labour Group was in Administration) some £44m had been expended on the Tram Project and two full Parliamentary bills had received formal approval and were on the statute book. Expenditure on the Tram Project by 30 June 2011 (when there was a Lib Dem/SNP Coalition) stood at £460m – some £100m per year had been spent from 2007-2011 with no sign of trams running on the streets of Edinburgh

7. Do you have any comments on the reporting of information relating to the trams project to Councillors?

Reports to the Council on the tram project were the responsibility of the Chief Executive and the Directors of City Development and Finance, depending on the content.

Tram reports were submitted to regular full Council meetings, and on occasion to Policy and Strategy and Transport Committee meetings, where other items were also discussed. On two occasions special Council meetings were called which solely related to the tram project. Full Council meetings do not lend themselves to questions and discussion and are focused on allowing each political group to set out their positions. Regular briefings were held prior to meetings of the Council which involved relevant officers. Decisions taken in relation to the tram project were whipped decisions within the Labour Group. Any briefings given separately to the Labour Group Leader and relevant Spokespersons were discussed at the regular meetings of the Labour Group Executive and the Labour Group.

On a number of occasions the Labour Group expressed its concern that papers had been submitted too late to allow full consideration. These are detailed in the paragraphs above.

8. Which body or organisation do you consider was ultimately responsible for ensuring that the trams project was delivered on time and within budget?

The SNP/Liberal council administration and Transport Scotland.

9. What do you consider were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?

Failures of Transport Scotland to play a key role and the Scottish Government for failing to support this large infrastructure project.

Also, the fact that the Coalition in Administration at the time (Lib Dem/SNP) held such opposing views on the project. To go into Coalition together when agreement could not be reached on such a large, important project was irresponsible. The 2011 Audit Scotland report stated "Elected members of the current administration at CEC hold differing views of the Edinburgh trams project, and considerable debate is generated at council meetings when the subject is discussed. This has made it **more difficult for CEC as a whole to present a unified commitment** to the project."

Some of the votes recorded above highlight this issue – at the meeting on 30 June 2011, the Liberal Democrat motion was approved with 16 votes (there were 56 members present at that meeting and only 16 voted for the proposal by the Liberal Democrats). At the meeting on 16 December 2010 the Liberal Democrat Group withdrew their motion and voted with a Labour Group amendment which condemned them for not bringing forward the earlier agreed Acts of Council.

At the Council meeting on 30 June 2011, the Labour Group moved no confidence in the Lib Dem/SNP Administration and called for the Council Leader and Deputy Leader to consider their positions and resign with immediate effect.

10. Do you have any comments on how these failures might have been avoided?

The formation of a Liberal Democrat/SNP Coalition when they held opposing views on such a large project was a mistake. This resulted in the Liberal Democrat Group requiring the support of opposition groups to win votes. However there was little attempt made to ensure this happened. As already stated, the Scottish Government's removal of Transport Scotland from the project was also a mistake.

11. What do you consider are the main consequences of the failure to deliver the trams project in the time, within the budget and to the extent projected?

Additional funding being required for less tram network and, unfortunately, reputational damage to the Council.

12. Are there any other comments you would like to make that fall within the Inquiry's Terms of Reference and which have not already been covered in your answers to the above questions? (The Terms of Reference can be found on the [Inquiry's website](#))

No

Guidance: **Possible issues to consider in your response**

Your duties and responsibilities

1. It would be helpful if you could set out the dates you served as a Councillor, the Ward you represented, the political party (if any) you were a member of and any positions in CEC you held (e.g. membership of committees, Group Leader etc)?
2. Were you a member of the Tram Project Board, TIE Ltd or TEL Ltd? If so, please provide dates.
3. Do you consider that you, or other Councillors, had any relevant qualifications or experience that assisted when taking decisions relating to the Edinburgh Trams Project? Did you receive any training or guidance in that regard? Do you consider that any such training and guidance would have been helpful? If you were given some training was it sufficient to enable you to fully consider the issues relating to the trams project that were brought before the Council? If not what was missing?
4. Did the fact that not all members/political parties supported the trams project cause any problems or difficulties (and, if so, in what way)?

