

Questionnaire to Witness – Margaret CHAPMAN

The following matters are covered in this Questionnaire:

- Introduction
- Reporting
- Events in 2007 to May 2008
- Events between May 2008 and December 2008
- Events in 2009 and the Princes Street Agreement
- Events in 2010
- 2011 to completion
- Project Management and Governance
- Public relations and Communications
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- Final Comments

Introduction

1.	<p>a) By way of introduction, it would be helpful if you could set out the dates you served as a Councillor, the Ward you represented, the political party you were a member of and any positions in CEC you held (e.g. membership of committees etc.)?</p> <p>Elected on 3rd May 2007, resigned on 21st July 2015 Represented the Leith Walk Ward on behalf of the Scottish Green Party Committee membership:</p> <ul style="list-style-type: none"> - Policy and Strategy Committee (May 2012-July 2015) - Economic Development Committee (May 2007-May 2012) - Health, Social Care and Housing Committee (Feb 2008-July 2015) - Finance and Resources Committee (May 2007-May 2012) - Leith Neighbourhood Partnership (May 2007-July 2015) - Pensions and Trusts Committee (May 2007-May 2012) - Petitions Committee, Convener (May 2012-July 2015) - Personnel Appeals and Recruitment Committees <p>b) As a Councillor, what duties and responsibilities did you have in relation to the Edinburgh Tram Project?</p> <p>All councillors (although probably more specifically those in administration) have duties and responsibilities to ensure Council projects (such as the Tram Project) are properly managed and monitored, and that public funds are appropriately managed. As a councillor for Leith Walk ward, I had a specific interest in the Tram Project given the impact it would have on my constituents. I had a duty to them to ensure their concerns were heard and answered. I received papers on behalf of the Green Group (for information</p>
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only) of the Tram Project Board meetings, and deputised (once, as far as I recall) for Steve Burgess at the Tram sub-committee.

c) Do you consider that you had any relevant qualifications or experience that assisted you when taking decisions relating to the Edinburgh Tram Project? Did you receive any training or guidance in that regard? Do you consider that any such training and guidance would have been helpful?

I had no relevant qualifications or experience (such as transport management, legal training, financial risk management, etc.) in relation to the ETP.

All councillors were offered briefings on the ETP as it progressed. These were useful, but the briefings did not highlight areas where further questioning would have helped Councillors to fulfil their governance role, or what specific information it would have been good to seek. I would have valued a clear outline of the legal processes (bespoke contracts vs. standard contracts, for example).

d) Which members and/or political groups were the main proponents of the tram project? Which members and/or political groups were opposed to the tram project? Did the fact that not all members/political parties supported the tram project cause any problems or difficulties (and, if so, in what way)?

The Scottish Greens always supported the principle of the ETP: trams playing a vital part of a properly integrated public transport system that delivered reliable, efficient and clean transport capable of carrying greater numbers of passengers than buses provide.

The Labour, Conservative and Liberal Democrat groups also supported the project. The SNP were opposed to the project initially.

Support and opposition for such a project along party lines was to be expected. Perhaps the main issue that arose from this is that it made the debate very much polarised: people felt they had to be either firmly in favour or firmly opposed to the project. This meant that nuanced debate, perhaps especially in the earlier discussions, was not really possible, but it possibly prevented some supportive yet critical discussions around costs, timings, etc. to be fully explored.

Reporting

2.	a) Which official or officials in CEC were responsible for advising Councillors of developments relating to the tram project, including explaining the risks and liabilities of the Council arising from the project?
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Over the course of the tram project and my time as a councillor, several officials were involved:

Tom Aitchison
Andrew Holmes
Donald McGougan
Jim Inch
Dave Anderson
Alan Coyle
Leanne Maberley (tram briefings)
Marshall Poulton
Gill Lindsay
Nick Smith
Sue Bruce

- b) How were you, as a Councillor, kept informed of developments relating to the tram project? 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?

As one of only three councillors in the Green Group, I received papers for the Tram Project Board meetings, but was unable to attend all of them because of the breadth of work required to be covered across a group of three councillors. There were also some briefing meetings arranged for Leith Walk councillors. Update reports were received by Full Council meetings too, as well as the Transport, Infrastructure and Environment committee, which was attended by my colleague Steve Burgess. He would report key issues to the group as appropriate.

There was some scope for discussion at Council or committee meetings, but, in hindsight, it would have been useful to have the opportunity to explore some issues in more detail, at discussion events, rather than business meetings.

- c) What was your understanding about the level of information that you required before taking decisions in respect of the tram project?

This varied at different decision times. I think enough information was provided to allow us to understand some of the issues as they arose (such as the delays experienced during the Utilities diversion work), but I am not sure that enough information was provided to allow Councillors to effectively interrogate the process, or what information was lacking, at some decision points. My focus was primarily about timings of works that affected the people of Leith Walk.

- d) In general, do you consider that Council members were provided with a sufficient level of information in relation to the tram project? Were members provided with any guidance (e.g. on financial and/or on technical matters) to assist them in coming to decisions? Was information and advice provided in a clear and intelligible form that you understood? Did

you ever have any concerns about the accuracy of information and advice provided to members?

From what I remember, it appeared that there was quite a lot of information available to Councillors about the ETP at different times during my time as a councillor. As indicated above, however, it was not always the case that enough information was provided to allow proper governance, or what information, if any, was missing. Proper scrutiny of the information was probably not supported in the way it should have been, for several reasons (not least a divided council administration from 2007-2012 without any experience of managing/overseeing such a project). Like many of my councillor colleagues, without any reason not to, we took on trust the information we were provided.

I know that some of my colleagues, and certainly citizens in Leith Walk and elsewhere, were frustrated that their questions went unanswered by council officials, or that information provided was not actually relevant. There were also some officials (although I cannot remember which ones) who were unwilling to be challenged by members of the public about the ETP. There was very much the sense that we should just trust the professionals to get on with the job.

e) Did you have the opportunity to complain about the information provided, request further information, or seek further guidance, advice or clarification and, if so, by what means?

As a group, the Greens asked for additional information and further clarification at several points during my time as a councillor – usually by email, but sometimes by telephone or in person. However, I no longer have the details of any of these communications.

f) What was your understanding in relation to the extent to which information relating to the tram project in reports to Council derived from TIE, and the extent to which it was produced or checked by Council officers? Did you have any concerns in that regard?

The provenance of information and checking processes were entirely opaque. I do not remember being clear what came from TIE and what came from council officers. But I do remember being repeatedly told by officers to trust the professionals. As it became clear things were not actually going as well as expected, I did have concerns about the veracity of information, but was repeatedly assured by officers that things were under control.

g) To what extent was the information provided to members hampered by the need for confidentiality and what steps were taken to address that? In a paper noted below, for example [CEC00013290] (final paragraph), it was stated that “*open decision making whilst necessary politically may pre-warn INFRACO*”. Was there a fundamental tension between the (democratic) need for “open decision making” and the (commercial) need not to disclose TIE/CEC’s position to BSC? Was that tension ever

satisfactorily resolved?

Yes, there was tension between proper political oversight and scrutiny, and commercial confidentiality. This tension was never fully resolved.

h) Did Group Leaders and convenors of the various Tram Project Boards and committees receive separate briefings on the project? If so, did they, in turn, keep other members informed?

Yes, from what I remember, our Group Leader did receive some information which he passed on to the group in our group meetings.

i) Did the political parties receive separate briefings and, if so, why?

From memory, we did receive briefings as a group about the project. This was not unusual across different aspects of council activities – officers would brief groups individually to ensure specific group positions remained politically confidential.

j) Were Councillors given a free vote in relation to the tram project or were they encouraged/required to vote along party lines? If the latter, did that result in the project not being as fully scrutinised as it might otherwise have been, for example, by “silencing” Councillors who may have had concerns about the project, or whose constituents may have raised concerns? How ought Councillors to have resolved any tensions or difficulties in that regard?

I can only speak for the Green Group – we were not ‘whipped’ as a group, but did vote together. This was not a silencing process, however – we were able to raise concerns and issues within the group and resolve them to reach a consensus. This sometimes meant we submitted amendments or addenda to motions at Council meetings, to ensure our position was clear.

k) How did you report matters relating to the tram project to your constituents? How did your constituents report concerns relating to the tram project to you? What steps did you take to address your constituents’ concerns?

The tram project was discussed at community council meetings, at Neighbourhood Partnership meetings, and other community meetings or events. I relayed information to these meetings as appropriate, and took questions from constituents. If I did not know the answers at the time, I would go back to officers to try and find out, and report back in person or by email. I also raised constituents’ concerns with officials or with the Transport Convener.

l) To what extent, if at all, was your understanding of, and views on, the tram project informed by what was reported in the media?

Very little – it was more informed by officers’ information

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Events in 2007 to May 2008

3. You were elected as Councillor at the local government election on 3 May 2007. This election changed the administration of the City of Edinburgh Council from a Labour administration to a Liberal Democrat/SNP coalition.

a) What were your initial impressions of the Tram Project when you became a Councillor? Did you have any concerns?

I was supportive of the Tram Project, and excited by the prospect of Scotland's capital city undertaking such an infrastructure project. I had significant concerns about how the works would affect the residents and businesses of my ward.

The SNP forming part of the coalition did concern me, given their very vocal opposition to the trams before the election. I was also concerned, following the election of an SNP government in Holyrood, that there would be little, if any support, from the Scottish Government for the project.

b) Did any tension or difficulties arise from the fact that the SNP Councillors at local level were part of an administration that supported the tram project while the SNP national administration did not? In the event, did SNP Councillors support the project?

It was obvious that the LibDem/SNP administration was split over the tram project, and it was clear that this was going to be an ongoing political football for the duration of the project. The lack of support from the Scottish Government meant that opportunities for proper scrutiny of the project were limited: the debate was polarised between pro and anti tram discussions, rather than proper scrutiny and critically supporting questioning.

4. Following the formation of an SNP administration in the May 2007 election, and a debate and vote in the Scottish Parliament on the future of the Edinburgh trams and EARL projects, the Scottish Parliament in June 2007 called on the SNP administration to proceed with the Edinburgh trams project within the £500 million budget limit set by the previous administration. Accordingly, the grant for the trams project from Transport Scotland was capped at £500 million (see the letter dated 2 August 2007 from Malcolm Reed of TS to Tom Aitchison **[CEC01666269]**).

A Highlight Report to the Chief Executive's Internal Planning Group (IPG) on 30 August 2007 noted that the capping of the grant from TS changed the risk profile for the Council and sought guidance on the procurement of resources necessary to provide a risk assessment and analysis of the INFRACO contract for the Council within the available timescales **[CEC01566861]** (para 4.1).

Around that time, as Finance Convenor, Councillor Gordon Mackenzie

	<p>sought information on a number of matters, including what contingency plan needed to be in place in case of a cost overrun [CEC01556572].</p> <p>a) What steps were taken by CEC following the changed risk profile to protect its interests including, in particular, to address, quantify and mitigate any increased risk and to ensure that Councillors understood the risks and liabilities arising from the tram project?</p> <p>The information I received on steps taken on this was what was provided to Councillors for council meetings and decisions at the time.</p> <p>b) What, if any, contingency plans were put in place by the Council at that time in case of a cost overrun?</p> <p>As above, this information was included in the papers received by all councillors for council meetings. I would refer to those reports.</p>
5.	<p>You attended a meeting of the Council on 23 August 2007 [CEC01891408] at which Councillors were asked:</p> <p>1) <i>To note the contents of the report by the Chief Executive with respect to the revised funding arrangements for the tram project and the implications for the transfer of risk to the Council.</i></p> <p>2) <i>To note that a revised governance structure was required for the project and for the relationships between the various companies and agencies promoting it.</i></p> <p>3) <i>To instruct and delegate to the Council Solicitor to conclude Operating Agreements with tie and TEL.</i></p> <p>4) <i>To note that the roles of the Executive Chairman of TIE and Chief Executive of TEL were being reviewed with a view to clarifying the contracts and responsibilities of each post.</i></p> <p>5) <i>To establish a subcommittee of the Transport, Infrastructure and Environment Committee with a remit to review and oversee decisions with respect to the Tram Project.</i></p> <p>6) <i>To note that the Chief Executive would report further to Council in September on a detailed scheme of delegation of powers to the various parties mentioned and in the meantime to delegate responsibility to the Chief Executive for any decisions that may require to be taken."</i></p> <p>a) What risk did you understand to have transferred to the Council at that stage?</p> <p>That the Council would be liable for costs above £500million</p>

	<p>b) What was your understanding of why it was thought to be necessary to revise governance arrangements? What changes to the governance structure were made in the second half of 2007 and the first half of 2008? Were these changes successful and, if so, why?</p> <p>From what I remember, this was to improve scrutiny and political oversight. With hindsight, it is clear that these changes did not perhaps deliver the improved governance anticipated. The problem was probably not the structure of governance per se, but the ability of the relatively inexperienced Council administration to effectively manage such a substantial and complex project.</p> <p>c) What was your understanding of why it was thought to be necessary to establish a subcommittee of the Transport, Infrastructure and Environment Committee, with a remit to oversee decisions with respect to the Tram Project? What was your involvement, if any, with this committee?</p> <p>The subcommittee would meet more regularly and receive information more frequently than the main Transport, Infrastructure and Environment Committee. Steve Burgess was the Green representative on this subcommittee, and I substituted for him on occasion.</p>
6.	<p>On 25 October 2007 TIE sought the Council's approval for the Final Business Case, version 1, in respect of phase 1a (Airport to Leith Waterfront) [CEC02083538]. The report advised that the estimated capital cost of phase 1a was £498m (which included a risk allowance of £49m) and that there was a 90% chance that the final cost of phase 1a would come in below the risk adjusted level. Fixed price and contract details would be reported to the Council in December 2007 before contract close. The full FBCv1 is [CEC01649235]. The report also advised that a separate report was being prepared for the Council to set out the result of the tender evaluation and give recommendations as to the preferred bidder for each contract.</p> <p>At the meeting of the Council on 25 October 2007, members appear to have been given a presentation by Andrew Holmes, Willie Gallagher and Neil Renilson [CEC02083536].</p> <p>a) What was your understanding of how and by whom the estimated capital cost for phase 1a of £498m had been arrived at?</p> <p>My recollection is that this figure was a product of further working up of the Draft Business Case (agreed before I was elected as a Councillor), taking account the input of Audit Scotland and other work undertaken since December 2006. The people responsible, as far as I was aware, were council officers (led by Andrew Holmes) and those at tie Limited (with Willie Gallagher taking a lead), with input from those at TEL (Neil Renilson).</p>

