

The Edinburgh Tram Inquiry

Witness Statement of Allan Jackson

Statement taken on 24 and 25 January 2017 in the presence of David Gray, Clyde & Co, and on 27 and 28 February 2017 in the presence of Christina Barr, Clyde & Co.

My full name is Allan George Jackson. I am aged 72, my date of birth being [REDACTED] My contact details are known to the Inquiry.

My current occupation is as Councillor for the Forth Ward in Edinburgh and I will not be seeking re-election in May 2017. I was appointed to the TIE Board as one of four Councillors to represent the Council from 22 January 2007 to 16 May 2011 as non executive director. I was also Convenor of the CEC Audit Committee between 2003 and 2012. My role as Convenor was to maintain the risk register and compare action against the risk register.

Statement:

Introduction

1. 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.)?

I was elected to the former City of Edinburgh District Council in 1974 and I was there for ten years until 1984. After I was defeated, I then joined the former Lothian Regional Council from 1987 until its demise in 1996. The year prior to that in 1995 there had been an election for the brand new City of Edinburgh Council. I was elected

to that representing the Trinity area and I have been there until now.

b) As a Councillor, what duties and responsibilities did you have in relation to the Edinburgh Tram Project?

As above, as a non executive.

c) Do you consider that you had any relevant qualifications or experience that assisted 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 did not have any relevant qualifications. I am a retired electrician. Any such training and guidance would have been helpful for the Edinburgh Trams Project, however, I do not recall receiving any training or guidance.

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

Initially, it was generally agreed across CEC that the Trams Project was a good idea. It only changed as time went on, when the Council SNP Group withdrew their support.

Reporting

2. a) Which official or officials in CEC were responsible for advising Councillors of developments relating to the Trams Project, including explaining the risks and liabilities of the Council arising from the project?

CEC officials who were responsible were the Chief Executive, Tom Aitchison; Director of Finance, Donald McGougan; Director of City Development, Andrew Holmes; Council Solicitor, Gill Lindsay; Chief Executive of Economic Development; and, latterly, the Director of Services for Communities was David Anderson when the departments reorganised.

- b) 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?

In the course of normal business at CEC, relevant issues would have been in Council papers/reports. In my view there was sufficient time at CEC meetings to discuss and consider the Trams Project.

- c) Were Councillors given a free vote in relation to the Trams 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 had raised concerns? How ought Councillors to have resolved any tensions or difficulties in that regard?

In the Conservative Group Voting was along party lines. The Trams Project was well scrutinised, certainly in the Conservative group, however I cannot speak for other groups. One of our Councillors had concerns and withdrew their support. I did not have many constituents raising concerns about the Trams Project in the early days. I do not recall any tensions or difficulties in the Conservative Group in the early days.

d) How were you, as a Councillor, kept informed of developments relating to the Trams Project? Were you always updated on significant developments relating to the Trams Project including, in particular, the problems that arose and the estimates of the cost of completing the project?

As a Councillor I was informed in the usual way by reports coming to CEC and/or verbally by relevant Council officials. As far as I am aware, we were updated on significant developments.

e) 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?

If the information was commercially sensitive, then it would probably be in a B agenda – not for publication. This would only go to Councillors for discussion. The public and non relevant officials would be excluded from attending meetings where the item was on the agenda. The only thing that was minuted was the decision, not any discussion. This is normal and it's unlikely that any tensions existed. I cannot speak for others.

f) Did Group Leaders and convenors of the various Boards and committee's receive separate briefings on the project? If so, did they, in turn, keep other members informed?

They most likely were. Our group leader at the time would have been Councillor Iain Whyte. The ruling groups may have been given more than we were. Councillor Whyte will be able to supply information on what he reported to the Group.

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

Political parties would have received separate briefings. I do not know if other parties received the same briefings, I cannot speak for other groups. When officials attended our group they may have circulated a paper or report verbally then take questions. Written briefing weren't always left with the group.

h) What was your understanding about the level of information that you required before taking a decision in respect of the Trams Project?

I was of the view that we had sufficient information.

i) In general, do you consider that Council members were provided with sufficient detail of information in relation to the Trams Project? Were members provided with any guidance (eg 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 have the opportunity to complain about the level of information provided, request further information, or seek further guidance, advice or clarification and, if so, by what means? Did you ever make such a request and, if so, what was the response? Do you consider that the information and advice provided to members was accurate? Did you have any concerns in relation to these matters? If so, did you express these concerns to others (and what was their response)?

In my view, CEC members were provided with sufficient detail in relation to the Trams Project but I do not recall if members were provided with any guidance/assistance on financial or Technical issues. There would have been the opportunity to question the level of information provided by the normal means by discussing with

officials. I did not have any reason to think that the information was not accurate. I don't recall having any concerns at the time.

- j) What was your understanding in relation to the extent to which information relating to the Trams 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?

I did not recall having any concerns in that regard at the time. I do not know if information derived from TIE relating to the Trams Project and used in reports to CEC was checked by CEC officers.

- k) How did you report matters relating to the Trams Project to your constituents? How did your constituents report concerns relating to the Trams Project to you? What steps did you take to address your constituents' concerns?

It was difficult to report many thousands of constituents. In the early days discussion was about deciding whether we went ahead or not with the Trams Project. I covered that in a newsletter which I circulated suggesting that it was something which may well affect the ward I represented on the north side of Edinburgh. There was some response but cannot recall the numbers. Most people were generally supportive. The only problem may have been the routes that were being suggested. I was also invited to various meetings to discuss the project. Keeping people up-to-date with everything was virtually impossible. It was a case of responding to people as they asked.

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

The greatest coverage was in the Edinburgh Evening News. Other media outlets would have given less coverage. Not all coverage

was particularly positive which had some bearing on public perceptions.

Initial Proposals (2000-2006)

The New Transport Initiative and the creation of TIE

3. As a member of the Council at the time the New Transport Initiative (NTI) was proposed, we would be grateful for your comments on the following matters:

a) Who did you understand to be responsible for the decision in 2002 to create TIE?

It would have been CEC at the time. I cannot recall what input if the Scottish Government may have had.

b) What did you understand as being the main reasons for the creation of TIE?

It was not unusual in CEC at that time, to put arms-length companies into place to run projects. Either that or CEC would have taken it on fully themselves. It allowed for the employment of professionals out with Council.

c) What were your views?

At the time it was normal so do not recall have any concerns.

d) To what extent was TIE created due to concern about the ability of the local authority to deliver the NTI, including a tram network [USB00000232]? Did you share these concerns?

It was normal in those days to do that. I do not know if that report came from the Chief Executive. Andrew Holmes, the Director of City Development, at the time signed that report off. CEC did

accept the report. I far as I can recall my group was content with the report.

- e) How important a factor in the creation of TIE was the fact that it was an off-balance sheet company? What were considered to be the benefits of that?

I do not recall the detail, but it was normal to do so. I do not recall if this was on a B agenda or if it was a straight decision at full Council. That would be contained in the minutes. The benefits included the employment of staff and I believe there were financial benefits re. Tax, budget and auditing. I do not recall details.

- f) By what means was it considered, at that time, that CEC would exercise control over TIE?

CEC were ultimately responsible for TIE. They would have exercised control in the normal way for an arms-length company by official's oversight and reporting to Council as required.

- g) What obligations did you understand TIE to owe the Council?

It was CEC's decision to set up TIE so they had an obligation to report to CEC. It did not always reach committee stage; maybe we were updated at the time in individual groups, but I cannot remember.

Initial Estimates for the tram network

4. Various STAG Appraisals and draft Business Cases for a tram network, with different estimates, were produced between 2000 and 2004.

- a) Which individuals or organisations did you understand to have been involved in preparing cost estimates for the Edinburgh Tram network?

I do not recall who would have been involved.

b) What involvement, if any, did you understand CEC officials to have had in preparing these estimates?

I understood CEC officials were involved and would have had an input. I don't recall to what extent.

c) Did you have any views on the various STAG Appraisals and draft Business Cases produced during this period, including the cost estimates for the project and the allowance for risk?

I had no reason to doubt any of it at that time.

d) Did the varying estimates for the proposed tram network produced during this period cause you, or other Councillors, any concerns as to the reliability of these estimates?

I do not recall having any concerns at that time but I cannot speak for other Councillors.

5. A member of the public, Alison Bourne, emailed every Councillor on 10 December 2003 in relation to the imminent meeting at which Councillors were to approve the lodging of the Tram Bills [CEC02082850]. Mrs Bourne stated:

"Costs – We note from the main report to Council (Trams) that, on 11 December, you are to be asked to approve the costs, as detailed in STAG 2 (page 71 for line 1; and page 88 for line 2) and Financial Statement. Are you aware that these documents show a different total cost (£566.7m) than the total being shown in the report to Council (£473.4m)?"

On 11 December 2003, Mrs Bourne was part of a deputation to the City of Edinburgh Council on the subject of the route of TL1 and the costs which elected members were being asked to approve that day. The deputation, apparently, raised concerns that *"the cost of the project ... was being*

seriously understated and that realistic sources of funding required to be identified" [CEC01926998].

(a) Did the concerns raised by Alison Bourne cause you concern as to the reliability of the estimates you were being asked to approve? What was done in response to these concerns?

I can't recall seeing the email from Alison Bourne dated 10 December 2003. It was sent from Barry Cross to Andrew Burns and various other officials at the time. It said "*I know this is probably the last thing you need but I would like to be able to respond before the Council meeting tomorrow*" and was copied to relevant Councillors. The email from Barry Cross to Andrew Burns suggests that more information was required and they would report to CEC. I do not know if there was any written report or what was done about it.

The October 2004 Arup Review

6. In October 2004, Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, produced a review of the Business Case for line 1 [CEC01799560]. While Arup concluded that, in general, the approach described in the Preliminary Financial Case was reasonable and robust given the stage of development of the project, the following concerns were noted:
- (1) the BCR of 1.21 did not appear to represent a particularly strong case in terms of economic value of the scheme and the economic case for the scheme was heavily dependent on the benefits from one area (ie Granton);
 - (2) there was a significant shortfall in funding (perhaps in the order of £82-£190m);
 - (3) the total amount added for contingency on capital costs was 25% (c.f. the maximum level of 44% recommended in HM Treasury's Green Book), the project's averaging of mitigation factors was likely to have led to underestimating Optimism Bias uplifts and further justification of the likely cost of the mitigation strategies should be provided; and
 - (4) the risk section in the Preliminary Financial Case did not specifically address the risks associated with the management of the interfaces between

the providers of design, infrastructure works and systems integration and the tram vehicles.

a) Were you made aware of Arup's report and its findings? If so, did it cause you any concerns, including that TIE may have under-estimated the capital cost estimates for the project?