Initial proposals (2000 to 2006)

5. What were your views on the creation of TIE to deliver the various projects forming part of the Council's New Transport Initiative, including the Edinburgh Trams Project? What was your understanding of how CEC would, and did, exercise control over TIE? Did you have any concerns in relation to these matters?
6. Various draft Business Cases and STAG (Scottish Transport Appraisal Guidance) appraisals were produced between 2002 and 2006. Did you have any views on these documents including, for example, the various estimates for the project and the allowance for risk?
7. The Council decided in January 2006 to build the tram network in phases, with a first phase to be built from Edinburgh Airport to Leith Waterfront. What was your understanding of the reason for that decision? What were your views?
8. What was your understanding of the procurement strategy for the trams project including, in particular, the aims of the procurement strategy, the extent to which design and utility diversions would be complete before the infrastructure works commenced and the extent to which the infrastructure contract would be a fixed price contract?

Events between May 2007 and May 2008

9. Following local government elections in May 2007 the administration of the Council changed from a Labour administration to a Liberal Democrat/SNP coalition. Do you consider that that had any effect on the trams project (and, if so, in what way)?
10. Following national elections in May 2007, and a vote in the Scottish Parliament, the SNP government announced that funding from Transport Scotland for the trams project would be capped at £500m. What was your awareness and understanding of the extent to which the capping of the grant from central government represented an increased risk for CEC? What was your understanding of the steps taken by CEC following the capping of the grant to address, quantify and mitigate any increased risk?
11. The Council's approval was sought in October and December 2007 for the Final Business Case for the trams project. In general, what were your views on the Final Business Case?
12. What was your understanding in late 2007 of the extent to which design and utility works were complete? What was your understanding of any difficulties that could arise from incomplete design and utility diversion works and how any such difficulties would be addressed?
13. What was your understanding in late 2007 of the extent to which the infrastructure contract was a fixed price contract? What was the basis of your understanding? How important to you was it that the infrastructure contract was a fixed price contract? To what extent, if at all, did your understanding in that regard influence your vote on whether the trams project should proceed?
14. What was your understanding of the allowance for risk made by TIE/CEC (including the amount of the risk allowance and the main risks allowed for)?
15. In early 2008 there were various increases in the price of the infrastructure contract. What was your understanding of the reasons for these increases?
16. The infrastructure contract was signed in May 2008. What was your understanding at that time of (i) which party bore the risks arising from any incomplete design and utility diversion works, (ii) the extent to which the infrastructure contract was a fixed price contract and (iii) the extent to which the aims of the procurement strategy had been met?

The dispute (May 2008 onwards)

17. In general, what information were you given as to the progress made with the design, utility diversion and infrastructure works after May 2008? Were you given progress reports or revised estimates of risk?
18. When, and how, did you first become aware of the dispute between TIE and the infrastructure consortium, BSC? What was your understanding of the nature of the dispute and the reason(s) for the dispute? What were your views on the dispute, including which party or parties were primarily responsible for the dispute arising? What was the basis of your understanding of these

matters? Did your views on these matters change at any time (and, if so, when and why)?

19. A dispute arose in respect of track laying works due to commence at Princes Street in February 2009. What were you told about the Princes Street dispute and the agreement to resolve that dispute? What were your views?
20. What was your understanding of, and views on, TIE's strategy to resolve the dispute? To what extent, if at all, did you consider that that strategy had been approved by the Council?
21. What were you told about the use of the contract dispute resolution procedures including, in particular, the referral of certain of the disputes to adjudication? What were you told about the outcome of these procedures including, in particular whether the outcomes were more favourable to TIE or to BSC? What was the basis of your understanding of these matters?
22. What were your views on the letters sent by BSC directly to Council members in 2010?
23. In late 2010 the Council were provided with a refreshed Business Case, which recommended building a line from the Airport to St Andrew Square. What were your views on that proposal?
24. At a Council meeting in December 2010 an amendment was passed to request a review of the updated Business Case by a specialist public transport company with no previous involvement with the trams project. What was your understanding as to why members requested that review?