	<p>b) What were your views, in general, on the Final Business Case? Did you have any concerns at that stage (and, if so, what were they and how were they addressed)?</p> <p>I shared some of the concerns raised in deputations earlier in the meeting (like those raised by Spokes about cycle integration). These were acknowledged in a clause of what was agreed at the meeting. The information about costings and timings we were given were convincing at the time, and included contingency of nearly 10%.</p> <p>c) What recollection, if any, do you have of the presentation noted above?</p> <p>I remember that this presentation took place. The whole issue was politically contested, as indicated above. My recollection is that the discussion focused on this political contestation, rather than the substantive issues.</p> <p>d) Approval was sought for the Final Business Case at a stage when considerable expense had already been incurred on the project? Did that give rise to any issues? Did that make it more likely that approval would be given with a view to avoiding “wasted expenditure”?</p> <p>It did strike me as unusual to only agree the FBC after significant expenditure had already been incurred. But the reports and information provided gave assurances that things were on track.</p> <p>e) Was a report setting out the result of the tender evaluation provided to the council? What was your understanding of why TIE chose BBS as the preferred bidder?</p> <p>The information about preferred and reserve bidders was included in the reports and supplementary reports submitted to the Council at this meeting. Those responsible for management of the project (CEC officers, tie Ltd and TEL) assured us that the bidder selection process took into account a range of factors, including costs, previous experience in such projects, ability to integrate the different parts of the project, and so on.</p>
7.	<p>Prior to the report to the Council in December 2007, by e-mail dated 3 December 2007 [CEC01397538], Alan Coyle sent a Briefing Note [CEC01397539] to Andrew Holmes and Donald McGougan setting out a number of concerns in relation to the tram project including the report to Council seeking approval of the Final Business Case.</p> <p>a) Were members of the Council aware of the concerns set out in the Briefing Note? If not, ought they to have been made aware of these concerns? What do you consider that you (or members) would have done in response to these concerns?</p> <p>The concerns were alluded to in the report to the December 2007 council meeting. It would have aided transparent decision-making if full details were</p>

	<p>discussed properly with all councillors. This would have allowed more detailed questioning and scrutiny. This reflects a broader tendency by officials to control the flow of information to councillors, which made scrutiny substantially more difficult.</p> <p>b) To the extent that you were aware of these concerns, what were your views on them, including how they had been or would be addressed?</p> <p>As a group, we asked questions in as far as we were able to do so. We were given assurances by officials that these matters were in hand.</p>
8.	<p>By e-mail dated 14 December 2007 [CEC01397774] Duncan Fraser, the Tram Co-Ordination Manager, in the City Development Department, referred to a presentation by TIE the previous day and asked certain questions about the Quantified Risk Allowance, including querying the provision made for the likely change in scope given the incomplete/outstanding design, approvals and consents. Mr Fraser stated, <i>“The scope of the works is not clear to CEC and specifically the quality and quantity and status of designs on which BBS have based their price. Also none of the designs are approved (none technically and only 4 out of 61 prior approval packages) hence the scope is likely to change, hence provision should be made for this”</i>.</p> <p>a) Did CEC officials make you aware of these matters at the time?</p> <p>As above, the reports submitted to the December council meeting mentioned some of these matters, but officials did not discuss the details or the ramifications of these.</p>
9.	<p>On 20 December 2007 Donald McGougan and Andrew Holmes presented a joint report to Council [CEC02083448] seeking members’ approval of the Final Business Case, version 2 [CEC01395434] and seeking staged approval of the award by TIE of the contracts, subject to (1) price and terms being consistent with the FBC and (2) the Chief Executive being satisfied that all remaining due diligence was resolved to his satisfaction. It was noted that the estimate for phase 1a of £498m (inclusive of a risk allowance of £49m) as reported in October 2007 remained valid.</p> <p>a) What were your views, in general, on the Final Business Case, version 2? Did you have any concerns at that stage (and, if so, what were they and how did you consider that they would be addressed)?</p> <p>As indicated above, some of the concerns alluded to (especially costs and timings) were discussed at this meeting, but assurances were given by officials that due diligence would be undertaken, and that the Chief Executive would monitor the project closely.</p> <p>b) What was your understanding at that stage of the extent to which design, approvals and consents/ utility diversion works were complete? What</p>

was your understanding of any difficulties that could arise from incomplete design and utility works and how any such difficulties would be addressed?

The reports indicate that design was not complete, but we were assured by officials and the Transport Convener that any issues arising from this had been considered and would be closely monitored.

c) What was your understanding at that stage of the main risks for the Council arising from the infrastructure contract, including which party bore risks arising from incomplete design, approvals and consents and utility diversion works?

We were assured that the 'fixed price' nature of the project limited the risks to the Council: Infracore bore the risks.

d) Was there ever discussion about postponing the award of the infrastructure contract until the design and utility diversion works were complete? If not, why not?

The timetable of progress was outlined as per the reports, and from what I remember, assurances were given by officials that any issues relating to this work would be ironed out and dealt in line with the timescales agreed.

The Report to Council noted that that some allowance had been made for risk associated with the detailed design work not having been completed at the time of financial close (para 8.1). Nonetheless, it stated that the "fundamental approach" had been to transfer risk associated with design not having been completed to the private sector and that this had largely been achieved (para 8.10) (see also, however, para 11.59).

e) Were you concerned that allowance had only, apparently, been made for delay resulting from design and not, for example, for delay resulting from unforeseen ground conditions or issues with utilities?

From what I remember, the dividing up of risk was justified by the officials and the Transport Convener at the time.

f) Which risks associated with design work did you understand to be transferred to the private sector and which had been retained by the Council? What advice was provided to the Council in this regard and from whom?

I understood that the risks associated with design work would be held by the private sector, and the risks held by the council were as outlined in para 8.13 of the report, with details in section 11 of the FBCv2.

The Report noted that the risk contingency did not cover major changes to scope and that changes to the programme could involve significant costs that were not currently allowed for in the risk contingency (para 8.16). It did not consider what events might cause changes to the programme, how likely it was that they would arise and what, if anything, was being done to mitigate the risk.

f) Did you seek further clarity on the costs that could arise from changes to scope or changes to the programme (including, for example, what events might cause changes to the scope or programme, how likely it was that such changes might arise and what, if anything, was being done to mitigate these risks)?

At the time, council officials and the Transport Convener were confident that changes to the scope or the programme were unlikely: the phasing had been costed and timetabled, and they assured us they were confident that the Tram Project was being well managed and monitored.

g) Did you feel comfortable approving the Final Business Case in these circumstances?

At the time, I had no reason to doubt the officials' position or the information provided.

The Report also noted that that some risks were retained by the public sector (para 8.13). These included:

- Agreements with third parties including delays to utility diversions
- Finalisation of technical and prior approvals.
- Absence of Professional Indemnity Insurance for TIE as it was wholly owned by the Council.

h) Were you concerned that the Council retained the risks noted above (and, if so, what was done to address any such concerns)?

As indicated above, the distribution of risk was justified and presented as fair, and we were assured that these issues would be monitored closely.

g) What remaining due diligence did you understand required to be carried out to enable the Chief Executive to be satisfied that it was appropriate for TIE to award the infrastructure contract?

I understood that the due diligence required was as outlined in the report, and that the Chief Executive would only sign off when he was happy these issues were closed out.

	<p>h) Did there come a time when you were satisfied that the conditions in relation to giving approval to TIE to award the contracts had been met and if so, when and on what basis were you so satisfied?</p> <p>My recollection of this is that all councillors received an email (from the Chief Executive, Leader or Transport Convener – I cannot remember which) indicating that outstanding issues had been resolved and that the Chief Executive was satisfied and prepared to award the contracts. Without information to the contrary, I took this information on trust.</p> <p>i) What was your understanding at that stage of the extent to which the infrastructure contract was a fixed price contract? What was the basis of your understanding? How important was it for the Council 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 tram project should proceed?</p> <p>We were assured that the Council's financial commitment for the Tram Project was £45million, and that this had been analysed by DTZ (as per the report "Independent Review of Tram Funding Strategy - Council Contribution"). The assurances by officials and administration councillors were convincing.</p>
10.	<p>Further concerns about the INFRACO contract were raised by CEC deputy officials in the lead up to contract closure (see e.g. [CEC01567522] [CEC01567520] [CEC01560815] [CEC01508412] [CEC01400919] [CEC01400987] [CEC01399016] [CEC01399075] [CEC01401032] [CEC01401628] [CEC01401629]). The concerns included that there had been a material change from the Final Business Case put to the Council in December 2007, the price had risen by £10m, the project timetable was now three months later than predicted, the risk of approvals and consents had not been taken by the private sector and, there was a residual risk associated with design which, although the Council did not have any figures to assess that risk, "<i>may be very significant</i>".</p> <p>a) Were you aware of these concerns? If not, ought you to have been made aware of these concerns? Had these concerns been made known to you what, if anything, do you consider that you would have done in response to these concerns?</p> <p>I was not made aware of the details of these concerns. It is possible that administration councillors did know about them, but I think these issues and the consequences of them should have been discussed with all councillors to allow proper scrutiny of the project. It is clear that individuals like Colin Mackenzie tried to raise concerns with senior Council staff but were ignored.</p>
11.	<p>On 18 February 2008 BSC produced a Design Due Diligence Summary</p>

	<p>Report, based on design information received by BBS by 14 December 2007 [CEC01449100]. That document raised various concerns about design, including that “more than 40% of the detailed design information” had not been issued to BBS.</p> <p>a) At that time, to what extent were you aware that design was incomplete, and how did you understand incomplete design would be dealt with in the Infraco price and in the risk allowance?</p> <p>Given the information provided at Council meetings, I was aware that some design work was incomplete. I understood, as indicated above, that the risks were to be borne by the private sector.</p> <p>b) What was your understanding, at that time, of how BBS could price for those works in respect of which detailed design was incomplete?</p> <p>As indicated above, and given what we were told by council officials, I understood the costs of incomplete design work would be borne by the private sector.</p> <p>c) What was your understanding, at that time, of how the issue of incomplete design was reflected in the risk allowance?</p> <p>Again, as indicated, my understanding was that this issue was to be dealt with by the private sector.</p>
12.	<p>By letter dated 12 March 2008 [CEC01347797] DLA advised CEC on the Draft Contract Suite.</p> <p>Graeme Bissett, TIE, appears to have had an input into the drafting of that letter (see, for example, e-mails from Mr Bissett to Mr Fitchie dated 11 March 2008 [CEC01551064] and [CEC01551066] and e-mail dated 11 March 2008 from Mr Bissett to Mr Fitchie [CEC01541242] enclosing a draft of the proposed letter from DLA to CEC [CEC01541243]; see also Mr Bissett’s e-mail of 13 March 2008 [CEC01474537] attaching a draft of a further letter from DLA to CEC [CEC01474539]).</p> <p>a) Were you aware that individuals from TIE had an input into the drafting of letters from DLA to CEC?</p> <p>No.</p> <p>b) Did you, or do you consider that to have been appropriate?</p> <p>No.</p>

	<p>c) Deputy officers at CEC had previously recommended (around August 2007) that the Council seek independent legal advice on the risks arising to the Council in respect of the infrastructure contract (see e.g. [CEC01567522] and [CEC01560815]). Was the possibility of the Council seeking independent legal advice ever discussed with you or other members? What were your views?</p> <p>As far as I can remember, there was some discussion of seeking independent legal advice, but these were informal and senior officials did not deem this necessary.</p>
13.	<p>A full meeting of the Council took place on 13 March 2008. From the agenda [CEC02083387] and minutes [CEC02083388] members do not appear to have been given any update on the tram project.</p> <p>a) Why were members not given an update in relation to the tram project at that meeting?</p> <p>Council agenda planning was never discussed with opposition group members.</p> <p>b) The following day (at 3:39 pm) an e-mail was sent to Alan Coyle [CEC01386275] attaching a Note that had been approved by Gill Lindsay [CEC01386276]. The Note, to be signed by Donald McGougan, Andrew Holmes and Gill Lindsay confirmed that it was appropriate for Tom Aitchison to authorise TIE to immediately issue a Notice of Intention to award the INFRACO contract to BBS. The final contract price was £508m (and the risk contingency had been reduced from £49m to £33m). Was it appropriate for authority to be given to TIE to immediately issue a Notice of Intention to award the INFRACO contract to BBS, without the authority, or indeed notification, of members?</p> <p>Council had delegated authority to award the contracts to the Chief Executive at the December 2007 meeting. Without additional information it seemed appropriate to follow this process.</p>
14.	<p>A report provided to the Chief Executive's Internal Planning Group on 16 April 2008 [CEC01246992] noted that the Planning and Roads Departments had written to TIE recording their concerns about the delay and quality of submissions for approvals and consents. There was concern that prior approvals may require to be revisited if there were substantial changes in design. It was noted, "There is potential for the approvals to cause a delay to the construction programme" (original emphasis). See letter dated 31 March 2008 from David Leslie, CEC, to TIE [CEC01493318] and letter dated 3 April 2008 from Duncan Fraser, CEC, to TIE [CEC01493639].</p> <p>a) Did officials make you aware of the above matters and how they could</p>

	<p>affect the Infraco programme and price?</p> <p>Not at the time, as far as I am aware.</p>
15.	<p>By e-mail dated 14 April 2008, the deputy solicitor to the Council, Colin Mackenzie, set out certain concerns [CEC01256710], noting his view that it would be “<i>prudent and proper</i>” to report again to members before Financial Close of the INFRACO contract was authorised given the various changes which had emerged since December 2007, including “<i>the new final estimate of £508 million; a four month delay to the revenue operating date; and continuing concern over the risks to the Council arising from the SDS programme</i>”.</p> <p>a) Were members of the Council aware of these concerns? Had these concerns been made known to you (or to members) what, if anything, do you consider that you (or members) would have done in response to these concerns?</p> <p>At the Council meeting on 1 May 2008, the new financial estimate was included in the Tram update report, but this was after the close of the Infraco contract. I recall there was a briefing for councillors before this meeting, but it was still after the contract had been closed. It would have enabled better scrutiny of the project and interrogation of the financial situation if this information had been discussed with councillors at an earlier point as suggested by Colin Mackenzie.</p>
16.	<p>By e-mail dated 15 April 2008 [CEC01245223] officers in CEC legal were sent a copy of Schedule 4 (Pricing Provisions) of the INFRACO contract [CEC01245224] and a cost analysis spread sheet [CEC01245225]. CEC legal replied on 16 April 2008 [CEC01247679], asking whether it would be appropriate to get a revised statement from TIE confirming that the risk allowance was still sufficient.</p> <p>a) We understand that each party group was briefed on the Infraco contract prior to the Full Council Meeting on 1 May 2008. We understand that councillors were shown a slideshow presentation summarising key aspects of the project at that stage. We believe this to be [CEC01276012]? Do you recall being briefed on the Infraco in the lead up to the 1 May 2008 Full Council meeting? Can you recall who delivered these briefings (TIE, CEC Officers etc)? Do you recall the presentation noted above?</p> <p>I do remember this briefing, but I cannot remember who delivered it. I do recall the slides.</p> <p>b) Were members ever addressed on the purpose and likely effect of the Schedule 4 pricing provisions? More specifically, were members ever</p>

	<p>addressed on the risk or likelihood of notified departures, the effect of that on cost and budget and whether the Quantified Risk Allowance was still sufficient?</p> <p>As in the presentation noted above, we were assured by officials that the project was on budget.</p> <p>c) To what extent, if at all, were members advised that the intention and effect of Schedule 4 was that the contractor was entitled to claim for additional payment over and above the final cost estimate of 498m?</p> <p>As indicated in the presentation noted above, this issue was not discussed in detail by officials in the briefing in April 2008.</p>
17.	<p>On 16 April 2008, officials in City Development were copied into an email that Andy Conway had sent to Susan Clark, asking whether TIE had <i>“undertaken an exercise to determine the extent and cost of changes that will be required since the design freeze in November?”</i> [CEC01247686].</p> <p>a) Did officials in CEC make you aware, at this stage, that any changes in design after the ‘design freeze’ of 25th November 2007, might result in additional costs?</p> <p>Not at the time, no.</p>
18.	<p>A Report to Council by Tom Aitchison on 1 May 2008 [CEC00906940] sought refreshment of the delegated powers previously given to the Chief Executive to authorise TIE to enter the contracts with the INFRACO and Tramco bidders.</p> <p>The report noted:</p> <p>(1) the cost of the project had increased from £498m to £508m (comprising a base cost of £476m and a revised QRA of £32m), which increase was noted to be largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the <i>“crystallisation of the risk transfer to the private sector as described in the FBC”</i> (para 3.5).</p> <p>(2) 95% of the combined Tramco and INFRACO costs were fixed with the remainder being provisional sums which Tie had confirmed as adequate;</p> <p>(3) <i>“As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. TIE Ltd advise that the outcome is the best deal that is currently available to themselves and the Council. Both TIE Ltd and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms”</i> (para 3.10).</p> <p>a) Were you aware prior to the meeting on 1 May 2008 of the recent price</p>

increase? If so, what was your understanding of the reason(s) for that increase?