I do not remember seeing or going through Arup's report and its findings.

b) Did you see TIE's response to Arup's report [CEC01705043]? If so, did it cause you any concerns, including that that TIE did not appear to intend to apply an additional contingency for risk or Optimism Bias?

I do not recall seeing Arup's report or TIE's response to that. In hindsight it looks as though, at the time, that report was reasonably positive about it.

The 2005 road charging referendum

7. In February 2005, following a referendum, the public voted against the introduction of road user charging.

a) How important a component was the income from road charging to the financing of CEC's proposals under the New Transport Initiative including the tram network?

Road user charging proposals were strongly opposed by the Edinburgh residents and in surrounding areas. The referendum result was about two-thirds against. It was so strongly opposed that it was never going to go ahead. Income from road charging was certainly in the briefing and in the leaflets that the Council made available. They detailed everything that would have come from road charging and that it would be one of the funding sources for Trams but people did not seem particularly swayed by that. As I recall It was not to be a Capital component the Trams Project.

- b) Were Councillors concerned about the affordability of the project without this income? Where was the alternative funding to come from?

As far as I can recall the income was for the operation of trams rather than the capital cost. I do not recall having concerns in that circumstance. It was hoped that tram operations would be able to cover the running costs.

The May 2005 Draft Interim Outline Business Case

8. In May 2005 TIE produced a Draft Interim Outline Business Case [CEC01875336] which noted that:
- (1) Either line 1 or line 2 were affordable within the Executive funding of £375m but a network of lines 1 and 2 was not affordable (with a shortfall in funding for capital expenditure for both lines 1 and 2 of £206m) (p14).
 - (2) The programme anticipated construction of phase 1a commencing in December 2007 to meet an operational date for the tram by the end of 2009. The 30 month construction programme from July 2007 to meet the operational date for the tram by the end of 2009 was a "challenging timescale" (p17).
 - a) The acknowledgement of a £206m shortfall appears to contradict TIE's earlier assurances in their response to Arup's report that "*the figures previously reported by tie remain the best estimate of the likely future costs and there is no additional "£220m shortfall"*" [CEC01705043]. Were you aware of this and if so, did it cause you concern?

I do not recall reading Arup's report at the time. I was not a member of TIE. I cannot remember if that document came to CEC or not. If CEC saw it then it would probably have been on a B agenda. It would have had an accompanying report from officials. The 'Strictly Confidential and Commercially Sensitive' marking leads me to believe that we probably did not see it.

b) Why were TIE/CEC under pressure to meet such a “challenging timescale”?

I cannot remember who said it had to be done in that time frame.

2006 Reports to Council and Draft Final Business Case

9. A report to Council on 26 January 2006 [CEC02083547] made certain recommendations for funding and phasing the tram network given that the total estimate for lines 1 and 2 was £634m and the total available funding was £535m (comprising £490m from the Scottish Executive and £45m from the Council). The figures quoted in the report to the Council appear to be based on the Edinburgh tram progress report of September 2004 [TRS00000209]. The Council's contribution would comprise only such amounts as could reasonably be expected to be funded from future tram related development and receipts, rather than from general funds or from Council tax.

September 2004
should be
September 2005

a) Did the need to restrict, or “phase” the scope of the tram network (which was apparent since 2005) cause you any concerns in relation to the reliability of the initial cost estimates, the affordability of the Trams Project and TIE's ability to deliver it?

I do not remember any particular concern at that time. It was hoped that businesses/developers would be able to contribute capital which would have had a positive effect on affordability.

b) Why was it recommended that a first phase be built from the Airport to Leith Waterfront? Did the Scottish Government play any part in that decision?

It would have served the major development areas as well as the City Centre and would probably have attracted the most patronage on. I don't recall if Scottish Government was involved.

c) Why was a first phase from the Airport to Leith Waterfront considered to offer the greatest benefits (c.f. the previous focus on a northern loop and the benefits that would bring to Granton)?

For the reasons above. This was only be the first phase.

d) How important a factor was it for the Council that the Council's contribution would comprise only such amounts as could reasonably be expected to be funded from future tram related development and receipts, rather than from general funds or from Council Tax?

It was anticipated that businesses/developers along the tram routes would make financial contributions due to a boost from their proximity to the tram. As far as I can recall CEC considered that would probably have covered the costs.

10. By joint report to Council on 21 December 2006 [**CEC02083466**] the Directors of City Development and Finance sought members' approval of the draft Final Business Case for the Edinburgh Tram Network.

The estimated capital cost of phase 1a (Edinburgh Airport to Leith Waterfront) was £512m if built alone.

The report noted (para 4.28) that the most significant risks affecting the timeous completion of the project within budget were (1) the advance utility works, (2) changes to project scope or specification, and (3) obtaining consents and approvals.

To maintain control over the capital cost of the project the following actions were required, namely, (a) enabling works, including utility works, should be authorised to proceed on a timetable that would not disrupt the main infrastructure programme, and (b) negotiations with bidders should continue with a focus on achieving a high proportion of fixed costs in the final contracted capital cost.

a) What were your views, in general, on the draft Final Business Case?

I do not recall having any issues with the Draft Final Business Case at the time.

- b) What were your views at that time on the most significant risks affecting the timeous completion of the project within budget?

As far as I can recall, I considered that the completion of the project within budget would be managed. I did not have any reason to think otherwise given Council reports I received at the time.

- c) What was your understanding at that time of the steps that would be taken, and by whom, to maintain control over the capital costs of the project?

I believed that CEC/TIE would maintain control.

- d) What was your understanding at that time of the procurement strategy for the Trams Project including, in particular, the aims of the procurement strategy, the extent to which design and utility diversions would be complete before the infrastructure works commenced and the extent to which the infrastructure contract would be a fixed price contract?

As far as recall I understood the aims but I cannot remember the detail of the procurement strategy. We were told at that time that the contract would be 90% to 95% fixed price and there was also a contingency amount. I did not think that the contract was going to be 100% fixed price. I do not think anyone assumed that the whole route would have had the utility diversion works completed before construction started.

Events in 2007 to May 2008

11. A highlight report to the internal planning group dated 20 March 2007 noted that design for the tram system was progressing slowly and TIE had

committed to carrying out an organisation and culture review to improve its approach. As part of that review it was noted that six CEC staff would hot-desk at TIE's office to assist with the approvals process [CEC01565481].

a) Was the slow progress of the design brought to your attention?

As far as I recall I was not on the Internal Planning Group so I do not recall seeing that report. It does not look like a CEC report that went to Council. I do not remember anything about the slow progress of the design being brought to my attention at the time.

b) To what extent did you understand that approval from the Council was delaying progress with the design?

I do not recall being aware at that time that approval from CEC was delaying progress with the design.

c) The highlight reports notes that yourself, Ricky Henderson and Phil Wheeler were to receive one to one briefing as tram spokespeople. What did this briefing consist of and what was its purpose? Did you convey briefing to the rest of the Council?

I would not have conveyed the briefing to the entire Council. One to one briefings would have been verbal but I cannot recall detail.

12. The local government election on 3 May 2007 changed the administration of the City of Edinburgh Council from a Labour administration to a Liberal Democrat/SNP coalition.

a) How politically contentious was the Trams Project prior to the 2007 election?

I do not recall it being particularly contentious.

b) What effect, if any, did the change in administration at a local level have on the Trams Project?

I do not recall it having a major effect on the Trams Project.

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

There would probably have been tensions and difficulties between SNP Councillors and their colleagues at the Scottish Parliament. I cannot recall when the SNP group withdrew their support.

d) What were your general views on the Trams Project? Did you have any concerns in relation to the project (and, if so, what were these concerns and how did you propose to address them)?

I do not recall have any concerns at the time. I supported The Tram Project as I considered it would be good for the City.

13. 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 called on the SNP administration to proceed with the Edinburgh trams project within the £500 million budget limit set by the previous administration in June 2007. Accordingly, the grant for the trams project from Transport Scotland was capped at £500m (see the letter dated 2 August 2007 from Malcolm Reed of TS to Tom Aitchison [CEC01666269]).

On 20 July 2007 Jim Inch produced a Briefing Paper for the Chief Executive [CEC01566497] in relation to the governance arrangements of TIE. The paper noted that the current governance arrangements for TIE were "complex", that it was "vital that more rigorous financial and governance controls are put in place by the Council" and that "TS have previously urged

the Council to implement a more robust monitoring of TIE's activities in delivering the project".

A Highlight Report to the Chief Executive's Internal Planning Group (IPG) on 30 August 2008 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).

30 August 2008
should be
30 August 2007

Around that time, as Finance Convenor, Gordon Mackenzie sought information on a number of matters, including what contingency plan needed to be in place in case of a cost overrun [CEC01556572].

a) What effect, if any, did the change in administration at a national level have on the Tram Project?

I do not recall what effect the change in administration at national level had on the Trams Project.

b) Did you see the Briefing Paper on the governance of TIE noted above? Were the issues in the Briefing Paper discussed with you and with members? Do you consider that they ought to have been? What were your views on the governance arrangements for TIE and the Trams Project at that time?

I do not recall seeing that Briefing Paper or what came from it. If it wasn't made available it should have been.

c) 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 Trams Project?

I would only have know what was contained in any Council reports but I don't recall seeing any.

d) What, if any, contingency plans were put in place by the Council at that time in case of a cost overrun?

I am aware that there was always going to be contingency plans. However I don't recall details.

14. You attended a meeting of the Council on 23 August 2007 [CEC01891408] at which Councillors were asked:
- 1) To note the contents of the report by the Chief Executive with respect to the revised funding arrangements for the Trams Project and the implications for the transfer of risk to the Council.
 - 2) To note that a revised governance structure was required for the project and for the relationships between the various companies and agencies promoting it.
 - 3) To instruct and delegate to the Council Solicitor to conclude Operating Agreements with tie and TEL.
 - 4) 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.
 - 5) 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.
 - 6) 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.
- a) 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? When were these changes introduced?