The Mar Hall mediation in March 2011

25. What were your views on the proposals for mediation that took place at Mar Hall in March 2011? To what extent, if at all, were Councillors consulted on, or had an input into, CEC/TIE's strategy for the mediation?
26. What were you told about the outcome of the mediation? What were your views?
27. What did you understand to be the main changes brought about as a result of the mediation?
28. Do you consider that you were provided with adequate briefing in relation to the mediation, both before and after the mediation?
29. What was your understanding of, and views on, the Council's decision in late 2011 to build a line from the Airport to Haymarket before, shortly afterwards, voting to build a line from the Airport to St Andrew Square/York Place?
30. What were your views on the settlement agreement reached in September 2011?

Project management and governance

31. What did you understand to be the respective roles and responsibilities of CEC, TIE, TEL, the Tram Project Board and Transport Scotland in relation to the trams project?
32. Do you have any views on whether members and officers of CEC should have been more actively involved in the project? Did you hold these views at the time or later? Do you consider that members and officers of CEC exercised effective oversight and control over the trams project (and, if not, why not)?
33. Did you have any concerns at any time in relation to the performance of any of the bodies involved in the project management or governance of the trams project, or the senior personnel in any of these bodies? If so, what were your concerns? Did you report or discuss any such concerns with anyone (and, if so, with whom and what was their response)?

Reporting

34. Which official or officials in CEC were responsible for advising Councillors of developments relating to the trams project, including explaining the risks and liabilities of the Council arising from the project?
35. Were issues relating to the project discussed separately or in the course of other Council business? Do you consider that there was sufficient time at Council meetings to discuss and consider the project? Did you have a free vote in relation to matters relating to the trams project or were you required or encouraged to vote along party lines?
36. How were you, as a Councillor, kept informed of developments relating to the trams project?
37. Did other Council members (including the Council Leader, the Finance and Transport Convenors and Group Leaders) receive separate briefings on the project? If so, did they, in turn, keep you informed?
38. What was your understanding about the level of information that you required before taking a decision in respect of the trams project?
39. In general, do you consider, that Council members were provided with sufficient information in relation to the trams project? Do you consider that members were advised in sufficient detail of developments in relation to the trams project? Were members provided with any guidance (eg on financial and or technical matters) to assist them in coming to decisions? Was information and advice provided in a clear and intelligible form? Did you have the opportunity to request further information, or seek further guidance, advice or clarification and, if so, by what means? Did you ever make such a request and, if so, what was the response? Do you consider that the information and advice provided to members was accurate? Did you have any concerns in relation to these matters? If so, did you express these concerns to others (and what was their response)?

40. To what extent did concerns over commercial confidentiality affect the information provided to and from Council members? What steps were taken to address any such concerns? Do you consider that concerns in relation to commercial confidentiality adversely affected Councillors' understanding of the project (including the problems that arose) and their ability to take informed decisions?
41. What was your understanding in relation to the extent to which information provided to Council members derived from TIE and the extent to which it was produced or checked by Council officers?
42. How did you report matters relating to the trams project to your constituents? Did your constituents report concerns relating to the trams project to you? If so, how and what steps did you take to address your constituents' concerns?
43. To what extent, if at all, was your understanding of, and views on, the trams project informed by what was reported in the media?

Cost overrun and consequences

44. When, and how, did you first become aware that there was likely to be a significant cost overrun, including that the total cost of the project was likely to exceed £545m? What did you understand to be the main reason(s) for that overrun?
45. What was your understanding following the Mar Hall mediation as to how the additional contribution by the Council would be financed, including the different financing options? What was your understanding about the effect that was likely to have on the Council's finances and expenditure, including on services and capital projects etc?
46. Do you consider that Councillors were kept properly informed of the risk of a cost overrun throughout the project, including the likely amount of the overrun?
47. What do you consider to be the main consequences of the failure to deliver the trams project in the time, within the budget and to the extent projected, both on your constituents and more generally?
48. To what extent did the shortened line result in the project failing to meet the objectives and benefits set out in the Final Business Case?
49. What was the effect of the additional borrowing by CEC for the trams project on the Council's finances and expenditure, including on services and capital projects etc.?