The briefing received prior to the 1 May council meeting did include the increased cost. My recollection is that this increase was explained by officials as reasonable slippage given the nature of the project, and the clear indication that it was still well within the 'funding envelope' of £545million, so was not a cause for concern.

b) What was your understanding of (1) the "new risk area" that had emerged as a result of the overlapping period of design and construction, (2) the "outcome" that had been arrived at in respect of that risk and (3) the steps that would be taken by TIE and CEC to reduce the new risk area?

This area was due to difficulties created by incomplete design work. The outcome was the revised base cost and reduced QRA. TIE and CEC officials would work together to ensure the new risk area was reduced.

c) The report further stated that work had been done since November 2007 to minimise the Council's exposure to financial risk, "with significant elements of risk being transferred to the private sector". What elements of risk did you understand were being transferred to the private sector since November 2007?

As indicated above, and outlined in reports to council, officials and the Transport Convener reported that risks relating to design were transferred to the private sector.

d) What was members' understanding, following this report, of the extent to which the costs were fixed? To the extent there was any misunderstanding in that regard, how and why do you consider that any such misunderstanding arose? Who do you consider was primarily responsible for any such misunderstanding having arisen?

The report clearly states that 95% of the costs were fixed, and that TIE was confident the remaining 5% could be covered by available budgets. At the time, this was the impression I think all councillors had.

e) The report provided no explanation of pricing Schedule 4, despite this Schedule having been provided to CEC legal on 15 April. With hindsight, do you consider that the report to the Council ought to have explained the purpose and likely effect of the Schedule 4 pricing provisions to members?

	Yes.
19.	<p>An email dated 2 May 2008 sent to yourself and Councillors Jenny Dawe and Phil Wheeler provided an upcoming schedule of works for Leith Walk [CEC01230480] [CEC01230481]. We understand that there were difficulties and delays in progressing and completing the utilities diversion works.</p> <p>a) What was your understanding of the main difficulties in carrying out the utilities works and the main reasons for these difficulties? What role if any was played by provision of designs for these works?</p> <p>We were repeatedly told by officials that the utilities works were complex because utility companies did not have accurate maps of what was underground, and excavations often produced unexpected results. Additionally, ensuring cooperation across the different utility providers was not always what it might have been.</p> <p>b) What steps were taken to address these difficulties?</p> <p>We were told that council officials sought to work with all involved in the utilities works to ensure smooth and cooperative working.</p> <p>c) Were these steps successful (and, if not, why not)?</p> <p>Given the lengthy upheaval the people of Leith Walk suffered, it is clear that difficulties were ongoing throughout the utilities works.</p> <p>d) Prior to your joining CEC, there was a suggestion that the utilities design and utilities works for phase 1b (the Roseburn link) were, at least initially, carried out before the utilities design and utilities works for phase 1a (i.e. the line from the Airport to Leith Waterfront). As far as you aware, was this the case that, and, if so, why?</p> <p>I was aware of this suggestion, and my recollection is that it was about undertaking work with limited impact on residents and businesses, but I was not briefed by officials on the details or rationale for this.</p>

20.	<p>On 3 May 2008 [CEC01231125] Willie Gallagher sent Councillors Henderson, Jackson, Mackenzie and Wheeler and an email noting that Bilfinger Berger would not honour their finally agreed price, and required an additional £12m.</p> <p>a) Were you and other members made aware of this issue? Had the full council been aware of this issue, what do you think would have done?</p> <p>I did become aware of this issue, but not immediately. Had all councillors been aware of it at the time, more detailed questions could have been asked about cost management and risks for the Council.</p>
21.	<p>We understand that on 13 May 2008, shortly before contract signature, Tom Aitchison submitted a report to the Policy and Strategy Committee [USB00000357] (the minutes of the meeting are [CEC01891564]). The report advised that the estimated capital cost for phase 1a had increased from £508m to £512m and that, in return for the increase in price, TIE had secured a range of improvements to the contract terms and risk profile (para 2.11; see also paras 2.7 and 2.9). The report needed to be considered as a matter of urgency, to allow an immediate financial close of the contracts for the Edinburgh tram network.</p> <p>a) We note that you were not present at this meeting. What was your awareness of, and understanding of the reason(s) for the increase in price? What was your understanding of the range of improvements to the contract terms and risk profile?</p> <p>Alison Johnstone attended this meeting and reported back to the group about this item. After having seen the report, my understanding was based on the contents therein (para 2.9 particularly). At the time, the improvements remained confidential.</p> <p>b) What is your understanding of why approval was sought from the Policy and Strategy Committee rather than a full meeting of the Council? Do you consider that the increased price and changed contract terms ought to have been considered by the full Council before authority to enter the contracts was granted?</p> <p>It probably would have been better to discuss this at full Council, but at the time, officials argued that it was important not to delay signing of contracts any further.</p> <p>c) An e-mail dated 9 May 2008 from Willie Gallagher noted that contract signature was agreed for 2pm on Tuesday 13 May 2008 [CEC01231125]. Do you consider that that allowed members of the Policy and Strategy Committee at their meeting on 13 May sufficient time</p>

	<p>to consider whether approval should be given for the contracts to be entered into? (We note for example, Stan Cunningham, Committee Services Manager, advised the Council Solicitor that <i>“it may be the first time that many of the members are aware of this matter. This is not satisfactory ...”</i> [CEC01248988].</p> <p>As above, officials stressed the importance of not delaying the signing of contracts. It would, of course, have been better to have more time to consider this and ask questions about the changes.</p> <p>d) At the meeting Jenny Dawe was appointed as convenor of the Committee and Steve Cardownie as vice-convenor. Are you aware why Councillor Dawe and Councillor Cardownie were appointed to convene the committee for this meeting? Who previously convened this committee?</p> <p>This was standard at the beginning of the new council year, and happened at all committees at the start of the annual meeting cycle. Jenny Dawe and Steve Cardownie were the previous convenor and vice-convenor respectively.</p>
22.	<p>The INFRACO contract suite was duly signed on 13 and 14 May 2008. By way of overview, what was your understanding of the following matters at contract close:</p> <p>a) The difficulties that had been experienced with design, the extent to which these difficulties had been resolved, the extent to which detailed design was outstanding and when the detailed design would be completed (and all approvals and consents obtained)?</p> <p>As indicated above, reports and briefings had indicated that difficulties arose because of the work beginning before design was complete. Timelines were outlined in the April briefing and Tram Briefing notes.</p> <p>b) The difficulties that had been experienced with the utilities works, the extent to which these difficulties had been resolved, the extent to which utilities diversions were outstanding and when these works would be completed</p> <p>These works created significant disruption for the residents and businesses along the on-road route of the tram, and these were ongoing beyond May 2008.</p> <p>c) The likely effect on the Infraco works and contract (and the cost of the tram project) if the outstanding design and utilities works were not completed within the anticipated timescale?</p>

	<p>Council officials repeatedly assured us that they were keeping a close eye on these elements and the impacts should be minimal. The April briefing indicated that things were on budget (at least within the 'funding envelope'), and that the risks were being managed and monitored.</p>
23.	<p>Pricing Schedule 4 [USB00000032] dealt with design development.</p> <p>a) To what extent did officials in CEC make you aware that the construction works price was based on the design dated 25th November 2007, and to what extent were you aware that any changes to that design, might result in additional costs?</p> <p>As indicated above, the cost changes were always justified by officials as expected with such a project, and were within the funding envelope. Officials and administration councillors assured us that the difficulties around incomplete design work were under control and being monitored.</p>

Events between May 2008 – December 2008

24.	<p>You were provided with the papers for the meeting of the Tram Project Board on the 24th of September 2008 [CEC01053637] which contained the minutes of the previous meeting on the 27th August 2008.</p> <p>a) You were not provided these papers as a member or an attendee of the Board, but rather for information only. Why was this? For what purpose were you provided these papers?</p> <p>I received these papers, on behalf of the Green Group, for information (they were available for the green group). They were used for reference and to help answer questions constituents might have had aboutt the tram project.</p> <p>b) Who did you understand to have been responsible for the preparation of these papers? If you had any concerns about the papers whom could</p>
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	<p>you contact to ask for further information?</p> <p>I understood that Transport Edinburgh and TIE Ltd would prepare the papers, as appropriate. I would have contacted members of the project board, or authors of the papers (if identified) if I had questions.</p> <p>c) What did you understand to be the main problems and concerns at that time?</p> <p>There were ongoing concerns about the design consents, and also the disruption caused by MUDFA works. Other concerns are outlined in the papers.</p> <p>d) How were they to be addressed?</p> <p>It seemed as though the different organisations (CEC, tie, SDS) were working together on the design and consent works. Communications and briefings were put out to residents and businesses about MUDFA works.</p> <p>e) Were these efforts successful (and, if not, why not)?</p> <p>The issues were ongoing.</p>
25.	<p>A Report to the Council from TIE dated 18 December 2008 [CEC01043168] noted that since summer 2008 work had been carried out to develop the business case for Line 1b.</p> <p>The report to Council of 1 May 2008 [CEC00906940] noted that the firm costs had increased by £27m, whereas the risk allowance had reduced by £17m. The council noting that the movement in cost may impact severely on the ability to deliver Tramline 1b [TIE00153367].</p> <p>Despite costs issue, the Council appear still to have been considering a network of lines 1a, 1b at 29 April 2009 [CEC00860021].</p> <p>a) Was it explained to the Council why work carried on notwithstanding the comments noted in the Minute of 1 May 2008 about the difficulty in delivering Line 1b in view of the increased costs of 1a?</p> <p>There remained the intention to deliver Line 1b at some future point.</p> <p>b) The Report to the Council from TIE dated 18 December 2008 [CEC01043168] continued to note that TIE were engaged with the contractor on re-programming phase 1a to address the slow start up of construction. What did you understand to be the nature and cause of the</p>

	<p>slow start up and what on-going effect, if any, do you understand that to have had?</p> <p>The slow start up was down to the failure to reach timely agreement between TIE and Infraco around design issues. The longer than expected MUDFA works also meant that Infraco could not access all the sites they required before work started.</p>
26.	<p>You were sent the papers for the meeting of the Tram Project Board on the 22nd of October 2008 [CEC01210242] again, for information only.</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>The relationship between TIE and BSC was not healthy.</p> <p>b) How were they to be addressed?</p> <p>Ongoing discussions</p> <p>f) Were these efforts successful (and, if not, why not)?</p> <p>It seems that this relationship was fatally flawed.</p>
27.	<p>At a meeting held at the City Chambers on Friday 28th November 2008 [CEC01069591], Jenny Dawe requested that TIE suspend the implementation of Phase 2 until after the embargo period.</p> <p>a) This decision appears to have then been reversed by the Policy and Strategy Sub-Committee on 12 May 2009. What did you understand to be the rationale behind this decision? Was it intended to mitigate further delay?</p> <p>The Christmas embargo was to enable retailers to maximise their business opportunities during their busiest period. By the time and embargo during the Festival month was discussed, retailers indicated they wanted the works finished as soon as possible, so did not support an embargo.</p>
28.	<p>On 10 December 2008, Councillor Iain Whyte sent an email to Jenny Dawe, Phil Wheeler, Alan Jackson, Tom Aitchison and Donald McGougan noting concerns about a comment made by David Mackay, then Chairman of TIE, to the effect that TIE never started with a fixed budget, because <i>“the design changes as you go along”</i> [TIE00887286].</p>

	<p>a) Were you aware of this comment made by David MacKay?</p> <p>I became aware of these comments at a later point.</p> <p>b) If so, what were your views on it?</p> <p>I was surprised given the assurances we had been given by officials and the Transport Convener that the contracts were fixed cost.</p> <p>c) What were your views at that time on whether there was a fixed budget and a fixed price for the infrastructure contract?</p> <p>It became clear that changes in scope or programme would affect the fixed cost of the project. But up until this, officials had been very keen to stress the fixed cost nature of this contract.</p>
29.	<p>On 11 December 2008 you were copied into an email from Alan Coyle to Ian Whyte in which he stated that the contract was fixed price so long as scope and programme did not change. He further noted that there had been changes in the design and programme but that the impact of these changes on the price was not yet known [CEC01054035].</p> <p>a) Were members of the Council informed of these matters? If so, did you seek clarification on this point? What was your understanding of what was meant by a change to “scope” or “programme”?</p> <p>I received the email communication about this, but more detail should have been available for all councillors. It became clear that changes to the scope and programme referred to increased complexity of works, such as altering locations of stops, and delays in the schedule of work.</p> <p>b) If not, ought members to have been made aware of these matters? Had members been aware of these matters, what do you think that they would have done in response?</p> <p>With hindsight, it would have been appropriate to discuss these matters with members, either at the December Council meeting (where several tram-related reports were discussed), or with detailed group briefings. This would have enabled scrutiny of these matters by councillors.</p>
30.	<p>You were sent the papers for the Tram Project Board meeting on the 17th of December [CEC01162774] again, for information only.</p> <p>a) What did you understand to be the main problems and concerns at that</p>

	<p>time?</p> <p>Willie Gallagher's resignation had caused significant media interest in the project, as had the discussions of re-calibrating the project. There were ongoing issues with Carillion.</p> <p>b) How were they to be addressed?</p> <p>There were assurances given through council and external communications about the management and oversight of TIE and the project, including MUDFA works</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>Full details of recalibration (rationale, consequences, etc.) should have been properly discussed with councillors.</p>
31.	<p>You were sent the papers for the Tram Project Board meeting on the 22nd of January 2009 [CEC00988028] again, for information only.</p> <p>Item 2.3 of the December Minutes notes that Kenneth Hogg considered that there were "issues" with the governance structure. He was concerned that at times the board could not discharge their functions fully.</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>Governance and the slow progress of Infracore were the main concerns.</p> <p>b) How were they to be addressed?</p> <p>The TPB indicated that plans and resources were in place to ensure progress improved, and would be monitored.</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>Progress did improve.</p>
32.	<p>An action note following the special tram Internal Planning Group (IPG) on 29 January 2009 which was attended by Council officials [CEC00867661] stated that absolute clarity was still needed on the price and noted that there was concern BSC costs did not represent value for money.</p>

	<p>a) Did senior Council officials who attended this meeting make you and other members aware that absolute clarity was still needed on the price and that there was concern BSC costs did not represent value for money? If, so, did this cause you concern?</p> <p>I understood later that administration councillors were informed about some of these concerns, but details were not discussed with all councillors until the March council meeting. I, along with other councillors and members of the public were concerned about BSC, given the delays and contract problems that were becoming apparent.</p>
33.	<p>You were sent the papers for the Joint Tram Project Board / tie board dated 11 February 2009 [CEC00988034] again, for information only.</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>The slow progress with Infraco work, and the need to agree an updated programme of works with Infraco.</p> <p>b) How were they to be addressed?</p> <p>There continued to be regular discussions and negotiations between TIE/CEC and BSC.</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>These issues remained ongoing.</p>
34.	<p>It is clear that as the contract got under way there were still on-going delays in designs, consents and MUDFA works.</p> <p>a) Did that cause you any concerns (and, if so, what did you do as a result)?</p> <p>Yes. I was perhaps particularly concerned with MUDFA delays given the impact it had on my constituents in Leith Walk. I sought assurances from officials about these delays, although they stressed the uncertainties arose because of the lack of knowledge of what the works would throw up.</p>

Events in 2009 and the Princes Street Agreement

35. By way of overview, in relation to the dispute that arose between TIE and BSC:

a) When, and how, did you first become aware that there was a dispute between TIE and BSC in relation to the infrastructure contract? What was your understanding of the nature of the dispute and the reason(s) for the dispute?