I do not recall why it was thought necessary. Changes to the governance structure would have been in CEC reports. It was not

unusual for governance arrangements to be changed as matters proceeded but I do not remember any detail.

b) What was your understanding of why it was thought to be necessary to establish a subcommittee of the Transport, Infrastructure and Environment Committee, the role of which was to review and oversee decisions with respect to the Tram Project? What was your involvement, if any, with this committee?

The reason was for Tram issues to be considered by Councillors who were not necessarily TIE members. I was not a member of it. There was only one Conservative member, Councillor McInnes. I substituted for him at one meeting because he could not attend so my involvement with the Tram Project Sub-Committee was minimal.

c) How did the roles of the Executive Chairman of TIE and the chief executive of TEL change and why?

I do not recall other than what's contained in reports.

d) What were your views on whether any changes to the governance structure introduced in the second half of 2007 and the first half of 2008 met the requirement noted by Jim Inch in his Briefing Note [CEC01566497] for "more rigorous financial and governance controls" (and met TS's urging of the Council to "implement a more robust monitoring of TIE's activities in to be put in place delivering the project")?

I have not seen that report before. I have checked the minutes of that Council meeting and there was no division on changes to the governance structure, so it must have been unanimously agreed across the Council.

15. A joint meeting of the TIE Board/Tram Project Board/Legal Affairs Committee took place on 31 October 2007 [CEC01357124]. The Boards were advised that the Infraco bids were primarily based on preliminary design.
- a) Were you aware that the Infraco bids were primarily based on preliminary design?
 - b) If so, did you have any concerns about a possible increase in cost when the bidders were provided with detailed designs?

I am not in that circulation list. It was probably for officials only. That meeting took place on 31 October 2007 and the detailed information went to internal officials following that meeting. I do not remember the details of this. I cannot remember if we asked for anything to be looked at further.

16. 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.
- 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].
- a) 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)?

From the first of the three documents [CEC02083538], it looked like we were receiving firm bids and I do not recall having any concerns at the time. From the papers [CEC01649235] and [CEC02083536],

on 25 October the full Council meeting members appear to have been given a presentation by Andrew Holmes, Willie Gallagher and Neil Renilson. I do not recall if they spoke to the full FBCv1 [CEC01649235], which was unusual for the full Council.

b) 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”?

I do not recall having any problems with that at the time. I do not recall the details of what I thought at the time.

c) Was your understanding of how and by whom the estimated capital cost for phase 1a of £498m had been arrived at?

I remember it being £498 million but I cannot remember how, or by whom, it came from.

d) What recollection, if any, do you have of the presentation noted above?

I do not recall the presentation.

e) Was a report setting out the result of the tender evaluation on the tender evaluation provided to the Council?

I don't recall.

f) What was your understanding of why TIE chose BBS as the preferred bidder?

I do not recall.

17. By email 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.

a) To what extent, if at all, were you aware of the concerns set out in the Briefing Note? To the extent you were aware of these concerns, what were your views on them, including how they had been or would be addressed?

As far as I can remember that was all kept confidential and I do not recall seeing it. I was not aware of those concerns. I do not think the Briefing Note came to me but I cannot speak for others.

b) 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?

I do not recall CEC members being made aware but I cannot speak for senior members in the coalition at that time.

c) If you (or members) had been made aware of these concerns what do you consider that you (or members) would have done in response to these concerns?

I do not recall being made aware of those concerns. I would probably have pursued the matter by seeking more information.

18. By email dated 14 December 2007 [CEC01397774] Duncan Fraser 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, "*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*".

Geoff Gilbert replied, *"I have previously explained the interrelationship between emerging detail design, Employer's Requirements and Infracore Proposals works and how price certainty is obtained out of this process and are in the process of delivering such certainty. Therefore, please advise what scope changes you anticipate arising out of the prior approvals and technical approvals. The overall scope of the scheme is surely now fixed, is it not?"*

a) What was your understanding of these matters at that time? Did you regard the scope of the scheme to be fixed? How did you understand that price certainty would, and could, be achieved while detailed design, approvals and consents were incomplete?

It was thought it was a fixed price contract apart from the contingencies that were allowed. I did not have any reason to think otherwise. I do not recall the presentation.

19. We understand that between 17 and 20 December 2007 negotiations took place at Wiesbaden, Germany, between representatives of BBS and TIE and that on 20 December 2007 an agreement, or heads of terms, were reached (the Wiesbaden Agreement).

a) What was your awareness and understanding of the purpose and outcome of the discussions in Wiesbaden? By whom, when and how were you advised of these matters?

As far as I can recall the discussions in Wiesbaden were to iron out issues referred to in previous questions. I cannot recall who reported back, that should be contained in Minutes.

b) Was it your impression that TIE knew that the contract was not fixed price and might result in the Council breaching the terms of the funding agreement with Transport Scotland?

I could not be 100% sure if TIE knew that the contract was not a fixed price. I don't recall that being stated at the time.

20. 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.

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)?

The inclusion of a risk allowance of £49 million remains valid in the joint report to CEC [CEC02083448]. I do not recall having any concerns at that time.

b) What was your understanding at that stage of the extent to which design, approvals and consents and utility diversion works were complete? What was your understanding of any difficulties that could arise from incomplete design and utility works and how any such difficulties would be addressed?

I do not recall other that was received in reports.

c) 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 Trams Project should proceed?

I do not recall having any concerns at th

d) 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?

As far I can recall I was understood the situation but didn't think there was reason to be concerned about my voting intentions. That was my position at the time.

e) What was your understanding in relation to the allowance that had been made for these risks (including how, and by whom, the risk allowance had been quantified and whether any allowance had been made for Optimism Bias)?

As far as I can recall I was still assuming that contingencies were sufficient. However I can't recall detail of Optimism Bias.

f) What were your views when voting on the Final Business Case in relation to the extent to which the aims of the procurement strategy had been met?

I do not recall having any concern at the time.

g) Did you consider that the price and terms of the infrastructure contract at that stage were consistent with the Final Business Case?

I do not recall thinking otherwise.

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).

h) 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?

I do not recall being concerned at that time.

i) 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 do not recall what was presented to Council or by whom.

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.

j) 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)?

I do not recall seeking further clarity as the report did not suggest that these issues would arise or be problematic.

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

As far as I recall, yes.

l) 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?

I not as I recall.

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.

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

I do not recall having any concerns at that time given official's reports or recommendations.

n) 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 do not recall what remaining due diligence was required.

o) 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?

In general, I do not recall a particular time when I was satisfied.

21. Between January and May 2008 there were a number of increases in the price of the infrastructure contract.

a) What was your understanding of the reason(s) for these increases and what these increases covered?

As far as I can recall that there would have been a report at that time but can't remember the content or who provided it.

22. A progress report from TIE to Transport Scotland dated 14 January 2008 [CEC01247016] noted that discussions with BBS had resulted in the signing of an "Agreement for Contract price for Phase 1a" on 21 December 2007, "essentially fixing the Infraco contract price based on a number of conditions". Key points of the agreement included:

- "Effective transfer of design development risk excluding scope changes to BBS".
- "Certain exclusion from the fixed price of items outside the scope of the Tram Project, all of which are well understood and either separately funded or adequately provided for in the overall Tram project estimate".

a) What was your awareness and understanding of the key points noted above?

I cannot recall if that report was circulated to me/us. I do not recall seeing it.

b) What was your understanding at that stage of "design development risk" and the extent to which the scope of the project had been fixed (in particular, given that design, approvals and consents were incomplete)? What was your understanding of the risk of scope changes (and the allowance, if any, that had been made for scope changes in the contract price and/or the risk allowance)?

As above. If I had seen it I would have question officials

c) What was your understanding of the "items outside the scope of the Trams Project" which were excluded from the fixed price? What was your

understanding of how these were “separately funded” or had been provided for in the overall Trams Project estimate?

As above.

d) What was the basis of your understanding of these matters?

Only what was contained in reports.

23. The papers for the joint board meeting dated 23 January 2008 [CEC01015023], item 1.5 notes that the discussion on risk transfer was “continuing with BBS”.

a) Had this been your understanding in December?

As far as I can recall. I do not remember the content of any verbal discussions at the meeting. Minutes of verbal discussions within the TIE Board were brief, they were not verbatim.

b) What was continuing – what were the issues?

I do not recall now.

c) What was the content of the update provided by Stewart McGarrity that is referred to in item 3.1?

I cannot recall any written report. He probably reported verbally.

The Project Director’s (PD) Report notes that the agreement with BSC means that there was effective transfer of design development risk (page 9).

d) What was your understanding of what this meant?

I do not recall having any reasons to question that.

The PD Report also notes that the Governance Structures were approved (page 9). This appears to have been done away from a meeting.

e) Were you involved?

If it was away from a meeting then I was not involved.

f) Did you accept the whole of the proposal?

I do not recall having reason not to.

g) Was the slippage in MUDFA works (page 11) of concern?

At the time the report told us what the slippages were for and the reasons for them. To the best of my memory, I understood what they were for and didn't expect that to become a major concern.

h) What effect would slippage have on Infraco and TIE liabilities?

I do not recall officials speaking to that matter or any discussion that would have followed.

i) Why is it that by this stage, there is no coding or rating within the Risk Register of the risk remaining after treatment? Were you content with this?

I don't know why there was no coding and can't recall it being discussed.

j) What role did you or others on the TPB play in the finalisation of the Close report (page 35 and following)?

There would have been a verbal discussion at the time but I cannot recall the detail of that.

k) What was the function of this report?

For approval of the terms and recommendations required.

l) Was it not always an inevitability that TPB would recommend that all the contracts be entered into? If they did not, there would be no purpose in seeking to get them executed.

It may well have been an inevitability.

m) Did you satisfy yourself that the statements made in the Report were correct or was it necessary to rely on others?

n) If the latter, who did you rely on?

There would have been discussions throughout the day but I do not recall the detail. As far as can recall I had no reason to be concerned at the time.

o) Did anyone carry out an independent check of the statements in the Report? In particular, did you or anyone else satisfy themselves of the accuracy of the statement that the principal pillars of the contract suite have not changes since approval of the FBC (Page 38)?