Councillors were informed at the March 2009 Council meeting that the Dispute Resolution Procedures had been implemented a few of weeks earlier. There had been some mention of this prior to the meeting, and media reports about it. The dispute centred on differing interpretations of the contract, and the request for more money by BSC.

b) What were your views at the time on the dispute, including which party or parties were primarily responsible for the dispute arising?

In hindsight, the dispute was perhaps likely given the preceding months of delays and non-agreements with BSC. Councillors were assured that TIE was doing everything possible to get a positive resolution, and we were told that we had to back TIE and the approach being taken. Without evidence to the contrary, this was the view taken by the Council.

c) What was your understanding of, and views on, TIE's strategy to resolve the dispute? To what extent, if at all, was that strategy approved by the Council?

We were told that TIE had been in daily contact with BSC, and that the DRP procedures would be followed. This included negotiations and mediation. Councillors were assured that this was the best line of action, and that we should support TIE in this.

d) 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 CEC?

Officials outlined what the DRP were, and there was some discussion about adjudication. We had been told that CEC should back TIE and its decision to take legal proceedings against BSC for the delays. In 2010 the independent arbiter found in favour of TIE on some points, but mostly found in favour of BSC, with additional costs to be paid to BSC.

e) What was the basis for your understanding and views on these matters?

	<p>Council officers provided information about these matters in briefings and at meetings. There were also reports and debates in the media.</p> <p>f) Did your views on these matters change at any time (and, if so, when and why)?</p> <p>With hindsight, it became clear that the problems were inevitable given the nature of the contracts signed (a bespoke contract was always much more likely to be contested).</p>
36.	<p>On 12 February 2009, Dave Anderson, Director of City Development, sent Councillor Wheeler and Marshall Poulton, in strict confidence, a copy of a letter from David Mackay to Dr Keysberg [CEC00900092] [CEC00900093].</p> <p>a) Do you think it was appropriate that this letter was provided only to select councillors? Do you think that the full council should have been notified of the issues raised in this letter?</p> <p>It is perhaps expected that such letters have restricted circulation, given the sensitivity of the information therein. But confidential briefings for other councillors would perhaps have been a suitable way of informing others of the issues raised.</p>
37.	<p>On Friday 22 February David MacKay notified Councillors Dawe and Wheeler and the chief executive of a response that was due to be dispatched to the INFRACO (Billfinger Berger and Siemens) [CEC00867359].</p> <p>a) Again, do you think it was appropriate that this letter was provided only to select councillors?</p> <p>As above, during dispute resolution proceedings, it is understandable that sensitive information has limited circulation, but there were other ways of ensuring proper council oversight of the issues that could have been undertaken.</p>
38.	<p>By e-mail dated 6 March 2009 Tie's solicitors, DLA, sent the Solicitor to the Council the parties' position papers in relation to the Princes Street dispute [CEC01031402]. In an e-mail dated 11 March 2009 [CEC00869667] Colin Mackenzie advised that Council officers did not know whether the INFRACO contract was sound, that it was possible the contract was not robust enough and affordability became an issue and that the Council were lacking the requisite information, certainty and confidence at that time.</p> <p>a) Did you (and members) receive any briefing from CEC officers around this time on the differing interpretations of the contract? Were you (and/or other members) informed of the consequences for the Council if TIE's</p>

22 February
should be
20 February

	<p>interpretation of the main provisions in the contract (including, in particular, the INFRACO Pricing Schedule) was incorrect?</p> <p>Some of these issues were discussed at the March council meeting which included a B Agenda (i.e. confidential) update on the tram project. There had been some other communications about some of these issues, given the dispute was public knowledge. Officials assured us that TIE had good grounds for its position.</p>
39.	<p>On 27 February 2009 Councillor Phil Wheeler sent an email to Council Leader Jenny Dawe [CEC00868427] informing her about his meeting with Richard Walker of BSC.</p> <p>By e-mail dated 11 March 2009 [TIE00446933] Mike Connelly of TIE advised David Mackay of his meeting with Margaret Smith MSP and Alison McInnes MSP.</p> <p>a) What was your knowledge of these meetings? Were you ever invited to meetings with TIE/ BSC? Did Councillors who attended these meetings feed back to other members on what was discussed?</p> <p>I knew that meetings of this type were taking place, but I was not aware of the details, nor of the content of the discussions. From what I recall, the Transport Convener did allude to these types of meetings in some council meetings when the tram project was discussed.</p> <p>b) In your view, was it appropriate for elected members to meet with BBS directly at this stage [TIE00304351]?</p> <p>Such meetings, if they had to take place, should perhaps have been limited to areas where they could not have an impact on the Dispute Resolution proceedings, but it seems reasonable that the City's Transport Convener would meet with those responsible for such a big transport infrastructure project.</p> <p>c) Were you concerned at this point that the contracts were not in fact "fixed price" [TIE00887286] on the basis that the contractor was entitled to seek further monies under the contract where the works deviated from the Base Date design [CEC00356396]?</p> <p>Yes, as this went against what officials (CEC and TIE) had repeatedly told us previously.</p>
40.	<p>In an e-mail dated 7 April 2009, "Edinburgh Trams; Strategic Options and DRP", Colin Mackenzie made certain observations on the dispute between TIE and BBS and raised certain concerns [CEC00900419].</p>

By e-mail dated 9 April 2009 [CEC00900404] Colin Mackenzie and Nick Smith circulated a report on the dispute between BBS and TIE [CEC00900405]. The report noted that there were presently 350 Notified Departures in process. The disputes could be grouped into a number of different categories, including who had responsibility for design management and evolution. BBS were taking the view that all changes to design were TIE's responsibility. The report noted, "*The main problem here stems from the fact that design was not complete at Financial Close*".

a) Were you as a member made aware of these concerns? To what extent, if at all, were you briefed on the significance of the 350 Notified Departures?

There was some discussion of these concerns at the April Council meeting, but no mention of the 350 Notified Departures or details about these in the update paper for councillors. We did, later, become aware of more of these details, but were not in a position to scrutinise them at the time.

b) Had these matters been made known to you (or to members) what, if anything, do you consider that you (or members) would have done in response?

Had councillors been informed, there would have been opportunity for better scrutiny of these issues, by asking questions and seeking clarification about consequences and possible outcomes.

41. You were provided with the papers for the meeting of the Tram Project Board on the 15th of April 2009 [CEC00888781] again for information only.

a) What did you understand to be the main problems and concerns at that time?

The main development here was the dispute with BBS around Princes Street works.

b) How were they to be addressed?

The establishment of the Project Management Panel was designed to assist relationship building between TIE and BBS as well as manage this section of work.

c) Were these efforts successful (and, if not, why not)?

Princes Street works did proceed, although it is clear given later legal proceedings that contractual issues and the working relationship issues were not resolved.

42.	<p>On 30 April 2009 the Council were given an update by Dave Anderson and Donald McGougan that an agreement had been entered into in respect of the Princes Street dispute, to allow the works to be carried out on demonstrable cost [CEC02083772]. The Princes Street Agreement was signed on 29 May 2009 [CEC00302099].</p> <p>a) To what extent were elected members consulted on the decision to enter the Princes Street agreement before the agreement was signed?</p> <p>The information we received was contained within the report to Council.</p> <p>b) The report provided that the PSSA would <i>“allow progression of Princes Street infrastructure works on demonstrable cost. This allows the contractor to be paid on this basis, for Princes Street works only, should they discover unforeseen ground conditions. This represents no further transfer of risk to the public sector.”</i> What was your understanding of these matters at the time?</p> <p>I understood that this meant there were tighter controls over the relationship between work undertaken and costs, and that the risks were clearly allocated.</p> <p>c) Did your understanding in that regard change at any time (and, if so, when and why)?</p> <p>As the legal conflicts ran on, it became clear that these issues were perhaps not as simple as indicated in April 2009.</p> <p>d) Do you consider that TIE and indeed, Council officers, were open and transparent when reporting to the Council on the Princes Street dispute and, in general, in relation to the dispute with BSC?</p> <p>It became clear that TIE and CEC officials had controlled how and what information was made available to councillors, both in the run up to the dispute, and throughout the dispute.</p>

43.	<p>You received papers for the meeting of the Tram Project Board on the 6th of May 2009 [CEC00633071], again, for information only;</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>The ongoing issues with BBS around the Princes Street works and the general issues of contractual liability for delays and cost increases.</p> <p>b) How were they to be addressed?</p> <p>As indicated above, the PMP was designed to deal with the Princes Street issues, and TIE initiated a planning exercise. There was also mediation ongoing.</p> <p>c) Were these efforts successful (and, if not, why not)</p> <p>These issues were ongoing, but further legal challenges ensued.</p>
44.	<p>You were sent the papers for the Tram Project Board meeting on the 3rd of June 2009 [CEC01021587] again, for information.</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>Concerns noted previously were ongoing, including the slow Infracore progress.</p> <p>b) How were they to be addressed?</p> <p>As above, in my answer to question 43</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above, in my answer to question 43</p>
45.	<p>You were provided with the Minutes of the TPB meeting on the 8th of July, for information only [CEC00983221].</p> <p>a) Again, what did you understand to be the main problems and concerns at that time?</p> <p>As above, in my answer to question 43</p> <p>b) How were they to be addressed?</p>

	<p>As above, in my answer to question 43</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above, in my answer to question 43</p>
46.	<p>On 13 August 2009 [CEC00679723] Richard Jeffrey of TIE wrote to certain Councillors/members of the board to inform them about the significant developments in the relationship with BSC and tie, namely that BSC were not happy to start works on Shandwick Place unless this work was undertaken on a cost plus arrangement.</p> <p>a) Was the possibility using the Princes Street Supplementary Agreement as the basis of a wider On-Street Supplementary Agreement ever discussed with Council members?</p> <p>Such a proposal might have been part of information discussions with some councillors, but nothing of this nature was formalised.</p> <p>b) Do you have any views on the suggestion that the Princes Street Agreement paved the way for BBS to claim further additional costs in respect of other on-street works (such as Shandwick Place) by changing the basis of payment under the contract so it was no longer fixed price[CEC00379020]?</p> <p>With hindsight, it is possible to see that this had set a potential precedent, but at the time it was very clearly focused on and limited to Princes Street works. As noted above, the 'fixed price' issue had already been shown to be problematic.</p>
47.	<p>On 20 August 2009 the Council were provided with an update by means of a report by David Anderson and Donald McGougan [CEC00738172]. The report stated that TIE had taken extensive advice and was "confident" on its position on the key matters in dispute, however, it was unreasonable to expect that all adjudication outcomes would be awarded in TIE's favour. It was noted that "<i>it is now considered that it will be very difficult to deliver the full scope of phase 1a within the available project envelope of £545m</i>". It was not possible to accurately forecast a revised budget.</p> <p>a) Were you "confident" of TIE's position on the key matters in dispute (and, if so, on what basis)?</p> <p>We had, repeatedly, been told by CEC officials that TIE staff were doing what was expected of them, and that we needed to back their position. We were not given information to think otherwise. As indicated above, there was general concern about the project, including governance and project</p>

	<p>management issues, but the senior council officials were advising us that they were keeping a close watch on TIE and the project overall.</p> <p>b) It appears that members were not provided with a revised cost estimate for the project until almost two years later i.e. summer 2011? Is that correct and, if so, why were members not provided with a revised cost estimate for the project earlier?</p> <p>TIE, TEL and CEC officials controlled the information given to councillors, and the inexperienced administration did not always ask the questions of officials that would have led to such information coming to light earlier. There was an indication in June 2010 that it was unlikely that the £545million envelope remained feasible.</p>
48.	<p>You were provided with papers in advance of the meeting of the Tram Project Board meeting on the 26th of August 2009 [CEC00739552]. The figure for MUDFA works completed on page 14 shows a big jump for the figure given to TS in the previous month (page 55). A note in the Costs section of the PD report states that TIE may not have “<i>sufficient contractual leverage to instruct commencement</i>” of works.</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>As above, the main concern continued to be the issues around contractual dispute and slow progress.</p> <p>b) How were they to be addressed?</p> <p>As above, TIE and CEC said these issues were being monitored and attempts made to get BSC to fulfil their contractual obligations.</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above, these issues were ongoing.</p>
49.	<p>You were provided with papers in advance of the meeting of the Tram Project Board on the 23rd of September 2009 [CEC00848256], again for information only.</p> <p>In relation to progress, the August minutes record that, “<i>Steven Bell reported that progress remains slower than desirable for the INFRACO works, largely due to ongoing contractual matters.</i>”</p> <p>a) What did you understand to be the main problems and concerns at that</p>

	<p>time?</p> <p>The ongoing dispute and slow progress remained the chief concern.</p> <p>b) How were they to be addressed?</p> <p>As above, TIE and CEC said these issues were being monitored and attempts made to get BSC to fulfil their contractual obligations.</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above, in my answer to question 48</p>
50.	<p>You were provided with papers in advance of the meeting of the Tram Project Board on the 18th of November 2009, again for information only [CEC00681328].</p> <p>The Minutes for the 21st of October are the first to set out bluntly that BSC refuse to carry out on–street works without a supplementary agreement entitling them to payment on a cost plus basis (page 9).</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>As above, the ongoing dispute with BSC, the contractual issues, and delays and potential cost increases remained the chief concerns.</p> <p>b) How were they to be addressed?</p> <p>As above, in my answer to question 48</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above, in my answer to question 48</p>
51.	<p>In November 2009 DLA provided the Solicitor to the Council with an “Overview of Adjudicator’s Decisions” [CEC00479382], in relation to decisions dated 16 November 2009 by Mr Hunter on the disputes relating to the Gogarburn and Carrick Knowe Bridges.</p> <p>a) Did you (or members) ever receive any briefing from CEC officials or TIE on these adjudication decisions and/or DLA’s overview? What was your understanding of the result of these decisions including the extent to which they favoured TIE or BSC?</p>

	<p>We were informed of the outcome of this adjudication (that the decision favoured BSC), but the details as outlined in the above-noted document were not communicated to us at the time.</p> <p>b) What was the basis for your understanding in that regard?</p> <p>Information provided to us (i.e. that the adjudicator had not found in TIE's favour).</p> <p>c) Did you read these decisions at the time (or later)?</p> <p>I would have read the information provided to us by officials.</p>
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Events in 2010