I do not recall an independent check being carried out. There would have been a verbal discussion on the accuracy of the statement, which I do not recall the content of.

p) What did you understand by the reference to a 'lump sum fixed price basis' for the Infraco contract on page 39?

It was just that; a proportion was a lump sum but not all of it. As I understood at the time there was an amount which was a lump sum at a fixed price, and an extra amount that would be contained in the contingencies.

q) What was the basis for your understanding?

I understood that to be the case as it was a continuation of what we had previously been told up to that stage. The Infraco contract would be a fixed price up to a certain percentage and there would have to be extra sums for contingency.

r) Was there any discussion at TPB as to the issue of allocation of risk (pages 64 and following) or was the matter left on the basis of the PD Report?

I cannot now recall the content of any discussion.

s) What was your understanding of the statement that of the Infraco price of £216.3m, £219.9m are 'firm' costs?

My understanding would have been just that, that those were firm costs.

t) Were you content with the statement that the price was based on the Employer's Requirements (page 6)? Did the author of this draft provide any explanation?

I do not recall the author of this draft providing an explanation. I do not recall having any reason not to be content.

u) Can you explain the QRA and Risk Allowance (page 68)? Did you have any information as to the basis on which TIE has assessed these as providing adequately for residual risk (page 69)?

I cannot explain it other than what information is shown there. I do not recall having any other information.

v) Why was it TIE rather than TPB that carried out this assessment in that it required a report to CEC via TEL?

I do not recall detail now.

w) What were the differences in the governance model for the next stage from before (page 80 and following)?

I cannot remember what changes were made to the governance model.

24. Further concerns about the Infraco contract were raised by CEC deputy officials in the lead up to contract closure (see eg [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, "*may be very significant*".

- a) To what extent, if at all, were you aware of these concerns? To the extent you were aware of these concerns, what were your views on them, including how they had been or would be addressed?
- b) Were members of the Council aware of these concerns? If not, ought they to too have been made aware of these concerns?
- c) 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?

The concerns appear as if they were confidential emails between officials and I do not recall being made aware of any of the concerns within them. I was not aware of these concerns and I cannot speak for other CEC members. It may well have been that

people who were leading CEC were aware, if not then they ought to have been made aware. I would probably have pursued the issue.

25. Originally it was intended that with approval in December 2007, the contracts would be signed by the end of January 2008. The papers for the meeting of Tram Project Board on 13 February 2008 [CEC01246826] indicate that matters were still up in the air in February.

a) We note that none of the members of the Tram Project Board who were Councillors were provided with the papers for the meeting on 13 February. Why was this?

I do not know.

b) Were you aware why the contracts had not been signed by the end of January? Was this discussed with you and if so what were your views in relation to this issue?

I do not recall it being discussed with me by anyone.

c) Did the TPB ask that any action be taken in respect of this?

I do not know if I wasn't present

d) As noted above it was forecast that delay in concluding would cost £8m to £10m a month. Was there any discussion of the additional cost that had in fact accrued?

As above.

The Minutes for January note that you were told that the MUDFA works were on time. The PD Report notes that the cumulative position was that they were running late.

e) Which was correct?

I do not know which was correct.

- f) Did anyone raise this conflict?

I do not recall, it may be in the minutes.

- g) Item 5.2 notes works on the Employment Requirements. Why were these still needing work after the date of approval of the contract? What was the issue?

I do not recall any discussion or briefing from officials.

- h) Was the fact that BBS had a different expectation of design completion prior to novation discussed (item 5.5)?

I don't recall it being discussed.

- i) Was this difference of view relevant to their acceptance of design risk?
j) Did you have concerns about this?

Not as I recall.

It is apparent from other documentation made available to the Inquiry that at this time negotiations were underway in relation to Schedule 4 of the agreement. This regulated payment and pricing. It is sometimes said that it arose out of the Wiesbaden agreement.

- k) What were you told of these negotiations?

I do not recall being told anything.

Design was once again causing concern (page 20).

- l) Was this discussed?
m) What was done about it?

I do not remember if it was discussed or what was done about it.

The risk register seems to show all treatments as in progress with nothing to begin and no untreated risks.

n) Was that the position?

I do not know if that was the position or not.

o) What was done in relation to the Peer Review Group (page 30)?

It is back to what was causing concern in the audits. It was proposed and it should be in the minutes of the next meeting.

p) Was there resistance to it and if so, from whom?

Not as I recall.

q) What was it intended that the Peer Review Group would achieve?

As described in the paper.

r) Why was it done at this stage and not earlier?

I do not know.

26. On 18 February 2008 BBS produced a Design Due Diligence Summary Report, based on design information provided to BBS up to 14 December 2007 [DLA00006338]. The document raised various concerns about design, including that "*more than 40% of the detailed design information*" had not been issued to BBS.

a) Did you see that report or were you otherwise aware of the matters in the report?

I do not recall seeing that document. I am not sure if it came to us or not.

- b) What was your understanding at that time of the extent to which detailed design was complete and the extent to which BBS's price was based on completed detailed design?

I do not recall discussions on that.

- c) What was your understanding of how BBS could price for those works in respect of which detailed design was incomplete?

Only what may have been contained in reports.

- d) What was your understanding at that time of how the issue of incomplete design was reflected in the risk allowance?

As above.

27. The papers for the Tram Project Board on 12 March 2008 [CEC01246825] indicate that there was still no Contract Close in March.

- a) What was your view on that?

I do not recall it being discussed or what view I had at the time.

- b) What was the view of the TPB generally?

I do not recall.

In the February minutes Donald McGougan is noted as having asked if the design risk could be bought out (page 6). The response is that neither consortium would accept this.

c) Is that refusal inconsistent with the earlier statement that BSC had taken the risk of design development? How can these statements be reconciled?

I do not know and I don't recall the content of any discussion.

d) If the design risk has not transferred, on whom did it lie? Was there any discussion of this? Was it reflected in risk registers?

I do not recall discussion.

e) As the earlier decisions proceeded on the basis that this risk was transferred, would it have been appropriate to go back and reconsider what had been done and consider the amount of risk being carried in the public sector? Was any account taken of this in relation to item 6.1?

There probably was discussion on that at the time but I do not recall the content of it.

f) What did it mean when Stewart McGarrity said that there was a risk allowance of approximately £30m relating to £90m of non-firm future costs? Was there any allowance for risk in relation to firm costs? How much of the sum allowed related to MUDFA?

It would have been discussed at the time but I do not recall the content of the discussions.

g) The MUDFA works were slipping (page 13). What if anything did TPB do in relation to this and its possible consequences?

The explanations given about what could be done about MUDFA slippage would probably have been agreed at the time.

28. By letter dated 12 March 2008 [CEC01347797] DLA advised CEC on the Draft Contract Suite.

Graeme Bissett, TIE, appears to have had an input into the drafting of that letter (see, for example, emails from Mr Bissett to Mr Fitchie dated 11 March 2008 [CEC01551064] and [CEC01551066] and email 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 email of 13 March 2008 [CEC01474537] attaching a draft of a further letter from DLA to CEC [CEC01474539]).

CEC01474539
should be
CEC01474540

a) Were you aware at the time that individuals from TIE had an input into the drafting of letters from DLA to CEC?

I note that the letter from DLA [CEC01347797] is marked "Strictly Confidential and Legally Privileged". I do not recall seeing that letter at the time and I do not recall being aware at the time that individuals from TIE had an input into the drafting of letters from DLA to CEC.

b) Do you consider that to have been appropriate?

I do not recall being aware at the time but on reading it now it probably wasn't appropriate.

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 eg [CEC01567522] and [CEC01560815]). Was the possibility of the Council seeking independent legal advice ever discussed with you? What were your views?

I do not recall seeing emails recommending that CEC seek independent legal advice [CEC01567522]. I do not recall it ever being discussed with me.

29. 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.

a) Why were members not given an update in relation to the Tram Project at that meeting?

If CEC members were not given an update then I do not know why.

30. On Friday 14 March 2008 (at 3:39 pm) an email was sent to Alan Coyle [CEC01386275] attaching a Note that had been approved by the Solicitor to the Council, 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).

a) What was your awareness and understanding at that time of the matters noted above?

I do not recall seeing that email or attached note.

b) What were your views on whether it was appropriate for authority to be given to TIE to immediately issue a Notice of Intention to award the Infraco contract to BBS?

That email or note do not appear to have gone to Councillors. It seems to have been something that we did not see, therefore, I cannot comment.

31. By email dated 31 March 2008 [CEC01493317], David Leslie, Development Management Manager, Planning, CEC, sent a letter to Willie Gallagher [CEC01493318] expressing certain concerns in relation to prior approvals for design.

On 3 April 2008 Duncan Fraser sent a letter to Willie Gallagher setting out similar concerns by the Transport Department relating to Technical Approvals and Quality Control Issues [**CEC01493639**].

a) Were you aware of these letters and the concerns noted in the letters? To the extent you were aware of these concerns, what were your views on them, including how they would be addressed?

I do not recall being aware.

b) Were other members of the Council aware of these concerns? If not, ought they to have been made aware of these concerns?

It may well be that people in the administration were aware, but not to my knowledge.

c) What was your understanding of the "*difficulties*" noted in Mr Leslie's letter that could be created in the coming months "*where BBS have been forced to make assumptions in their bid which do not correlate with our own expectations*"?

d) What was your understanding of how the pricing provisions in the Infraco contract dealt with any such "*difficulties*"?

I had not seen that letter and would not have an understanding of it.

32. You received the papers for the Tram Project Board meeting on 9 April 2008 [**CEC00114831**].

a) Did the extension to the membership of the TPB change the way that it worked?

I do not remember any changes in the way the Tram Project Board worked.

b) By this time there was still no Contract Close. What was your view on that?

I do not recall discussion on this matter. I cannot recall what my view at the time although there was concern.

- c) There is no record in the minutes of the delay in conclusion of the contracts compared to target dates, the measures taken to address this and the costs involved. Is there a reason for this? Was anyone in the TPB asking these questions?

There was no record in the minutes so anything else would have been verbal. I do not know why and there was no record or the reason for that. I cannot remember if anyone in the TPB asked questions.