52.	<p>An opinion from Richard Keen QC on the interpretation of the INFRACO contract [CEC00356397] was given in the course of dispute resolution on 14 January 2010.</p> <p>The opinion found that TIE did not take full and proper account of the wording which appeared in the last three lines of paragraph 3.4 of Schedule 4 which provided, <i>“for the avoidance of doubt, normal development and completion of designs means the evolution of design through the stages of preliminary to construction stage and excludes changes of design principle, shape and form and outline specification.”</i></p> <p>The effect of this wording was that <i>“Changes of design principle, shape and form and outline specification”</i> constituted “notified departures”, entitling the contractor to seek further monies under section 3.2.1 of Schedule 4 of the contract. The opinion was provided to the Solicitor to the Council and CEC legal officials on 12 April 2010 [CEC00356396].</p> <p>a) Did you (or members) ever receive any briefing from CEC officials or TIE on this opinion?</p> <p>We would have received a summary of this opinion, but I do not recall what form the communication of this information took.</p> <p>b) The contractual dispute had been on-going for some time. Do you have any views on whether this opinion should have been sought by TIE sooner?</p> <p>We were told by officials that we had to give mediation enough time to work before escalating. In hindsight, seeking legal opinion earlier might have been</p>
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	<p>appropriate, but we, especially opposition councillors, could only act on the information provided by officials.</p> <p>c) Do you have any views on whether the Council as ultimate stakeholder, should have taken separate legal advice at an earlier stage?</p> <p>As indicated above, legal staff in the council had advised seeking advice earlier, but had been blocked by senior officials. We, especially opposition councillors, were not privy to all the information held by CEC/TIE officials, and were repeatedly advised to trust the officials.</p> <p>d) In Jan/Feb 2010 CEC appear to have instructed their own legal advice from Dundas and Wilson [CEC00450359], [CEC00479797], [CEC00480029], [CEC00551307]. Did members receive any briefing on that advice?</p> <p>From what I recall, we were told that this was happening, but I do not remember the form or the timing of this communication.</p>
53.	<p>By e-mail dated 4 March 2010 [CEC00474750] Alan Coyle sent the Directors of City Development and Finance a Briefing Note [CEC00474751] setting out the estimated cost of the three options that formed part of "Operation Pitchfork". The estimated cost of completing the works appears to have been between £644m and £673m.</p> <p>a) To what extent were the different options discussed with members? What were your views on the best option at that time, including the proposal to build a line from the Airport to St Andrew Square?</p> <p>Different options were discussed at a later date with members (in 2011), when it became clear that completion to Newhaven was not feasible.</p> <p>b) Were you aware of these cost estimates? Were these options and the cost estimates put to Council and, if so, how and when (we note that the estimates are not, for example, mentioned in the report to Council on 24 June 2010 noted below)?</p> <p>These estimates were not discussed by councillors at the time. Revised costs were discussed in 2011 when the route was shortened.</p>
54.	<p>Richard Walker of BBS sent a letter to Tom Aitchison, Gordon Mackenzie, Donald McGougan and David Anderson dated 8 March 2010 [CEC00548823]. In this letter he stated that TIE had sought to insist that it had signed a fully fixed price lump sum contract when, in Mr Walker's view, the pricing assumptions and the adjudications on the interpretation of those</p>

	<p>pricing assumptions indicated that this was not the case.</p> <p>a) Did you (and other members) see that letter? Did council officers, bring these matters to the attention of yourself or elected members?</p> <p>The issues contained in this letter were not discussed at council meetings. As far as I am aware, the letter was not made available to opposition councillors at the time.</p> <p>b) If so, what were your views on the matters contained in the letter? Did these assertions cause you any concern? What, if anything, did you do to address any such concerns?</p> <p>n/a</p>
55.	<p>You were provided with papers in advance of the meeting of the Tram Project Board in 14 April 2010, again for information only [CEC00420346] [CEC00379024].</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>Main concerns continued to be the disputes and contractual issues, and the consequent delays and potential increases in cost.</p> <p>b) How were they to be addressed?</p> <p>As above, we were told that these issues were in hand</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above</p>
56.	<p>By email dated 16 April 2010 [CEC00266715] Richard Jeffrey wrote to Tram Project Board members, including you, to inform them that he and Tony Rush had met with Michael Flynn (Siemens) and Richard Walker (BB).</p> <p>a) Were you concerned by INFRACO's allegation that they were owed £15m for work done?</p> <p>This position seemed to be consistent with their position throughout the dispute process, and spoke to the general conflict between the tram project and BSC.</p>

	<p>b) What was your understanding of that issue?</p> <p>Officials firmly rebutted this allegation, as indicated in the email.</p>
57.	<p>By email dated 19 April 2010 Richard Jeffrey [TRS00010706] wrote to party leaders (namely Jenny Dawe, Ian Whyte, Steve Cardownie, Andrew Burns, and Steve Burgess) setting out TIE's position on the main matters in dispute. This email was forwarded to you shortly thereafter [CEC00245727].</p> <p>Mr Jeffrey noted that <i>"there is disagreement over what is or is not included in the original 'fixed price' contract"</i> and BBS are <i>"refusing to get on with the works in an attempt to coerce us into agreeing to change the form of contract onto a 'cost plus' contract"</i>. He would not allow the city to be <i>"held to ransom"</i>.</p> <p>In relation to the adjudication decisions Mr Jeffrey noted, <i>"It is true that we did not get all the results at adjudication we would have liked, however, it is also true that the results do not support BB's extreme view of their entitlements either. I would like to be able to fully brief you on these adjudications, but they are confidential under the contract and to do so would put tie in breach of contract"</i>.</p> <p>a) Did these party leaders inform you or other members of these issues?</p> <p>Yes, we would have discussed this in our group meeting.</p> <p>b) Did you ever see or seek the adjudication decisions?</p> <p>We did receive information about the adjudications, as indicated above, but not the full judgments.</p> <p>c) What are your views on the assertion that councillors could not be "fully briefed" on the adjudication decisions because they were confidential and to do so would put TIE in breach of contract? Did you regard that position as satisfactory? To what extent did that affect the ability of you, and other Council members, to take informed decisions in relation to the tram project? Did you, or CEC officials, give any consideration to requesting that BSC agree to the adjudication decisions being disclosed to members?</p> <p>Council officials repeatedly used confidentiality as a reason to withhold information, perhaps especially from opposition councillors. I was not convinced that full briefings would be a breach of contract, but, without a reason or evidence to the contrary, we had to take on trust what we were told by officials.</p>

58.	<p>On 21 April 2010 a meeting took place in Carlisle between TIE and BBS at which we understand that parties agreed to investigate a way forward whereby a line would be built to St Andrews Square for a guaranteed maximum price and a new completion date.</p> <p>a) To what extent were you, and other members, aware of this meeting and the discussions that followed [CEC00387018] [CEC00247389]?</p> <p>At the time, councillors were not briefed about this meeting and following discussions, as far as I am aware. As the above emails indicated, we were informed later of these discussions.</p>
59.	<p>You were provided with papers for the meeting of the Tram Project Board on the 2nd of June 2010 again, for information only [CEC00261936]. The papers contained the minutes of the Tram Project Board meeting on the 5th of May 2012 (page 7), which noted that an independent expert review of the programme had been conducted and that it had concluded that delivery of Phase 1a could be achievable by December 2012.</p> <p>a) Did you see the expert review?</p> <p>I recall receiving a summary of the review.</p> <p>b) If so, what were your views on it?</p> <p>It appeared to offer some degree of confidence in the project – i.e. that Phase 1a could be completed by December 2012.</p>
60.	<p>On 24 June 2010 the Council were given an update on the Tram Project by means of a joint report by Dave Anderson and Donald McGougan [CEC00021372]. The report stated that the utility works were now substantially complete (i.e. 96%).</p> <p>The report further stated that <i>“The essence of the [INFRACO] Agreement was that it provided a lump sum, fixed price for an agreed delivery specification and programme, with appropriate mechanisms, to attribute the financial and time impact of any subsequent changes”</i> (para 3.3)</p> <p>It was further noted that <i>“Whilst there have been disputes on design-related matters ... it is normal in any large construction project for the scope of the project to change in material ways, for a variety of technical and commercial reasons”</i> (para 3.10) and that <i>“The outcome of the DRPs,[Dispute Resolution Procedures] in terms of legal principles, remains finely balanced and subject to debate between the parties”</i> (3.12)</p> <p>The Report stated that it was <i>“prudent”</i> to plan for a contingency of 10% above the approved funding of £545m because of the current lack of clarity</p>

on programme and cost. The Council instructed a refresh of the Business Case.

a) What were your views around that time on the extent to which the INFRACO contract was for a “lump sum, fixed price”?

As indicated above, the exact meaning of this was already contested, but officials were confident that TIE/CEC’s position was sound and appropriate.

b) Do you consider that members of the Council were adequately advised and informed, both when the Final Business Case was approved and prior to the INFRACO contract being signed, of the risk or likelihood of the “*scope of the project to change in material ways*”, with a resulting increase in cost?

No. I think that there was perhaps too optimistic advice given to councillors about this aspect of the contract, and then, when things started to unravel, senior officials withheld information from us. However, without the benefit of hindsight, the advice obtained by DLA at the time perhaps counters my interpretation that this was too optimistic to some extent.

c) Did you agree that the outcome of the Dispute Resolution Procedures was “*finely balanced*”?

At the time, on the advice and information provided by officials, it did seem a fair interpretation of how things were going. It later became clear that this was not actually the case.

d) What were your views on whether it was “*prudent*” to plan for a contingency of 10% above the approved funding of £545m? Did you consider it likely around that time that a line from the Airport to Newhaven could be built for £600m (i.e. £545m plus the 10% contingency)? What was the basis for your views? Ought members to have been advised around that time that there was a significant risk that the actual cost of phase 1a was likely to be much higher? If members were not advised of that, did that affect their ability to take informed decisions in relation to the Tram Project around that time?

It seemed plausible that a project of this scale should plan for a 10% contingency, but having no prior experience of such a project, we could only make decisions on the basis of information provided by officials. If there was information suggesting a much higher cost, councillors should have been informed.

e) It appears that, in general, members were given notice of cost overruns and difficulties only after overruns and difficulties had occurred. Do you

	<p>agree? If so, should members have been advised of these matters at an earlier stage?</p> <p>To enable proper scrutiny and oversight of the project, we should have been informed of such matters earlier. However, a feature of the tram project was the withholding of information by officials which prevented councillors making fully informed decisions.</p> <p>f) Should members, in your view, have been advised at an earlier stage that decisions were being taken as part of the Dispute Resolution Process which showed that significant additional sums were due (and, indeed, that TIE accepted that some additional sums were due)?</p> <p>Yes.</p>
61.	<p>You were provided with papers in advance of the meeting of the Tram Project Board on the 28th of July 2010 [CEC00244400] again for information only.</p> <p>a) What did you understand to be the main problems and concerns at that time?</p> <p>Ongoing concerns as above, although some of the dispute findings in favour of TIE were good news.</p> <p>b) How were they to be addressed?</p> <p>As above</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>As above</p>
62.	<p>By e-mail dated 8 January 2010 [CEC00473789] Nick Smith sent Alastair Maclean a document, "Tram-Potted History" [CEC00473790]. Mr Smith's e-mail noted <i>"dissemination of the actual history here could cause serious problems and we definitely don't want to set hares running ... be very careful what info you impart to the politicians as the Directors and TIE have kept them on a restricted info flow"</i>.</p> <p>a) Do you have any comments on Mr Smith's e-mail and the accompanying document?</p> <p>The comments made in this email are pretty damning – it is clear that senior council officials (directors) and those at tie were consistently withholding</p>

	<p>information from councillors. This is a clear abuse of their positions. The accompanying document makes it clear that such withholding of information was intentional and designed to limit political oversight and involvement. It also makes clear the inability of senior officials to take advice or act on concerns of their staff – this reflects very poorly on those senior officials.</p> <p>b) Do you consider that CEC Directors and/or TIE kept other Council members “on a restricted info flow”? Did you have any concerns in that regard at the time? If members were given restricted information, did that affect their ability to take informed decisions in relation to the tram project?</p> <p>Yes. As indicated above, it became clear that information was being withheld. Several councillors were concerned, but were repeatedly given assurances (by officials and administration councillors, most notably the Council Leader and Transport convener) that we should not worry about this.</p>
63.	<p>On 20 August 2010 CEC officials met with TIE representatives to consider TIE’s Project Carlisle Counter Offer. A record of the meeting [CEC00032056] noted a range of costs of between £539m-£588m for the Airport to St Andrew Square and a range of between £75m-£100m from St Andrew Square to Newhaven, giving a total range of costs, from the Airport to Newhaven, of £614m-£693m.</p> <p>It was noted that this was essentially a re-pricing exercise for the completed design (which was thought to be approximately 90% complete) with the intention of giving TIE certainty and that all of the pricing assumptions in Schedule 4 of the INFRACO contract would no longer exist.</p> <p>a) Were you (and members) informed of these discussions? If so, what were your views on these proposals?</p> <p>Not at the time, as far as I recall.</p>
64.	<p>You were provided with the papers for the Tram Project Board meeting on the 22nd of September 2010 [CEC00013818] for information only. The papers contained the minutes of the meeting that took place on the 25th of August 2010. These minutes refer to Workstream A (page 7), which appears to be focussed on Contract Administration. In the minutes of the previous meeting in July however, Option A appears to be focussed on termination of the contract.</p> <p>a) What is the significance of this?</p> <p>I was not a member of the TPB, and consequently did not attend these meetings, so I was not party to the detailed discussions, and the minutes do</p>

	<p>not provide adequate information to allow me to make a judgement on this.</p> <p>b) As matters progressed, did TIE take the view that termination was no longer the correct course of action? If so, why?</p> <p>There were discussions about termination, but the risks associated (including further extended delays, cost hikes, disruption to citizens, etc.) all had to be taken into account.</p>
65.	<p>By letter dated 13 October 2010 [TIE00301406] BBS wrote directly to Councillors giving their views on the dispute. BBS advised that of the nine formal adjudication decisions issued, BBS had had six decisions in its favour, there were two split decisions (with the principle found in favour of BBS) and there was one decision in favour of TIE.</p> <p>BBS stated that, in the interests of accuracy and transparency, and if TIE agreed, BBS had no objection to the disclosure of the adjudication decisions to elected members in order that they could make their own judgement.</p> <p>a) What were your views on that letter?</p> <p>This seemed to be useful to allow full disclosure of the adjudication decisions.</p> <p>b) Were the adjudication decisions made available to members at that time (and, if not, why not)? Ought they to have been made available to members? If they were not made available to members did that affect the ability of members to make informed decisions in relation to the tram project?</p> <p>The detailed decisions should have been made available to members, along with detailed briefing or discussions to ensure all councillors understood fully what the consequences and ramifications of these could be. Such detailed discussion was not provided at the time, as far as I am aware.</p> <p>c) What was your understanding and what were your views at that time on the outcome of the adjudication decisions, including the extent to which they favoured TIE or BSC (and what was the basis for your understanding and views)?</p> <p>The letter made it clear that the decisions favoured BSC.</p> <p>d) How did the information provided to Councillors by BBS contrast with the information being provided by TIE at that stage [TIE00463778]?</p> <p>The information provided by TIE was limited as far as the adjudications and</p>