The minutes for March records that the position with BBS was settled in terms of price.

- d) Were you advised of the discussions on Schedule 4?

I don't recall if we were advised or not. That may be include in minutes.

- e) Were the issues arising in relation to SDS novation discussed at the TPB?

I do not recall verbal discussions.

- f) What was causing delay?

I do not recall what was causing the delay.

- g) What did the SDS contract say about novation?

No doubt that would be contained somewhere in the SDS contract and I do not recall going through the SDS contract in detail.

h) In relation to item 10.1, why was there a £10m increase in the project price? Some components are referred to in 10.3 but why are they arising at this time?

I do not recall why it was brought to our attention or why project price arose at that time. I cannot recall anything other than what was contained in item 10.3. The minutes may be helpful on this matter.

i) Willie Gallagher referred to buy out of the risk of SDS non-performance (item 10.4). To what is this referring?

I do not recall a discussion or him enlarging on that.

j) What were the items that Stewart McGarrity said were included in the risk allowance (item 10.5)?

I do not recall, as that would have been a verbal summary given at the time.

k) On the basis of the PD Report (page 10) what did you understand was the position in relation to concluding negotiations?

I do not recall anything other than what was contained in the PD Report. I cannot remember having a different view or any particular view on the report.

It is clear that MUDFA was slipping (page 13).

l) In that Infracore was about to be awarded, was there any consideration of whether problems and conflicts would arise?

Members were becoming aware that there was a lot more under the ground than anticipated. I do not recall whether or not there

was any consideration of slippage before the Infraco contract got to the stage where it was about to be entered into. There may have been consideration given but I cannot recall. I may be contained in the minutes.

m) Can you explain the new format to the Risk Register (page 27 and following)?

I cannot explain the new format now.

n) What changes had been made to the draft Close Report?

I do not recall what changes had been made.

33. By email dated 11 April 2008, the deputy solicitor to the Council, Colin Mackenzie, advised the solicitor to the Council, Gill Lindsay, of a difficulty that had arisen with the "Russell Road Bridge: Prior Approval" and which raised the question whether the sum allowed in the Quantified Risk Allowance for SDS delay (£3m) was sufficient [CEC01401109]. Mr Mackenzie noted, "*this is getting very close to calling upon the Monitoring Officer to become involved*".

Concern was expressed by Alan Coyle of TIE in an earlier email in the same thread that this was contrary to the risk transfer to the private sector, that insufficient information had been provided by TIE for CEC to accept the risk on these matters, leading him to ask "*how many more of these things are going to come out of the woodwork?*"

a) To what extent, if at all, were you aware of these concerns? To the extent you were aware of these concerns, what were your views on them?

I do not recall being made aware of those concerns. I certainly did not see that document at the time.

b) Were other members of the Council aware of these concerns? If not, ought they to have been made aware of these concerns?

I do not know if other CEC members were made aware or not of those concerns. It may well be that senior CEC members of the administration were aware, but I do not know.

c) What do you understand Mr Mackenzie to have meant by his comment that *"this is getting very close to calling upon the Monitoring Officer to become involved"*?

Normally when the Monitoring Officer would be brought in it was to bring an independent opinion and act accordingly. Presumably that was the reason at the time, but I had not seen that email previously.

d) 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?

I did not know about those concerns and I do not recall being made aware of them. If I had been aware of those concerns I would have pursued the matter by asking more questions/seeking more information.

34. By email dated 14 April 2008 Colin Mackenzie set out certain concerns [CEC01256710], noting his view that it would be *"prudent and proper"* 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 *"the new final estimate of £508m; a four month delay to the revenue operating date; and continuing concern over the risks to the Council arising from the SDS programme"*.

a) To what extent, if at all, were you aware of these concerns? To the extent you were aware of these concerns, what were your views on them?

I had not seen that email before and was not aware of those concerns.

b) Were members of the Council aware of these concerns? If not, ought they to have been made aware of these concerns?

I do not know if any CEC members were aware of those concerns, if not, then they should have been made aware.

c) 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?

If it had been known I would have pursued it by questioning relevant officials.

35. By email 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.

a) Did you ever see or were you ever made aware of Schedule 4 (Pricing Provisions)?

I note that the emails in the chain between Stewart McGarrity of TIE and Alan Coyle of CEC are Commercially Confidential so I did not see those emails. Having seen Schedule 4 now, it appears to be a crucial document, but I do not recall it being brought to the TIE Board's attention. I do not recall seeing the Schedule 4 document before.

b) Did officials ever report to the Council on the pricing provisions, Pricing Assumptions and Notified Departure provisions contained in Schedule 4 and on whether the Quantified Risk Allowance was still sufficient?

I do not recall being separately briefed. I had do not remember having seen a cost analysis.

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?

I do not recall this in reports to Council or TIE. I do not recall being separately briefed.

36. You were copied in on an email from Willie Gallagher sent on 23 April 2008 [CEC01228509] stating that there were only a few outstanding discussions to finalise the Infraco Contract and Tramco and SDS Novations and noting that the intention was to issue the final contracts to all parties to commence a seven day due diligence process. We have requested confirmation that all parties are agreed to sign by no later than noon on Wednesday April 30.
- a) Were you and other members of the Boards provided with the final contracts?

I do not recall.

37. On 30 April 2008 (at 14:41 hours) Colin Mackenzie sent an email to Gill Lindsay, "*You may know this already, but BBS have increased the price by a significant amount. Urgent discussions underway at TIE this afternoon. Wonder how this leaves the report to Council tomorrow!!*" [CEC01241689]. 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. The report noted:

(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 *"crystallisation of the risk transfer to the private sector as described in the FBC"* (para 3.5).

(2) 95% of the combined Tramco and Infraco costs were fixed with the remainder being provisional sums which TIE had confirmed as adequate;

(3) *"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"* (para 3.10).

a) Were you aware prior to the meeting on 1 May 2008 of the recent price increase? If so, what was your understanding of the reason(s) for that increase?

I do not recall being aware.

b) Were members advised at the meeting on 1 May 2008 of the recent price increase (and, if not, why not)? Did you have any discussions with officers as to whether members should be advised of the price increase? When were members first made aware of the further price increase?

I do not recall being advised verbally outside the meeting. It was not normal at Council meetings for officials to speak unless Standing Orders were suspended. I do not recall receiving any advice other than what was contained in Council reports.

c) 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?

As far as CEC was concerned, I do not recall a new risk area being discussed. As for as the outcome, it appeared to be the best deal and 3.10 of the report stated that *"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 think private emails were sent back and forth between officials/others if so I wasn't copied in. I accepted that it was the best deal for CEC and that TIE and CEC would take steps to reduce the new risk area.

d) 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 changes did you understand had been made to the contracts as they stood in December to reduce the Council's exposure to risk? The report to the Council in 2007 indicated that risk was fully managed – did this apparent reduction cause you concern as to whether you had been given the full picture regarding risk to the Council? Did you ever have any concerns in that regard?

I do not recall having any concerns in that regard at the time.

e) The report provided no explanation of new pricing Schedule 4, despite this having been provided to CEC legal on 15 April. The Report again stated that 95% of the combined Tramco and Infraco costs were fixed. Do you consider that you, and members of the Council, were adequately briefed on the effect of and risks arising from the contract including, in particular, the Infraco Pricing Schedule 4?

I do not recall being briefed. I cannot speak for other members of CEC.

f) What was members' understanding in relation to 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? Who was responsible for correcting any such misunderstanding?

We had been assured that there would be fixed costs. This had been looked at by various parties and by TS at one time. I do not think there was any misunderstanding at the time, we were constantly reassured of that and there would always be a contingency to take up the other 5%.

38.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].

- a) Do you recall being briefed on the Infraco in the lead up to the 1 May 2008 Full Council meeting?
- b) Can you recall who delivered these briefings (TIE, CEC Officers etc)?
- c) Do you recall the presentation noted above?
- d) What was your response to the briefing (including, if appropriate, the presentation) including ,in particular, the pricing of the project?

I don't recall the briefing being presented when I was present or who may have delivered them. However I have now seen the briefing referred to. It appears to coincide with the position as understood at the time.

38. On 3 May 2008, in advance of the Tram Project Board meeting the following week, Willie Gallagher sent yourself and Councillors Henderson, Mackenzie and Wheeler an email providing an update in confidence [CEC01231125] in advance of the Tram Project Board meeting the following week. The email noted

- while TIE were hoping to sign contracts on Friday May 1st this did not happen as on Tuesday evening, WG received a call from the Bilfinger Berger UK MD requesting an urgent meeting at which he was informed that Bilfinger Berger would not honour their finally agreed price, and required an additional £12m. WG noted that the details provided were sketchy but it involved commitments from their Supply Chain being broken due to Construction Price Inflation. What did you understand by this?

It all happened very quickly and I would have been waiting for more information. However he came back within a couple of days, as in the emails, and told us "*A much better start to your weekend*". AS far as I recall matters were on their way to being resolved.

- WG continued to note that the Infracore were claiming that they only were able to pull together their final price on the Tuesday the initial call was made. Did this concern you? What was your understanding of the reasons for this?

It was through a short period of time of a few days, over a weekend. We were a bit concerned over the weekend. My understanding would have been based on the information from WG.

- On Wednesday after the TPB, WG requested that the UK MD to be removed from the project, and had a conversation with his German Board Director. What is your understanding of why WG requested this?

As far as I recall he did have concerns and he wanted to make them know.

- WG states that he made it clear to the Infracore that he had no additional budget and no authority to pay them any additional monies. The Infracore stood firmly behind the £12m.

- WG notes that he called an emergency meeting of the Tram Project Board on Wed pm, informed them of the issue. Did you attend this meeting and did you agree with the series of actions agreed including:

a) Requesting an urgent meeting with BB Board for an explanation on Monday 5th with the objective of getting as much of this increase of the table as possible.

I do not recall being at that TPB, I did not attend that meeting. The meeting that Willie refers to is an urgent meeting with the Tram Project Board. I do not know who was invited to that meeting.

b) What was your understanding of why TIE were investigating the implications of bringing back Tramlines (likely to cost a six month delay) at this stage.

I believe that was in his first email and it appeared that that was one of the matters that he had resolved over that weekend. I do not recall having time to go into the detail and questioning WG. on that.

c) Removal of BB from Consortium and replacement by other Civil Contractor – big Procurement Law Issues and probably not possible.