	<p>consequences were concerned – a further example of the control of information to councillors.</p>
66.	<p>A report to Council dated 14 October 2010 [CEC02083124] noted that at the Council meeting on 24 June 2010, the Council had required a refreshed Business Case, detailing the capital and revenue implications of all the options currently being investigated by TIE and taking into account assumptions contained within the original plan (e.g. anticipated development) that either no longer applied or whose timescales had now substantially changed.</p> <p>The report noted that the contingency planning work undertaken by the Council and TIE had identified funding options which could address project costs of up to £600m. It was stated, <i>“Due to the current uncertainty of contractual negotiations, it is not possible to provide an update at this time on the ultimate capital costs of the project”</i> (para 3.1).</p> <p>It was, again, noted that <i>“The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties”</i> (para 2.50).</p> <p>Termination of the contract was one option. It was noted that extensive legal advice had been taken and continued to be taken.</p> <p>The report did not, however, give an indication of the likely cost, or range of costs, of the different options with the Project Carlisle offers and counter offers, for example, not being referred to.</p> <p>a) We understand that on this occasion Councillors were unhappy with the level of detail provided and required a more detailed update of the Business Case. What is your recollection of the discussion in that regard including why more detail was requested? On what matters did members wish to receive more information?</p> <p>It was becoming increasingly apparent that councillors were not receiving full information or the whole picture from senior council and TIE officials. From what I can recall, this was the underlying reason for requesting more information, on the issues outlined in the motions and amendments discussed in the meeting.</p> <p>b) Did the statement that the outcome of the DRPs remained “finely balanced” accord with your understanding at that time? What was the basis for your understanding?</p> <p>The information provided (as indicated above) by BBS seemed to indicate that this statement was not an accurate reflection of the DRPs.</p> <p>c) What legal advice was provided to you (and to other members) in relation</p>

	<p>to the contractual disputes? To what extent, if at all, was the legal advice that had been obtained by the Council and/or TIE made available to you (and to other members)? Was any such legal advice that was provided or made available, readily accessible and understandable? If legal advice was not provided and/or made accessible to members, to what extent did that affect the ability of members to come to informed decisions in relation to the tram project?</p> <p>Questions were asked about the legal advice being taken by the Council and TIE, and assurances were given by senior officials that all the usual and expected checks and investigations were underway. Detailed explanations and discussions of such advice was not available to opposition councillors, as far as I am aware. With hindsight, it is clear that it would have been useful to have access to such information and explanations.</p>
67.	<p>An e-mail dated 4 November 2010 by the Council Solicitor, Alastair Maclean [CEC00012984], stated that CEC were to instruct “[<i>their</i>] own independent analysis of TIE’s position by CEC’s QC” and that McGrigors had been appointed to lead that work stream in place of DLA.</p> <p>In e-mails dated 22 and 30 November 2010 Mr Maclean expressed certain concerns about TIE and the legal advice received by TIE [CEC00013411] and [CEC00014282] (see also [CEC00012450]).</p> <p>In an e-mail dated 30 November 2010 [CEC00013550] Nick Smith listed his personal view on the performance of TIE and DLA.</p> <p>In an e-mail dated 24 November 2010 to Mr Maclean [CEC00013441], Richard Jeffrey stated, “<i>if the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation</i>”.</p> <p>a) To what extent, if at all, were members aware at this stage that CEC officials had lost confidence in TIE and/or their advisors?</p> <p>At the time, I do not think that all councillors were aware of the full extent of these issues, or of the consequences (for the tram project, the Council’s reputation, etc.) of the different options for action.</p>
68.	<p>Following the resignation of David Mackay, the Chairman of TIE, Bilfinger Berger wrote to yourself and other elected members on 5 November 2010 [CEC00013011] stating that the resignation was not conducive to progressing the project and that the comments made by Mr Mackay in the media were sufficiently harmful to BBS’s reputation to warrant legal action against him. The letter urged the Council to distance themselves from these comments and to request Mr McKay to make a public apology.</p> <p>We understand that a meeting took place between BSC and John Swinney on 8 November 2010.</p>

	<p>The Chief Executive of CEC then wrote to BSC on 15 November 2010 [CEC00054284] restating that negotiations in respect of the contract must be carried out between INFRACO and TIE, but indicating that the Council would be willing to meet with tie and INFRACO officials on a without prejudice basis.</p> <p>We understand that on 16 November 2010 Council leader Jenny Dawe wrote to the Managing Director of BSC to offer a meeting with Council officers and that, later that day, Ms Dawe and Mr Aitchison met with John Swinney.</p> <p>On 18 November 2010 Jenny Dawe tabled an emergency motion proposing mediation as a means of progressing the tram project [TIE00306955].</p> <p>a) It would be helpful if you could explain your awareness of events around that time? Why, for example, did CEC indicate a willingness to meet with BSC at that stage (c.f. their earlier position that it would not be appropriate to meet directly with BSC)? What were your views?</p> <p>Some of these events were reported in the media, and the emergency motion was discussed as indicated. Given the changes in TIE, and the obvious poor relationships involved, and the challenges around the contract disputes, it was reasonable for CEC to meet with BSC, especially as there had been at least one meeting of this nature before (in February 2009, as indicated above). This was perhaps an attempt by the Council Leader to get a grip on the project.</p> <p>b) Do you consider that CEC ought to have met with BSC earlier in an attempt to better understand and/or resolve the dispute?</p> <p>An earlier meeting, or regular meetings, might have led to a better understanding and earlier resolution of disputes, but this would have undermined the governance responsibilities of TIE. Officials were clear that TIE should be allowed to manage the project without political interference. Hindsight suggests that this was perhaps poor advice.</p>
69.	<p>On 16 November 2010, Richard Jeffrey advised Alastair Maclean of certain serious concerns he had in relation to events at the time the INFRACO contract was entered into. On 17 November 2010 [CEC00013342] Mr Maclean produced a Note for the Council's Monitoring Officer setting out Mr Jeffrey's concerns.</p> <p>a) Were you as a member made aware of these concerns? If so, what were your views?</p> <p>As far as I recall, the details of these concerns were not communicated to all members at the time.</p>

	<p>b) What steps, if any, do you consider ought to have been undertaken by the Council's Monitoring Officer in response to these concerns?</p> <p>The accusations and concerns demanded immediate investigation.</p>
70.	<p>A report to the meeting of the IPG on 17 November 2010 [CEC00010632] noted that a range of cost estimates for the different scenarios were being produced. The draft estimate for Project Carlisle varied between TIE's estimate of £662.6m and BSC's estimate of £821.1m. These estimates were for the full scheme and the report noted that the cost estimates, as they stood, indicated that delivery of the project to St Andrew Square could be delivered for £545m-£600m.</p> <p>a) To what extent, if at all, were you (and other members) made aware of these figures around that time?</p> <p>As far as I recall, the details of these figures were not discussed with councillors at the time.</p>
71.	<p>You were provided with papers in advance of the meeting of the Tram Project Board meeting on the 17th of November 2010 again, for information only [CEC00014175]:</p> <p>a) Where did you understand discussions had got to in Project Carlisle?</p> <p>The information I had on this was just what had been provided by officials. I was not a member of the TPB, so if further information was provided, I was not there to hear it.</p> <p>b) What was the intention at this stage in relation to the contract with BSC?</p> <p>Again, as I was not a member of the TPB, the information I had about intentions is as included in these papers and reports to Council.</p> <p>c) How much feedback were you getting from the TIE officers dealing with BSC?</p> <p>As far as I recall, there was limited very feedback directly from TIE officials to councillors; opposition councillors were perhaps less well-informed than others.</p>
72.	<p>An exploratory meeting took place on 3 December 2010 between Alastair Maclean and Donald McGougan on behalf of CEC, Richard Walker of</p>

	<p>Bilfinger Berger and Antonio Campos of CAF (a record of the meeting was produced [CEC02084346]).</p> <p>a) Were you advised on what was discussed?</p> <p>As far as I recall, no detail of this meeting was disclosed. An update report was discussed at the December Council meeting, but it did not cover many of the points raised in this exploratory meeting.</p> <p>b) If so, what were your views on BSC's position?</p> <p>n/a</p>
73.	<p>On 16 December 2010 Tom Aitchison provided the Council with an update on the refreshed Business Case [CEC01891570].</p> <p>The report noted that a line from the Airport to St Andrew Square was capable of being delivered within the current funding commitment of £545m. It was noted that mediation discussions involving the Council and BSC would commence early in the New Year, that, by their nature, mediation discussions had to be conducted on a confidential basis and that it would not be possible to report in detail on the mediation process until it was completed or possible decisions emerged which required consideration by the Council.</p> <p>At the meeting an amendment was passed by members to request a review of the Business Case by a specialist public transport consultancy that had no previous involvement with the Edinburgh tram project (see Minutes [CEC02083128], p22).</p> <p>a) What were your views at that time on whether it was likely that a line could be built from the Airport to St Andrew Square within the current funding commitment of £545m?</p> <p>The reassurances given about this were encouraging, although concerns still remained.</p> <p>b) Do you consider that members were provided with sufficient detail in the report to enable them to come to informed decisions? (See e.g. the Action Note of the IPG meeting on 1 December 2010 [TIE00896611] which noted that Mr Aitchison wished to make the report to Council "as <i>high level</i> as possible, focussing on strategy rather than detail".)</p> <p>Again, this is an example of the control of information given to councillors.</p> <p>c) Were you (and other members) consulted in relation to CEC/TIE's</p>

	<p>proposed approach to the mediation?</p> <p>From what I recall, we were informed what the approach was, rather than consulted on a range of options.</p> <p>d) What was your understanding as to why members requested a review of the Business Case by a specialist public transport consultancy with no previous involvement with the tram project? Was such a review carried out (and, if so, when and by whom)? Do you consider that such a review ought to have been undertaken at an earlier stage?</p> <p>This was an attempt to get an independent opinion from a public transport specialist. Given the conflicting views of the different players involved to date, it appeared to be the best way for councillors to be confident that the project was being managed and supported properly. Atkins undertook an audit of the business case, and reported to the June 2011 council meeting. With hindsight, it might have been useful to undertake such a review at an earlier stage, but, as before, council and TIE officials assured us they were undertaking internal checks and monitoring throughout the project.</p>
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2011 to Completion

74.	<p>You were provided with the minutes of the Tram Project Board [TIE00897052] meeting on the 12th of January 2011. The papers contain the minutes of the meeting that took place on the 15th of December. Both the papers for the meeting on the 12th of January and the minutes of the meeting on the 15th of December consider mediation and the Board are said to want it progressed asap.</p> <p>a) What is your understanding of why mediation was the preferred option?</p> <p>Given the events of the previous years, it was clear that the relationships between TIE and BSC had become problematic. Mediation appeared to be a constructive approach. However, as I was not at the meeting, I was not party to the specific discussions about this.</p> <p>b) What did you understand to have brought about the change of heart from the other remedies that had been pursued since about April 2010?</p> <p>As above, not having been at the meeting, I cannot describe the discussion that took place. However, I can assume that the fact previous approaches clearly hadn't worked, another approach was required.</p>
75.	The Highlight Report for the meeting of the IPG on 21 January 2011

	<p>[CEC01715625] noted that both Nicholas Dennys QC (instructed by CEC) and Richard Keen QC (instructed by TIE) had advised that the best option was to seek to enforce the contract until grounds of termination could be established as a result of a failure to perform the works, which option would also place TIE in the strongest position with regard to any mediation/negotiated settlement. It was unclear to what extent there had been a rigorous approach by TIE to enforcement of the contract pending the Carlisle negotiations and the focus on the termination option.</p> <p>The report noted that, <i>“TIE Ltd presently appear to be in a weak position legally and tactically, as a result of the successive losses in adjudications and service of remediable termination notices [RTN’s] which do not set out valid and specific grounds for termination”</i> (p7). The consortium were noted to be extremely well prepared.</p> <p>It was further noted, <i>“However, there was a desire commercially and politically to move towards mediation notwithstanding TIE Ltd’s (apparently) relatively weak tactical and legal position. That is likely to have a financial implication with the INFRACO as the party in the stronger position faring rather better out of it than might otherwise have been the case. Against that there are financial and other costs involved in allowing matters to continue”</i>.</p> <p>a) To what extent, if at all, were these matters discussed with members?</p> <p>As far as I recall, these issues were not discussed with all members. They were not included in update reports to Council (in May and June 2011).</p> <p>b) Had members been aware, what do you think that they would have done in response?</p> <p>This information could have provided useful context for discussions about the best way forward, including councillors seeking information about like costs and other consequences TIE/CEC could face.</p>
76.	<p>You were provided with the papers for the meeting of the Tram Project Board in February 2011 [TIE00897058] again, for information only.</p> <p>a) It contains the minutes of the January meeting, where there was discussion of the Audit Scotland report (page 13). Did you read the Audit Scotland report at that time? If, so can you comment on the principal findings and, in particular, the suggestion that TS should have had a greater role?</p> <p>I read the Audit Scotland report at the time. It had been suggested several times that TS should have had a greater role in the whole project, but because of their objection to the tram project from the outset, the SNP government made a policy decision preventing this involvement.</p> <p>b) In the same Minutes it is noted that there was discussion about the</p>

	<p>objectives to be secured at any mediation. To what extent were the objectives to be secured at mediation discussed with members? Was there a difference of opinion amongst members of the council as to what would represent a desirable/ necessary outcome? If so, how was the matter resolved and what factors swayed the final decision?</p> <p>As I was not a member of the TPB, it is not possible for me to say how this discussion developed. However, given the differences in opinion of the councillors as to the best way forward, it is likely that there would have been different ideas as to what the desired outcome should be. The council meetings where this was discussed reiterated the commitment to trams being part of Edinburgh's transport future. At a very high level, that is perhaps the outcome required.</p>
77.	<p>Mediation talks took place at Mar Hall in March 2011.</p> <p>a) Did you (or other members) play any part in the preparations for the mediation and/or the mediation talks?</p> <p>I did not. I do not know what part, if any, other councillors played.</p> <p>b) Do you consider that you (and other members) were provided with adequate briefing in relation to the mediation?</p> <p>It was made quite clear that we would not receive detailed updates on the mediation process because of the requirement for confidentiality.</p> <p>c) Do you consider that you (and other members) were provided with an adequate opportunity to express your views before, during and after the mediation?</p> <p>Again, as indicated above, there did not appear to be an opportunity to discuss the terms of the mediation or the process once it was underway. There was the opportunity to discuss the mediation after it had taken place, at both the May and June 2011 council meetings.</p> <p>d) What was your understanding of the outcome of the mediation? When and how were you (and other members) advised of the outcome of the mediation, including the sums discussed/agreed for the off-street and on-street works? What were your views on the outcome of the mediation?</p> <p>The mediation appeared to be positive, as outlined in the Tram Update report to Council in May 2011. This report, and the subsequent one in June, provided the information about the mediation discussions.</p>

78.	<p>You received papers for the meeting of the Tram Project Board on the 11th of May 2011 for information only [TIE00896987].</p> <p>a) What did you understand to be the main problems and concerns at that time? In particular, what is your understanding of the concerns expressed by Kenneth Hogg in the May TPB meeting (page 3) in relation to the mediation agreements?</p> <p>These concerns focused on governance arrangements, and what oversight role TEL/TPB had had during and after mediation. The papers identify concerns, but having not been at the meeting, I cannot give more information than that which is included in these papers.</p> <p>b) How were they to be addressed?</p> <p>The paper highlight that the Board agreed the need to resolve these governance concerns.</p> <p>c) Were these efforts successful (and, if not, why not)?</p> <p>Revised governance arrangements were discussed at the June council meeting, and then again later in the year.</p>
79.	<p>A report to the Council on the 16th of May 2011 stated that mediation had made progress and work had started in priority locations (Minute of Variation 4) while further work was done on other issues.</p> <p>a) Were members advised at that meeting (or earlier) of the outcome of the mediation including, in particular, the sums discussed/agreed for the off-street and on-street works (i.e. a price of £362.5m for the off-street works and a target price of £39m for the on-street works). If not, ought they to have been?</p> <p>My recollection is that information about the mediation process communicated to councillors was contained in either this and subsequent reports to council, and in TPB papers.</p>
80.	<p>On 30 June 2011 the Council were advised of the options for the tram project in a report by the Director of City Development [CEC02044271].</p> <p>It was recommended that the Council complete the line from the Airport to St Andrew Square/York Place, at an estimated cost of between £725m and £773m, depending on the risk allowance.</p> <p>The report stated that in the 12 months between preferred bidder stage and financial close of the contract there were significant negotiations on</p>

commercial matters including management of risk arising from incomplete design work. It noted that claims related disputes were apparent from an early stage and tested the parties' respective understanding of the contract.