I assume that was a major law issue, as it says, and was probably felt not possible.

d) WG noted that meeting with the BB board to try and get as much of the increase of the table as possible was by far the most likely for sustaining the Project's momentum. What were your views on this?

I would probably have agreed. However cannot give my views on what they were at the time as I do not know the detail. It all happened quickly and I was not present at that meeting.

e) WG noted that Transport Scotland have also been briefed. What was their response to this briefing?

I do not remember the TS response at the briefing. I am not in a position to know what it was.

f) A follow up email on 9 May concluded that contract signature was scheduled to take place on Tuesday 13 May. Did this concern you?

I had not seen that email, but going by the emails that were given to us, I had no reason to be concerned at that time.

g) On receipt of this email did you update members/officials?

I would not have updated CEC officials because I assumed by these private emails that they were being informed anyway.

39. The papers for the Tram Project Board meeting on 7 May 2008 [CEC00079902] contain the minutes for April which note that 30% of all works were complete.

a) What was the rationale for splitting the MUDFA works from the Infraco works?

As far as I can recall the reasons for doing that was that MUDFA would continue with the basic work and anything that Infraco required out with that they would carry out

b) Was the fact that 70% of MUDFA works remained outstanding at the award of Infraco consistent with that?

I do not recall.

c) Can you explain the increase of £17.8m in the base cost for Infraco that Stewart McGarrity referred at item 4.2 (the part of the Close Report in question was page 50 of the papers for the April TPB referred to above)?

I cannot explain it now.

d) Was there any concern that the programme dates were based on the assumption that there would be recovery in the MUDFA programme (Item 4.3)?

I do not recall any concern at the time.

e) What was the basis for thinking that there would be such a recovery?

I do not recall having the thinking explained to us.

f) What was your view of the further slippage in signature of Infraco contract (item 7.2)?

It all happened quickly and gradually worked out without me being closely involved and officials (I can't recall who) expressed confidence. Therefore, given what had happened quite quickly over that week, as far as I recall, I accepted the expressed confidence because it had gradually improved over that week.

g) What was the cost to TIE?

I do not recall being told what the cost to TIE was.

h) Why were PUK to cease attending TPB (Items 15.2)?

I do not recall the reason for them ceasing to attend.

The PD Report further clouds the issue of the transfer of design risk (page 11).

i) What was your understanding of the position and view of the repeated revisiting of the issue?

We were told about it; it was all happening over that fairly short period. I do not recall what I would have known about it at the time, but I accepted the position as shown given the fact that TIE officials reported positively. It was taking longer and my views on repeated revisiting of the issue were covered in the PD reports.

j) What was the response of the TPB to the request from BBS on 30 April for more money?

I do not recall a verbal discussion at the time. It may well be noted in the minute of that meeting.

k) MUDFA is slipping further (page 12). Was the effect of this considered in TPB?

I cannot recall a verbal discussion on that at the TPB. As far as I can recall, the reasons were explained in that paper, such as finding skeletal remains, and the paper stated that there had been "70% of the planned diversions completed in the period. A total of 77% of the planned diversions have been achieved". I do not recall that being discussed or being raised.

l) The Risk Register reverts to an old format (pages 16 and following). Why was the new format abandoned?

I do not recall.

40. By email dated 8 May 2008 Stan Cunningham, Committee Services Manager, advised the Council Solicitor that the current plan for tabling a report noting

the further price increase from £508m to £517.2m, and seeking approval for the Chief Executive to instruct TIE to enter into the relevant contracts, meant that *"it may be the first time that many of the members are aware of this matter. This is not satisfactory ..."* [CEC01248988].

a) What are your views, and why, on whether approval ought to have been sought from the full Council to enter the contracts or whether it was sufficient to seek approval from the Policy and Strategy Committee?

I do not recall being a pre-elected member. I am presuming these were people in the administration. I do not recall what the procedure was or the way governance worked at that particular time and whether the Policy and Strategy Committee had the power to do that or if it had to go to full Council. Standing orders are reviewed annually and I cannot trace what they were at that time.

41. 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 was now £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.

a) 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 at that time? Who previously convened meetings of the Policy and Strategy Committee?

Convenors of committees were appointed annually, they were not appointed for a certain number of years. The Council leader and deputy leader would be convener and vice convener respectively.

In this instance that would have been the same Councillors as in the previous year.

- b) The minutes note (at para 11) that notice that approval would be sought for Financial Close and notification of contract award had, apparently, been given "*at the start of the meeting*". When and how were members of the committee first given notice that the meeting of the committee on 13 May 2008 would consider whether approval should be given for the contracts to be entered into?

Document [CEC01891564], was the minute of that meeting dated 13 May 2008 and was in a B agenda. At the start of the meeting that minute would have been given verbally. The minute noted that approval would be sought to Financial Close and that "*the convenor ruled that this item, notice of which had been given at the start of the meeting, be considered as a matter of urgency.*" That was covered in the period working up to that so the question was "When and how were members of the committee first given notice?". I do not recall if it was on that B agenda as an item complete with a report. I can only surmise now that it was not on the papers which were usually sent out seven working days in advance. I cannot answer it now but I am surmising that that was probably a verbal update which I do not recall. I do not know when members of the committee were first informed.

- c) What documentation in relation to Financial Close and notification of contract award, if any, were members of the committee provided with? When (and how) was any such documentation provided?

I do not know if documents were to follow or even if there were documents.

- d) What is your recollection of what happened at the meeting (including how long the meeting lasted, how long was spent discussing the other

10 items noted in the minutes, how long the discussion lasted in relation to the Trams Project and whether there were any differing views as to whether approval should be given for the contracts to be entered into)?

I do not recall how long it lasted or how long the discussion took and that will not be minuted. Going by the minutes no one moved any amendments so a decision must have been accepted unanimously.

e) We note, under Declarations of Interest, that Councillors Buchanan, Jackson, Mackenzie and yourself were also members of the TIE or TEL Boards? Do you consider that that gave rise to any conflicts of interest or potential conflicts?

No, it was standard practice. At the beginning of every meeting Councillors were asked if they had any interest in any of the items on the agenda, financial or non-financial. That is still standard practice and happens at the start of every meeting.

f) To what extent were the other members of the committee excluding yourself (namely, Councillors Aitken, Cardownie, Blacklock, Brock, Edie, Hinds, Johnstone, MacLaren, Munn, Murray and Whyte) sufficiently informed in relation to the Trams Project (including, in particular, the potential risks and liabilities arising from the contracts to be awarded) to enable them to come to an informed decision at the meeting as to whether approval should be given for the contracts to be awarded? What information and briefing had been given (including by whom and when) to members of the committee to enable them to come to an informed decision at the meeting?

I do not know what information other members were given.

g) Why did the report require to be considered as a matter of urgency? In hindsight do you consider that the committee should have had more time to consider the report and the risks to the Council arising from the contract? In

hindsight, do you consider that the increased price and authority to enter the contracts ought to have been considered by the full Council?

I do not recall if that report was just circulated to us on that day or previously. I do not know if it ought to have been considered by the full Council as I can't trace standing orders from that time.

h) What was your understanding of the reason(s) for the increase in price?

I do not recall what my understanding was at the time other than what is contained in reports.

i) What was your understanding of the range of improvements to the contract terms and risk profile? What were members of the committee advised in that regard?

I do not recall what my understanding was of the range of improvements to the contract terms and risk profile but it may have been presented to us at the time. I do not recall what members of the committee were advised in that regard.

j) Was the Infraco Pricing Schedule (Schedule 4) [**USB00000032**] mentioned or discussed at this meeting? Was there any discussion of the concepts of Pricing Assumptions or Notified Departures or that changes to the contract, with resulting increases in the contract price, were likely to arise?

If it was mentioned or discussed then that would have been verbal. The minutes would not have recorded a verbal discussion and I cannot remember any verbal discussion.

k) As convenor, Jenny Dawe also ruled that a changed position in procurement negotiations for the ETN constituted a material change in circumstances which should be reconsidered at the meeting on 13 May. Was

the matter reconsidered and if so, what was the outcome of that consideration?

I do not recall and any verbal discussion was not normally minuted.

l) A certified extract of the minute from the meeting notes that the committee authorised the Chief Executive to instruct TIE to enter into the contracts [CEC01222172]. Was this the final "sign off", or approval, from the Council [CEC00080738]?

I was not a member of the Tram Sub-Committee although I did substitute for a member on one occasion because he could not attend. I do not know if that was the final sign off or approval.

42. The Infraco contract suite was duly signed on 13 and 14 May 2008.

a) What changes did you understand had been made to the contract between December 2007 and contract signing in May 2008?

I do not have any recollection of any changes made in particular.

b) Did you receive briefing from CEC legal officers, at any time, on the effect of the contract, including pricing Schedule 4 to the contract?

We received quite a few briefings at the time but I do not recall if I that was one of them.

c) Did you ever receive briefing, at any time, from TIE or DLA on the effect of the contract, including pricing Schedule 4 to the contract?

I do not recall receiving any briefings. I am fairly sure I received no briefings from DLA. Any briefing from TIE would have been a verbal briefing update, if any, but I do not recall it now.

d) What was your understanding of which party bore the risks arising from incomplete and outstanding design, approvals and consents and outstanding utility diversion works? To the extent these risks had been retained by CEC, what was your understanding as to (i) how these risks would be managed and mitigated and (ii) the allowance, if any, made for these risks in the risk allowance?

CEC /TIE would have retained the risk. I cannot recall details of how it would have been managed and mitigated. As far as I can recall I assumed that contingencies would cover risk.

e) What was your understanding of the extent to which the infrastructure contract was a fixed price contract?

As mentioned previously, what we were told at the time.

f) What was your understanding of the extent to which the aims of the procurement strategy had been met?

As far as I can recall we were led to believe they had been met.

g) What was your understanding, if any, of the entitlement on the part of the contractor to seek further monies on the basis that there has been a variation under the contract (ie a "Notified Departure" under section 3.2.1 of Part 4 of the Schedule to the contract)?

I do not recall seeing Schedule 4 at the time but I understood that was to be covered by contingencies and that the contingency amount should have been sufficient to cover it.

h) What was your understanding, if any, of the purpose and likely effect of the Pricing Assumptions set out in Schedule 4?

I do not recall seeing it at the time.

i) What was your understanding, if any, of the consequences likely to arise from the fact that the Base Date Design Information was fixed with reference to the design drawings issued as at 25 November 2007?

I do not recall being given all that information.

Events between May 2008 and December 2008

43. You were sent papers for the meeting dated 2 July 2008 [USB00000005].

a) Why was membership of the TPB to be reduced (June Minutes, item 12.1)?

I cannot remember why it was done.

b) From reading the PD Report (page 12) what was your understanding of the position in relation to design and whether it was running to time?

I cannot recall other than what was reported.

The first report of Infraco progress once the contract was signed was that it was disappointing (page 12).

c) What was your and the Board's reaction to this?

It would have been a verbal discussion at the time on the Board.

I cannot recall the content of the discussion and I cannot speak for others.

d) Was there concern at the TPB about the slippage in design and MUDFA and the effect it might have on Infraco?

Again, it would have been a verbal discussion at the time on the Board. I cannot recall the content of the discussion and I cannot speak for others.

- e) How did risk drawdowns such as that in the papers at page 32 'work'?
- f) Was there any real chance that approval for drawdown would be withheld?
- g) What would happen in that situation?

I can't only recall anything other than what was reported. I don't recall if these issues were discussed.

44. You were sent the papers for the meeting of the Tram Project Board on 27 August 2008 [CEC01053601]. The papers contained the minutes of the meeting of the Tram Project Board in July which note that Willie Gallagher recorded his concern on MUDFA progress and Infracore mobilisation and progress (item 2.1).

- a) What was the view of the TPB in relation to item 2.1 of the July minutes?

It would have been a verbal discussion at the time and I cannot recall the content of the discussion.

- b) What were the issues with MUDFA works referred to by Susan Clark at 2.3?

Again, it would have been a verbal discussion at the time and I cannot recall the content of the discussion.

- c) What was your response to the statement noted from WG that the Board should not be unduly worried about progress (item 2.5)?

I do not recall other than what was stated. As far as I can recall I had no reason to doubt it.

At item 2.12 there is a note that the Infraco delay was due to bad "Issued for Construction" (IFC) drawings. What information was the TPB given about this?

d) The PD Report says that works remain behind the programme but does not say if the position was getting better or worse (page 9).

Again, if it was a verbal discussion then I cannot recall the content of that discussion.

e) Were you given this information?

I do not recall any information being handed out at the time, so it was likely to have been verbally discussed.

On the other hand, the design position is noted as getting worse.

f) Was this a concern?

I do not recall if it was a concern.

g) What was done about it?

I don't recall being given any information on that from officials.

h) It is clear that there is a risk that MUDFA will impact on Infraco (page 10). Despite this, it is not in the risk register. Why not?

It may have been picked up at the time but I do not know.

i) The same issue arises in respect of the slow progress of Infraco. It has always been said that delays will result in increased expenditure but this risk to CEC is not noted in the Report. Why not?

I do not know.

45. The papers for the meeting of the Tram Project Board on 24 September 2008 [CEC01053637] contain the minutes for the meeting in August.

a) In the Minutes for August, what is your understanding of item 1.5?

From the minutes of that meeting, I was not present and cannot comment.

b) Did it concern you that a close out plan for aligning Infraco proposals with the SDS design was still being finalised when the Infraco contract had already been awarded?

As above.

c) At item 2.1 Jim McEwan refers to Infraco mobilisation. What was the issue? What was causing problems? What was being done to address the matter? What effects was it having and what effects might it have in future?

As above.

d) What were the issues with consents (item 2.12)?

I was not present at the meeting and I cannot comment.

e) What was the effect and what was being done to address the issues?

I was not present at the meeting and I cannot comment.

f) What were the positive and negative aspects of Infraco progress explained by Steve Bell (Item 2.14 and 2.15)? Can this be cross-referred to the table on page 10?

I was not present at the meeting and I cannot comment.

g) What was your view of the fact that at this stage there was no progress at all in the construction works?

Reasons would probably have been given.

h) In view of the history and the concerns as to progress expressed by this date, did this cause alarm?

There would have been alarm at the time at that meeting, if there was any.

i) There does not appear to be a record of concern in the TPB Minutes at this stage – would you agree?

If it is not on record then it was not recorded.

j) It is clear from the PD Report (page 9) that there was design slippage right at the start. What was causing this, what was done about it and what else could have been done about it? What were non-executive members doing in relation to this?

I wasn't present so wouldn't to speculate on what happened at the meeting.

k) As designs were to be provided "just in time" any slippage tends to suggest that they would be too late. Was there consideration of what the consequences of this might be?

Consideration would have been given by the Board members and we would have discussed it verbally.

l) What did you understand was the message of the first paragraphs after the bullet points on page 9?

It was probably regarding the start of the tram operation.

m) In the section on risk there is nothing to reflect delays in design. Were the TPB aware of the risks that were presented by this matter? If they were, why was no entry made in the register?

I do not know.

n) Although some risks are referred to on page 12, they do not appear in the risk register. Is that correct? Why were they not included there? Were they included within the QRA? If so, what cost was attached to them?

If they were not on the risk register then they must be correct and there was no doubt about them. I don't know if they were included within the QRA or not.

o) Where risks are carried into the risk register it appears that in general the approach was that all treatment was complete. If the risk remained, could more have been done to mitigate it further?

I don't know if there was a risk that remained.

p) The treatments for the risk presented by late delivery of prior approvals by SDS is noted as being ongoing (page 15). It is clear from the above, however, that these matters were running late. Can you explain this?

No, I cannot explain.

q) In relation to late running of MUDFA (risk 48), how likely was it that by this stage that this would occur? How does the treatment strategy mitigate the risk? Was there any concern about these matters at the TPB? Was there any discussion about it and what could or should be done or what instructions should be given to the executive team?

I do not know what was done in relation to the late running of MUDFA from that meeting.

46. 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. The report from TIE continued to note that an indicative figure of £87m had been provided by BBS for phase 1b but that this was open only until March 2009.

It appears that this had gone on notwithstanding the comments in the report to Council of 1 May 2008 [**CEC00906940**] that the firm costs had increased by £27m, whereas the risk allowance had reduced by £17m and the Council noting that the movement in cost may impact severely on the ability to deliver tramline 1b [**TIE00153367**].

Despite costs issue, the Council appear still to have been considering a network of lines 1a, 1b at 29 April 2009 [**CEC00860021**].

- 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. Why, despite the costs issue, did the Council continue to consider a network of lines 1a, 1b?

At committee meetings in CEC members can ask question of officials. That did not happen at full Council meetings. Some groups may well have spoken to officials prior to the meeting but I cannot speak for them. The groups would have discussed the paper in advance and the minute of that meeting would show if it was unanimously agreed or if there was a division across CEC.

- 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 slow start up and what on-going effect, if any, did it have?

At the time there was a general view that the start of construction was taking longer than anticipated. I don't recall discussion at full Council.

47. You were sent the papers for the meeting of the Tram Project Board on 22 October 2008 [CEC01210242].

a) What were the positive and negative aspects of Infracore progress explained by Steve Bell (Item 2.20)?

I do not know what was explained by Steven Bell because I was not there. It would probably have been verbal.

b) The PD for the previous period said that there would be a detailed breakdown of potential slippage and opportunities for recovery provided this month (see page 9). Was it provided?

Not that I am aware of.

c) On page 9 there is reference to a Table in section 4.2 which identified slippage and action. Which table is this a reference to? Exactly the same wording and the same problem arise in the December 2008 PD Report below. Can you explain that?

No I cannot explain that.

According to the tables on page 10 it is clear that there has still be no construction work and that the design is failing to keep up with even version 31 of the design programme.

d) Were the implications of these matters for the project discussed and, if so, what was said?

e) Was there any consideration of whether there was a fundamental problem which might pose risk to the project as a whole?

I don't know

f) Despite the slippage of Prior Approvals and Structures Approvals, the PD Report says that they are "progressing well" (page 10). Were you reassured by this? Was it explained?

I don't know.

g) At page 10 there is discussion of what happened when the traffic management measures for the Mound were implemented. Can you explain what happened? Is your explanation from your own knowledge or from the PD Report?

The general problem was due to MUDFA getting everything connected/moved. There is no more detail to that in the PD report. My explanation is from the general knowledge I have from other meetings.

h) Did the problems have consequences for the way that the tram works on Princes Street were to be carried out?

I don't know.

i) The same wording about Infraco mobilisation (page 11) appears in many successive reports.

j) What was the view of the TPB in relation to this matter?

I don't know what their view was. This was explained to us over time.

k) The risk is noted to remain the same from the previous period (page 13). Were you surprised at this in view of the risks that appeared to be coming to light or crystallising?

It was not unusual to receive the same reports if there was nothing new to report.

48. At a meeting held at the City Chambers on Friday 28 November 2008 [CEC01069591], Jenny Dawe requested that TIE suspend the implementation of phase 2 until after the embargo period.

a) What impact did this have on the project?

I have no knowledge of that as I was not present at that meeting. I do not know about suspending implementation of phase 2 until after the embargo period.

b) 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?

The decision appears to have been reviewed by the Policy and Strategy Sub-Committee but I have not seen any document for that and I was not on the Policy and Strategy Sub-Committee, so I cannot comment.

49. On 10 December 2008, Councillor Iain Whyte sent an email to yourself, Phil Wheeler, Jenny Dawe, Tom Aitchison and Donald McGougan noting concerns about a comment made by David Mackay of TIE to the effect that TIE never started with a fixed budget, because "*the design changes as you go along*" [TIE00887286].

a) Did this email cause you concern?

That email was copied to me to let me know he was sending it. Councillor Whyte will be able to enlarge on the content of his email.

b) What were your views at that time on whether there was a fixed budget and a fixed price for the infrastructure contract?

We had been reassured that it was a fixed price contract.

50. You were sent the papers for the Tram Project Board meeting on 17 December [CEC00988024] containing the minutes of the meeting which took place in November.

a) Again you were sent these papers for information only. Why was this?

I was amongst various other Councillors who were sent them "for information only" at that stage. I cannot confirm why that was at the time.

b) In the November Minutes, what was the issue that arose in relation to the Princes Street blockade (Item 3.18 and following)?