Difficulties were exacerbated by delays with utility diversion works; slow progress in clearing design related activities; and problems with sub-ground conditions during utility diversion works.

a) What were your views on the best option available to the Council at that time?

The Green Group amendment to this report sought further information for completion to either Haymarket or York Place.

b) What were your views on the recommendation by the Director of City Development?

The Green Group amendment submitted for this meeting describes my views.

c) What were your views on the greatly increased cost of the tram line (for a shorter line) and how, and by whom, that estimate had been produced?

As above, we expressed regret in our amendment, and requested further information.

d) We understand that confidential appendices to the report were made available to members which outlined included a lump sum price for the off street section between the airport and Haymarket subject to certain exceptions and, a measurement contract basis for the on street section which included the Council carrying certain risks, including those risks associated with utility diversions [CEC01914665]. What documents comprised these confidential appendices, and what was your understanding of why were they considered confidential? How (and when) were they made available to members?

From what I recall, councillors had the opportunity to view these documents before the meeting, but I do not remember the exact details (timings, etc.).

e) Do you consider that you (and other members) were provided with sufficient information to come to an informed decision?

Our amendment calls for further information on the Haymarket/York Place options, but we were satisfied we had enough information to rule out options 1 and 2.

	<p>f) Do you consider that the Report to CEC on 30 June 2011 presented a contrast to the position presented to the Council at the time of financial close? If so, why do you think this position was not presented to the Council at the time of financial close?</p> <p>The intervening years, and the contractual disputes experienced during this time, changed the nature of the tram project. It is clear, given earlier comments about restricting information flow and silencing of dissent by senior officials, that more information should have been available earlier.</p> <p>g) Was consideration given to the interest that would accrue on the large sums that the City of Edinburgh Council was borrowing?</p> <p>Yes, consideration was given to this.</p> <p>h) Claims were made that terminating the Edinburgh Trams Project would be more expensive than building it to St Andrew's Square. Was this one of the reasons that the Council wanted to proceed with the project? Given the interest payable on the loan for completing the project, with hindsight, do you consider that the cost of terminating the contract would in fact have been more expensive than continuing the line to St Andrew's Square [TIE00687940]?</p> <p>As far as I recall, we discounted terminating the project because of the considerable investment already made, as well as the disruptions suffered. We wanted to have a tram at the end of all of this. Further information is in the Green amendment discussed at this meeting.</p>
81.	<p>On 25 August 2011 the Council were given a further update by way of a report by the Director of City Development [TRS00011725].</p> <p>The report noted that Faithful and Gould had worked with Council officers in validating the base budget for the proposed works.</p> <p>There was a requirement for funding of up to £776m for a line from St Andrew Square/York Place (comprising a base budget allowance of £742m plus a provision for risk and contingency of £34m).</p> <p>Additional funding of £231 was required, which would require to be met from Prudential borrowing, at an estimated annual revenue charge of £15.3m over 30 years (which, applying a discount rate, resulted in a present day value of the additional borrowing of £291m).</p> <p>At the Council meeting, members voted in favour of an amendment that a line should be built from the Airport to Haymarket (and not St Andrew Square/York Place).</p> <p>At a Meeting of the Council dated 2 September 2011 however, the Council</p>

	<p>overturned the decision to go only to Haymarket (the report for this meeting, by Sue Bruce, is [CEC01891495]). This appears to have been in response to a letter from Transport Scotland stating that there would be no further payment of grant if the line stopped there.</p> <p>a) What is 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?</p> <p>The Green Group amendment at this meeting made it clear that we sought further information, but wished to see the tram built to St Andrew Square/York Place, for the reasons outlined in the proposals for which we voted.</p> <p>b) What is your understanding as to why Transport Scotland were unwilling to provide further payment of grant if the line stopped at Haymarket? What were your views about this decision?</p> <p>We understood that if the line stopped at Haymarket, the benefits to the city of the tramline would be limited, and this was the reason TS were unwilling to provide further payment. This was outlined in the September council meeting, and the Green Group amendment at this meeting presents our views.</p> <p>c) We understand that the report to Council in August included a confidential summary of a report dated 19 August 2011 by Faithful and Gould [CEC01727000]. The full report by Faithful and Gould noted, in the Executive Summary, that the current costs for the on-street works for Siemens were "<i>extremely high and not value for money</i>" and that the cost of the other on-street works was "<i>grossly inflated</i>". Were you (and other members) aware of these conclusions? If so, why did the Council nonetheless agree to instruct these works?</p> <p>I would have read the information on this issue provided to us at the time by officials.</p>
82.	<p>A Settlement Agreement was entered into on 16 September 2011 between the Council and BSC which, ultimately, resulted in a reduced tram line (from the Airport to York Place) being built for a total capital cost of approximately £776m.</p> <p>a) What were your views on the settlement agreement reached in September 2011? What advice was given to members in that regard?</p> <p>It appeared the best option available, as outlined above, following the August and September council meetings where this was discussed.</p>

	<p>As noted above, the main features of the contractual arrangements were set out in a confidential appendix to the 30 June 2011 Council report [CEC01914665] Do you remember being provided with this confidential appendix and if so, what was your understanding of the contractual arrangements?</p> <p>I recall reading this confidential appendix at the time.</p> <p>b) Did you understand there to be any realistic alternatives to the settlement agreement? Again, what advice was given to members in that regard?</p> <p>As a group, we requested some further information, as outlined in our amendments at these meetings.</p> <p>c) The additional funding of £231 million came from additional Council borrowing. Given the long term consequences of that borrowing, do you consider that it was justified to carry on with the project? Did members have regard to the views of constituents on this matter?</p> <p>We did take this issue into account, as indicated by our amendment. This position would have been informed by constituents' views.</p>
83.	<p>An announcement that Ministers/TS would oversee the project and that the grant would be re-instated was made on 14 September 2011. The Council appointed external project managers, Turner and Townsend, to assist the process, revised the governance arrangements and began to wind down TIE [TRS00012622].</p> <p>a) What role did you understand TS to play after the settlement agreement?</p> <p>As described, TS would oversee the project given TIE was being wound down.</p> <p>b) What role did you understand Turner and Townsend to play after the settlement agreement?</p> <p>Turner and Townsend would work with TS as project managers.</p>
84.	<p>At a meeting of City of Edinburgh Council on the 24th of November 2011 [CEC01891428] Lesley Hinds noted that Jenny Dawe had requested an inquiry into the Edinburgh tram project and asked whether she would circulate this request to elected members. The letter from the first Minister confirmed that the Scottish Government would be delighted to have an inquiry into the problems surrounding this project.</p>

	<p>a) Did you think that a public inquiry was necessary? What did you hope a public inquiry would achieve?</p> <p>Yes. Given the gross mis-management of the project, the restriction of information flow, the cost and timing overruns, and other issues associated with the project, and inquiry was the only way to shed light on these problems, enabling real accountability and transparency. This is crucial for any democracy.</p> <p>b) The Chief Executive, Sue Bruce, was of the view that any Inquiry at that time would be an unwelcome distraction and that it should wait until the project was complete. Did you agree?</p> <p>The focus had to be on completing the project, but the inquiry was an important part of restoring trust in the council generally, and in the tram project specifically.</p>
85.	<p>Following the Mar Hall mediation and the Settlement Agreement, works progressed to complete a tram line from the Airport to York Place, which opened for revenue service on 31 May 2014.</p> <p>By way of overview:</p> <p>a) What were the main changes introduced as a result of the Mar Hall mediation and the Settlement Agreement?</p> <p>The line was shortened to York Place, the governance arrangements changed, and contractual obligations were more clearly defined.</p> <p>b) Do you agree that the project appeared to run reasonably smoothly after these agreements (c.f. events previously)? If so, why do you consider that was?</p> <p>Events in 2011 did enable the completion of the curtailed project, much more smoothly than how things had run up until this point. Relationships had been rebuilt, governance arrangements strengthened, and communications improved.</p>

Project Management and Governance

General	
86.	In general:

a) What were your views on the governance arrangements for the tram project? Do you consider the governance arrangements were effective (and, if not, why not ?)

Governance of this project was problematic from the start, mostly because of the inexperience of the Council administration, and the unwillingness of certain senior officials from 2007-10 to act in good faith (with respect to flow of information, etc. as indicated above). The arrangements in place initially did not allow these issues to be adequately dealt with.

b) Do you consider each of the relevant bodies (CEC, TIE, TEL the Tram Project Board and Transport Scotland etc.) were able to, and did, exercise effective governance and control over the project?

CEC was hampered by lack of information, as were the TPB. TS's distance to the project meant it had no interest in exercising effective governance.

c) Did you have any concerns at any time in relation to the performance of CEC, TIE, TEL the Tram Project Board and Transport Scotland, or the senior personnel of 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)?

As indicated above, concerns about information flow were expressed, but senior officials repeatedly assured us that things were under control.

d) Do you consider that the roles and responsibilities of each of the bodies etc. involved in the delivery and governance of the project was sufficiently clear? Do you have any views on the suggestion that may be made that there were too many bodies and organisations involved in the governance of the project?

On the surface, things were clear, but the complexities of relationships, including responsibilities and lines of communication, were not clear. It is debateable whether or not TIE was necessary at all.

e) Which body or organisation do you consider was ultimately responsible for ensuring that the tram project was delivered on time and within budget?

As the main proposer of the project, the Council is ultimately responsible. However, TIE, as the company designed to manage the project, also was responsible. Responsibility for the failure to deliver the project on time and within budget must be shared by the senior officials involved in both organisations, perhaps especially those advising on the contractual issues, which caused significant issues throughout the project. And, political responsibility should rest with the whole administration (Lib Dems and SNP).

87.	<p>The report to Council on 25 August 2011 [TRS00011725] noted that <i>“the existing governance arrangements for the tram project are complex and have not been effective”</i>, that <i>“the governance arrangements for the delivery of the Tram project additionally have had to take account of the complexity of the arms-length bodies that were proposed to deliver an integrated transport service once trams become operational”</i> and that <i>“there is a need to revise the overall arrangements to ensure effectiveness, accountability, probity and integrity going forward.”</i></p> <p>a) What are your views on the conclusions noted above? Do you agree with them?</p> <p>As indicated above, it is clear that there were significant failures in the governance of this project.</p> <p>b) Whose responsibility was it, in your view, to ensure that effective governance arrangements were in place?</p> <p>Ultimately, this probably rests with the Council, including the senior officials advising the politicians.</p>
88.	<p>Slides setting out a new governance structure [TRS00014775] were agreed by Council on 25 August 2011 and 2 September 2011.</p> <p>a) What changes were made to the governance structures around this time? Were they effective (and, if so, why)? What did you consider to be the main improvements?</p> <p>The significant change is the removal of TIE and the bringing back into direct Council oversight (under the Chief Executive) of the project. Having TS providing oversight was significant too – they should always have been involved, as key funders.</p>
TIE	
89.	<p>In general:</p> <p>a) By what means did CEC exercise oversight and control over TIE? Which Council officer was responsible for ensuring that CEC exercised effective oversight and control over TIE</p> <p>The Transport Convener and senior officials (Chief Executive and Directors) had the main responsibility for oversight of TIE.</p> <p>b) By what means did the Council’s senior officers and members receive information and updates from TIE?</p>

This varied: there were emails, briefings, tram updates, etc. As an opposition councillor, I was not aware of all the channels of communication between TIE and CEC officials, nor between TIE and administration councillors, but several of these have become more apparent in the documents associated with this inquiry.

- c) Did you have any concerns at any time about TIE's reporting to the Council including, in particular, whether information was always fully and accurately reported? If so, what were these concerns and what was done to try address them?

I sought to monitor the information to ensure proper scrutiny of the project, but information was not provided in a way that facilitated such scrutiny, making this substantially more difficult.

- d) Did you have any concerns at any stage in relation to TIE's project management of the Tram Project or the performance of any of TIE's senior personnel or Board members?

There were concerns expressed, both in private and in different public forums (public meetings, the media, etc.) about certain individuals. If concerns were raised, however, at least in the first few years (2007-2010), these were brushed off by senior council officials.

- e) Did you consider that TIE had sufficient experience and expertise (both individually and as an organisation) to project manage a complex infrastructure project like the Edinburgh tram project?

We were assured by both CEC and TIE officials that TIE did have the necessary experience and expertise. While I have doubts about this, it is not my professional field, and I took this on trust.

- f) Was any consideration given to instructing an organisation (e.g. a firm of civil engineers) with an established track record of project managing major infrastructure projects to assist CEC and/or TIE in project managing the Edinburgh Tram Project? With the benefit of hindsight, do you consider that such an organisation ought to have been instructed?

I am aware of some discussions around this, but none of them were formal, as far as I know. Had they been, it might have been possible to obtain guidance and advice from such an organisation.

- g) What were your views on the TIE bonus scheme, including whether it was appropriate that bonuses were paid to senior TIE employees in addition to

	<p>their salaries? Do you consider that CEC exercised sufficient control over TIE bonuses? Do you have any views on the level of the bonuses?</p> <p>The bonus scheme was completely inappropriate – TIE staff were on good salaries.</p>
The City of Edinburgh Council	
90.	<p>In general:</p> <p>a) How did CEC officers advise members of important matters relating to the tram project?</p> <p>As indicated above, senior officers, particularly in the 2007-10 period, controlled and limited information flow to councillors. They prohibited more junior staff speaking directly and openly to councillors. This behaviour was unacceptable.</p> <p>b) Were members always fully updated on significant developments relating to the Tram Project including, in particular, the problems that arose and the estimates of the cost of completing the project?</p> <p>No. As indicated above, information was controlled and often restricted.</p> <p>c) To what extent did the need for confidentiality conflict with the need to keep members informed of matters relating to the Tram Project and what steps were taken to address that conflict? (see e.g [CEC00855002]) To what extent did that affect the ability of Council members, to take informed decisions in relation to the tram project? What steps were taken to address any such concerns?</p> <p>Confidentiality was often used as an excuse for not providing information. Some of this might have been understandable if other information had been forthcoming, but it is clear in hindsight that confidentiality was used to hide things from councillors. This meant we did not have the necessary information to make truly robust decisions.</p> <p>d) Which officer (or officers) in CEC do you consider was ultimately responsible for ensuring that the Tram Project was delivered on time and within budget?</p> <p>Probably the Chief Executive, given this role's management of all other senior council officials.</p> <p>e) Do you consider that members who sat on the Tram Project Board and the Boards of TIE and TEL had sufficient experience and expertise</p>

(including of major infrastructure projects) to inform their decisions as members of these boards? Was training provided? Ought it to have been?

There were some relevant experience/expertise on these bodies, and some training was provided. However, given the inexperience of the politicians, there should have been a much more rigorous skills/experience audit of the professionals and other council officials involved.

f) Do you consider that any conflict of interest, or potential conflict of interest, arose from Councillors being members of both the Council and organisations with responsibilities for delivering the project i.e. TPB, TIE and TEL?

No.

g) Do you consider that CEC officers were able to, and did, exercise effective oversight and control over the tram project (and, if not, why not)?

There were some individuals who sought to properly scrutinise the project and inform councillors about events, but others were clearly not interested in enabling transparency and proper scrutiny of this project.

h) Do you consider that members were able to, and did, exercise effective oversight and control over the tram project (and again, if not, why not)?

The restrictions of information by council officials was a significant barrier to effective oversight by councillors.

Tram Project Board

91. In general:

a) What is your understanding of when and why the Tram Project Board (TPB) was created?

The TPB was set up to provide a link between and oversight of common interests across the Council, TEL and TIE; i.e. to aid communications and governance of the transport bodies. As far as I am aware it was set up in 2006, before I was elected as a councillor.

b) What was the role, remit and responsibilities of the TPB?

I was not a member of the TPB, but understood it to have a governance and oversight role, bringing TIE and TEL together, and providing opportunities for elected member input.

	<p>c) What powers were formally delegated to the TPB, by whom and when?</p> <p>I was not a member of this board, but it appeared to be more of an information sharing and exchange and oversight forum, rather than a decision-making body.</p> <p>d) To whom did the TPB formally report?</p> <p>As indicated at the Council meeting in August 2007, consideration was given to the requirements for TPB to report to the Tram Sub-committee.</p> <p>e) How did the above matters change over time?</p> <p>As TIE was wrapped up, governance arrangements changed and the TPB was much more closely associated with the Tram sub-committee. The membership of the TPB also changed over time, as reflected in the minutes and papers discussed above.</p> <p>f) Were elected members who sat on the Tram Project Board, acting as the “eyes and ears” of Councillors as a whole or at least a conduit between the two bodies? Did they report back to the full Council?</p> <p>Councillors on the TPB acted as the eyes and ears of other councillors and as a conduit between the two bodies. However, there was no formal reporting process by these councillors back to the full Council.</p> <p>g) Was there representation of all parties on the TPB (and, if not, why not)?</p> <p>No. For example, I received papers on behalf of the Green Group, but did not have a position on the TPB. With only three councillors, it was probably not surprising that the Greens did not get full representation on this body.</p> <p>h) Did you have any concerns, at any time, in relation to the TPB as an organisation or in relation to individual members of the TPB?</p> <p>No, although, not being a member of this board and just receiving the papers, it was not always clear what added value it provided.</p>
TEL	
92.	<p>In general:</p> <p>a) What was your understanding as to why TEL was created?</p> <p>TEL was created to oversee the integration of bus and tram services. On the</p>

	<p>introduction of the tram system, TEL was to operate both Lothian Buses and the trams on behalf of the Council.</p> <p>b) What were the role, remit and responsibilities of TEL [CEC00475228] [CEC00475229]?</p> <p>TEL was responsible for overall responsibility for the integration of Edinburgh's transport. This was to work through developing the tram business case, an operational plan for the organisation, and for governing projects. It was also designed to ensure compliance with competition and transport legislation.</p> <p>c) What powers were formally delegated to TEL, by whom and when?</p> <p>TEL was created before I became a Councillor, I think in 2004, by the Council, with powers to ensure legislative compliance as indicated in b) above, and authority to promote bills, undertake procurement and the like. It had the authority to deliver an integrated transport system.</p> <p>d) To whom did TEL formally report?</p> <p>TEL reported to the Tram Project Board, which reported in turn to the Council.</p> <p>e) How did the above matters change over time?</p> <p>As governance and project needs changed, so did TEL. These changes are summarised in the report CEC00475229 cited above.</p> <p>f) Did you have any concerns, at any time, in relation to TEL as an organisation or in relation to individual members of the board or senior employees?</p> <p>I was concerned by the general approach of the Council, putting areas of competence in the remit of arms-length organisations, which were much harder to scrutinise for Councillors.</p>
Transport Scotland	
93.	<p>Following the debate and vote in the Scottish Parliament in June 2007, Transport Scotland's role in the governance of the project changed.</p> <p>a) In what way did TS's role and involvement in the tram project change at that time? Why was that change made? What were your views on TS's changed involvement?</p>

It became clear that TS would not be directly involved in the project. At the time this meant a substantial reduction in the specialist competence available for the Council to draw upon in specifying, delivering and completing the project.

This change was made because the SNP minority Scottish Government wanted to spend the money elsewhere, but could not command a parliamentary majority for this.

I was disappointed at this withdrawal of support. It seemed childish to withdraw support, and this withdrawal cost the people of Edinburgh substantially. The situation was rescued somewhat when Transport Scotland intervened to avoid the Haymarket completion plan that was voted for at full Council.

b) What regular reporting to TS, and by whom, took place after that change? What level of oversight did they provide?

I was not in a position to be aware of these arrangements, and this reflects the broader issue of secrecy around the tram project.

c) What impact, if any, do you consider that TS's changed role had on the management, oversight and/or delivery of the tram project (and, if so, in what way)?

As I make clear in a) above, I think this substantially diminished the capacity to deliver this project effectively.

d) What impact, if any, did TS's changed role have on scrutiny of the information and estimates provided by TIE? Do you have any views on the suggestion that may be made that TS's changed role reduced the opportunity for TS, as a body with experience of managing and delivering major infrastructure projects, to offer guidance and advice, and exercise oversight and control of the tram project?

As indicated in a) above, the distancing of TS from the tram project was detrimental to the project as a whole, and certainly to the city more generally. The experience and expertise of TS would have been invaluable, especially in the earlier stages of the tram project (2007-10), to assist the inexperienced council administration and also the perhaps poorly qualified senior officials in their management of the project.

Audit Scotland

94. | Audit Scotland produced reports on the tram project in June 2007

[CEC00785541] and February 2011 **[ADS00046]**.

a) Did you read these reports at the time?

Yes

b) If so, what were your views, in general, on these reports? What did you understand the main conclusions of each report to have been?

The 2007 report, as discussed at the August 2007 council meeting, gave external validation of the tram project, commenting in positive terms on a range of issues including governance, financial control and risk management.

The 2011 report provided the incentive for Transport Scotland to get more involved, and suggested some useful issues to consider as we dealt with the issues of the project we had encountered.

c) What reliance, if any, was placed by you (and other Council members) on these reports?

These reports, at the different times and stages of the Tram Project, gave either a positive endorsement of the project, or usefully highlighted issues requiring to be addressed, or suggested useful avenues to explore.

OGC Reviews

95. In May 2006 an Office of Government Gateway (OGC) Readiness Review was carried out of the tram project and a report of the review was delivered to the Chief Executive of TIE on 25 May 2006 **[CEC01793454]**. The overall status of the project was assessed as "Red" (meaning "To achieve success the project should take action immediately").

a) Did you see a copy of that report?

As far as I recall, I did see a copy of that report in the first few months as a councillor.

b) Did the report cause you any concerns and, if so, what did you do in light of any such concerns?

Plans for the Tram Project had moved on since these reports, and I remember being advised by an official (although I cannot remember who this was) that these reports had been overtaken by more recent events.

A second OGC review was carried out in September 2006 **[CEC01629382]**

	<p>which resulted in an “Amber” rating.</p> <p>c) Did you see a copy of that report?</p> <p>As above, I think I did see a copy of this report in my first few months as a councillor.</p> <p>d) Did the report cause you any concerns and, if so, what did you do in light of any such concerns?</p> <p>As above, the Tram Project had moved on since these reports, and advice was that they had been overtaken by more recent events.</p>
96.	<p>A third OGC Review was carried out in October 2007 [CEC01562064] and resulted in a “Green” rating (i.e. “<i>The project is on target to succeed provided that the recommendations are acted upon</i>”).</p> <p>a) Did you see a copy of the OGC report?</p> <p>Yes.</p> <p>b) Did the report cause you any concerns and, if so, what, if anything, did you do in light of any such concerns?</p> <p>Not at the time, no.</p> <p>c) The OGC produced a further report on 15 October 2007, “Project Risk Review” [CEC01496784], which described the risk provision as “prudent”. Did you see a copy of that report at the time? If so, what were your views on it and what reliance, if any, did you (and other members) place on it?</p> <p>Yes. This report gave me and other councillors confidence in the Tram Project.</p>

Public Relations and Communications

97.	<p>a) Do you consider that the public were kept fully informed of developments relating to the tram project and, if not, why not?</p> <p>Just as councillors did not always receive the information they required, so too was there sometimes limited information to the public. Confidentiality was sometimes used as a reason not to communicate effectively with the public.</p>
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	<p>b) How was information provided to the public in relation to the tram project?</p> <p>Regular tram updates were available online and in hard copy, information was attached to the on-street works, and there were also information officers available at certain points of the work. Public meetings were held, and council officers in libraries and elsewhere were supported to point members of the public to information sources.</p> <p>c) How, and by whom, were queries or representations by members of the public addressed?</p> <p>In various ways – email, telephone and in-person communications, public meetings, using local councillors to relay information, press releases, online information and FAQs, etc.</p> <p>d) There were calls for the Council to hold a referendum on the Tram Project. Why was this resisted [CEC01241182]?</p> <p>These calls were resisted for a range of reasons: significant expenditure had already been committed; the public was not in receipt of as much information as councillors and therefore could not make a truly informed decision; it was thought that a ‘no’ vote would seriously damage the chances of the project being completed and would result in reputational damage for the Council and increased financial risk.</p> <p>e) Was your ward in particular adversely affected by the works? If so, in what way? What was done to mitigate this and were these measures effective?</p> <p>Leith Walk ward suffered years of noise, diversions, disruptions, etc. The works compounded the impact of the 2008 recession and meant there were business closures. The accessibility of Leith Walk to those with mobility impairments was greatly reduced.</p>
98.	<p>Leith Business Association (LBA) sent you and other Councillors an email on 30/11/2010 noting that due to the lack of accurate plans, the utility works took far longer than was anticipated or communicated to the businesses on the route [CEC00127068]. LBA made the following demands of the Council.</p> <ul style="list-style-type: none"> • Road and pavement surfaces to be re-instated to the standard they were in before the project began. • Re-instatement of all of the trees removed from Leith Walk (on both sides and on the central islands). • Re-instatement of the permanent crossings and central islands as existed before the project began. • Assurances that TRO1 will be amended to exclude all roads which

	<p>might be affected if the decision is made to terminate the project short of Leith Walk.</p> <ul style="list-style-type: none"> • That no pavement narrowing / road widening be carried out until such time as tram tracks are actually being installed on Leith Walk. • A new comprehensive financial support package is set up for traders, irrespective of their size / rateable value. <p>a) How did the Council respond to this email?</p> <p>There were several responses to this: meetings with Leith Walk traders were set up, both as individuals and as a group; regular Leith Walk updates were issued; email and in-person communications became more regular; information about the works was attached to the on-street barriers; etc. The four Leith Walk Councillors also undertook to keep local businesses and residents informed as appropriate.</p> <p>There were steps taken to ensure Leith Walk would be redeveloped, including some of the reinstatement works described, and work on this started in the 2012-2017 session.</p> <p>Financial support was perhaps not as comprehensive as people had hoped.</p> <p>b) Did the Council consult with these constituents throughout the project?</p> <p>Communications with these constituents improved at the project went on.</p> <p>c) We understand that a small business compensation scheme was launched. What difficulties were encountered? Was a compensation scheme the best option? What alternative options were considered to reduce the effect on Edinburgh businesses?</p> <p>The scheme was not as comprehensive as people wished, and did not offer the level of support some expected. There were issues of eligibility. There were also concerns expressed around already-failing businesses receiving support. The idea of a compensation scheme was supported by local residents and businesses.</p>
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Cost Overrun and Consequences

99.	<p>In relation to cost overrun:</p> <p>a) When, and how, did you first become aware that there was likely to be a significant cost overrun, including that the total capital cost of the project was likely to exceed £545m? What did you understand to be the main</p>
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	<p>reason(s) for that overrun?</p> <p>As indicated above, the costs were revised from under £500million, to £545million, and then to £776million. These changes were communicated to council meetings in reports as identified above.</p> <p>b) 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?</p> <p>Specific information on this was included in the reports to Council in May 2011 and June 2011.</p> <p>c) 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?</p> <p>No. This was one key element of secrecy that prevented proper scrutiny of the project.</p>
100	<p>In relation to consequences:</p> <p>a) What do you consider were the main consequences of the failure to deliver the tram project in the time, within the budget and to the extent projected?</p> <p>Other than the shortened tram line and the reluctance to consider extensions to the existing line or building new lines, the following consequences can be highlighted</p> <ul style="list-style-type: none"> - Reputational damage to the Council, including distrust by citizens - Massive disruption to the people living and working along the route, without the expected gain (especially for Leith Walk) - Distrust between councillors and council officials <p>b) What were the particular consequences for your constituents?</p> <p>The people of Leith Walk endured years of disruption, and have not seen the benefit of a tram route down Leith Walk. Businesses suffered (although the concurrent economic downturn makes singular causality unlikely), and residents faced noise disruption, disturbance to home and community life, and massive inconvenience of MUDFA works, traffic diversions, increased travel delays, sound and air pollution as a result of traffic diversions, etc. They were</p>

	<p>left not only without the benefit of a tram down Leith Walk, but also a main street in a pretty poor state.</p> <p>c) What steps were taken by the Council to try and address or mitigate the effect on residents and businesses etc?</p> <p>Financial support was available for some businesses. There were attempts to plan for breaks in works to ensure significant disruptions over important times (such as Christmas) was minimised. But the long delays meant many mitigations paled into insignificance.</p> <p>d) 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?</p> <p>The failure of the line to go down Leith Walk meant that none of the regeneration, transport and economic development benefits in the north of the City will be realised.</p> <p>e) What was the effect of the additional borrowing by CEC for the tram project on the Council's finances and expenditure, including on services and capital projects etc?</p> <p>This put additional strain on Council finances, exacerbated by the global economic crash.</p>
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Final Comments

101	<p>Finally:</p> <p>a) What do you consider to be the main reasons for the failure to deliver the tram project in the time, within the budget and to the extent projected?</p> <p>The main reason was weak political leadership – an inexperienced council administration, one part of which was opposed to the tram project from the outset, unfamiliar with what governance and management of such a project would entail. The polarised debates initially meant that council meetings and public discussions were framed within a pro / anti tram context, limiting the scope for critical analysis and interrogation. It also meant that the draft business case, signed before the May 2007 elections, was probably agreed in haste, to ensure the project was underway before the new administration took control of the council.</p> <p>This, combined with senior official' incompetence and a determination to control the flow of information meaning that many councillors only found out</p>
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	<p>too late the full extent of problems, meant that proper scrutiny and transparency were never enabled or supported. All of these elements were compounded by Transport Scotland stepping back from the project.</p> <p>Bespoke contracts should not have been signed off by council solicitors.</p> <p>b) Do you have any comments on how these failures might have been avoided?</p> <p>It is not reasonable to expect elected representatives to have all the skills and experience relevant to such a project. Thus, the guidance and advice of officials is crucial. It is clear that there were council officials who expressed concerns about the project, but they were silenced by senior management. This speaks to a broader culture of poor management, possibly because certain individuals had been promoted beyond their capabilities.</p> <p>Open and transparent governance structures and information flows should have been instituted from the outset.</p> <p>c) 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?</p> <p>n/a</p>
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Signature:



Date: 7th June 2017