I do not recall other than what was in the content of items 3.18 and 3.20.

c) It seems to have been a matter in which the members of the TPB took a full involvement. Why was that?

I do not remember reasons other than general interest and concern.

d) There does not seem to have been any announcement or recognition in the papers of an increase in budget such as was adverted to the previous period.

I do not know why there was no announcement.

e) What had happened to this issue?

I do not know.

f) In the reasons for slow progress, availability of design and overrunning of MUDFA are both noted. As these risks were crystallising, what was done about them?

I do not recall anything else other than what was in the minutes. MUDFA was an ongoing issue that was discussed at various times for the reasons I gave earlier. I cannot recall in particular what was being done at that time.

g) There is no report of any change to risk allowances as a result. Would you have expected something?

I do not recall what my thoughts were at that time.

h) Can you explain the table in Section 5 (page 46)?

I cannot explain that.

51. 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?

I gradually became aware of the problem but I cannot give a particular time we became aware. I know now having seen the contract that it did not always favour the client. The dispute would be on interpretation of it.

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

We were being assured at the time that the contractor was responsible and that was accepted that at the time.

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?

As I recall, the TIE strategy seemed to be fine at that time. I cannot speak for the ruling coalition in CEC. I'm not aware of any paper on that to Council.

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?

We were told at the time that the outcomes were generally in favour of TIE/CEC.

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

That was the understanding I had at the time.

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

We were being assured it was the right thing to do and I cannot recall any particular time that my views changed.

Events in 2009 and the Princes Street Agreement

52. The papers for the meeting of the Tram Project Board dated 22 January 2009 [CEC00988028] contain the minutes of the previous meeting held on 17 December which you attended.

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.

- a) What did you understand to be the issues with the governance structure and in what way could the Board not discharge its functions fully?

I cannot recall verbal discussion. I cannot recall what the reason was now.

- b) In view of the discussion noted at item 2.12, was there any discussion about whether there would be insufficient risk allowance for MUDFA?

I cannot recall any discussion, there may have been was but I cannot remember what it was or the content of any discussion.

- c) A substantial amount of the PD Report and the TS Report was the same as the month before. Were the Board content to accept the same text each month in relation to the lack of progress in various areas?

I cannot recall any discussion by the Board on that matter and whether or not they were content.

- d) The design section of the PD report refers to good progress but also notes that reasons for design slippage are being reviewed. What did you understand the position to be?

As far as I can recall, my understanding was as stated in the PD report that it was 85% complete, which seemed reasonable to us at that time.

e) Again, were you concerned that the statement about reviewing and recording reasons for design slippage was repeated with no feedback as to what was being achieved in this regard?

In retrospect, there would have been concerns but I cannot recall any concerns at the time.

For the second month there is a statement that the quantum of designs required to go through re-design process as a result of the approvals process or VE will be reported in the future.

f) When were you expecting the approvals process or VE to be reported on? Was anything said about this at the meeting?

I don't recall when the approvals process was to be reported on. I don't recall any discussions at the time.

g) What is your understanding of why the late completion of utility works in one particular location was created as a new risk (page 43)?

I do not recall the reasons. MUDFA proved difficult due to unknown utilities being found. There were so many MUDFA problems that I cannot remember any particular one.

53. 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.

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?

I do not recall being told anything about that. They may well have reported to others but I cannot speak for them.

54. You were sent the papers for the Joint Tram Project Board/TIE Board dated 11 February 2009 [CEC00988034] which contained the minutes from the previous meeting you attended on 22 January 2009.

11 February 2009
should be
11 February 2008

a) In the Minutes for January, there is a note that the party with power to regulate governance was CEC (page 6). Was this accepted by the members of the TPB?

I cannot recall that being challenged or discussed by any of those present.

b) Can you explain the concern as to conflict of interests (page 6) and what was done to resolve it?

In general, at that stage, I can only surmise that CEC would represent TIE and CEC's interests. There were various outside Boards that Councillors were put on and that happened to be one of them. It was always left open that Councillors at Council meetings would record their interest; it happened all the time; there were no great surprises there.

c) Why do you think this issue only arising now?

I do not recall why that issue came up at that stage.

d) Were you involved in the internal audit on internal governance (item 2.11)? What did it find? What recommendations were made and what improvements were required? It seems that assignation of contracts arose in this context. What was the issue?

I cannot recall if I was involved at that stage and I cannot recall any discussions about the recommendations or improvements.

e) Could you please explain what Kenneth Hogg is referring to in para 2.19?

I cannot explain any more than what is written.

You were told that MUDFA was 65% complete (page 8).

f) How complete did you understand it should have been, in terms of the programme? Was information about MUDFA progress made available to you at the time? If you had wanted that information, could you have obtained it and if so, how?

I do not recall how complete MUDFA could or should have been other than what we were told. In general, the information about MUDFA progress was discussed quite regularly. I do not recall what information was made available to me at that stage. If I had wanted more information I would have asked the officials to explain further but I cannot remember doing so other than at board meetings.

In the PowerPoint for the meeting there is a note that there was a significant risk of a major dispute (page 4 of the slides) [CEC00988036] What discussion took place at the TPB about this issue and what could be done to avoid a dispute?

Most of those presentations the TPB would normally be talked through by the relevant official(s). There would then have been a discussion on the content. There were options on page 5 of that document as to what could be done to avoid a dispute. The minutes may contain the outcome.

55. A dispute arose between TIE and BBS prior to the planned commencement of works on Princes Street in February 2009. On Friday 22 February Derek MacKay notified Councillors Dawe and Wheeler and the Chief Executive of a response that was due to be dispatched to the Infracore (Bilfinger Berger and

Siemens) [CEC00867359]. The response stated that *"their email responding to questions in relation to Princes St is typically overlaid with extraneous comments and bold statements of Infraco's position which are not backed up in any reference to the terms of the Contract."*

a) When, and how, did you first become aware that there was a dispute between TIE and BSC in relation to the works due to commence at Princes Street?

I have not seen that email previously as I was not included in it. I don't recall when I was first made aware of the dispute.

b) What was your understanding of the nature of the dispute in relation to the works at Princes Street, including why BSC had refused to start work and the "root cause(s)" of the dispute? What were your views on which party was primarily to blame for the dispute arising?

As far as I can recall, BSC were basing their claim on certain conditions within the contract.

c) What were your views on the conduct of TIE throughout the dispute [TIE00306566]? What was your understanding of, and views on, TIE's strategy to resolve the dispute? To what extent, if at all, was that strategy, and the eventual Princes Street Supplemental Agreement, approved by the Council? Do you consider that TIE were open and transparent when reporting to the Council on the Princes Street dispute?

As far as I can recall my understanding on the conduct of TIE throughout the dispute appeared to be in line with what we were told. At the time, we were told about a strategy and I do not recall anybody having any reason to challenge that if they agreed with it at the time. I cannot recall if TIE's strategy to resolve the dispute, and the eventual Princes Street Supplemental Agreement was or was not approved by CEC. I do not know if that strategy was approved by CEC officials and senior Councillors. I do not have any

reason to think that TIE were not open and transparent when reporting to CEC.

d) Were TIE reluctant to use the contractual dispute resolution procedures to require that works be undertaken even in the absence of agreement? What were you told about the use of the contract dispute resolution procedures?

I cannot recall whether or not we were briefed. I guess we were but any briefing would have been verbal.

e) What were your views on the conduct of BB throughout the dispute? What was the basis for your views in that regard?

I did not have great faith in BBs conduct at the time which I considered to be negative. That was the mood within TIE at the time which informed my opinion.

f) As far as you are aware, was the dispute in relation to the works at Princes Street the first dispute between TIE and BSC in relation to the Infrastructure contract?

As far as I can recall it wasn't the first dispute. There would have been disputes prior to that.

56. By letter dated 5 March 2009 to TIE [CEC00870592] Tom Aitchison set out a number of measures required to keep the Council updated about disputes.

a) Are you aware of the purpose of that letter?

I have not previously seen that letter. I can only surmise that CEC or Councillors were concerned about the situation as in the letter.

b) Did you have any concerns at that time (or later) as to whether TIE were keeping the Council fully informed of the disputes with BSC?

I do not recall having concerns at that time.

57. By email 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 email 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. DLA's Chris Horsley, responded to CEC attaching a paper entitled ("DLA Piper Response to CEC Questions" [DLA00001357]).

a) Did you (and members) receive briefing from CEC officers around this time on the differing interpretations of the contract? Were you (and members) informed of the consequences for the Council if TIE's interpretation of the main provisions in the contract (including, in particular, the Infraco Pricing Schedule) was incorrect?

I have not previously seen any of those three documents referred to. I do not recall receiving a briefing and I cannot speak for others. I cannot remember being notified about the consequences for CEC if TIE's interpretation of the main provisions in the contract was incorrect.

b) Were you notified about the use of the contract Dispute Resolution Procedures and the outcome of those procedures?

I cannot recall being notified.

58. 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.

By email dated 11 March 2009 [TIE00446933] Mike Connelly of TIE advised David Mackay of his meeting with Margaret Smith MSP and Alison McInnes MSP.

a) What was your knowledge of these meetings? Did Councillors feed back to you on what was discussed? Were you ever invited to such meetings?

I have no knowledge of those meetings. I do not recall if Councillors provided feedback.

b) In your view, was it appropriate for elected members to meet with BBS directly at this stage [TIE00304351]? Did this jeopardise TIE's position in any way?

I could not condemn elected members for doing so as long as they kept TIE informed.

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]?

It was still assumed that any extra cost would be covered by the contingencies.

59. The Report to Council dated 12 March 2009 [CEC02081494] appears to be the first report to the Council to refer to contractual difficulties between TIE and BSC.

CEC02081494
should be
CEC01891494

The Report noted that while works were due to start in Princes Street in February 2009, it had been apparent in the preceding days that they might not start as intended. The statement made by the Council at the time made reference to the contractors wishing to impose unacceptable conditions in order to start the works (however, these conditions are not identified). In the report Tom Aitchison merely states that "*members will appreciate that I am restricted in what I can say while commercially confidential negotiations are taking place*". He states that TIE is maintaining an approach to what was agreed "*after tough negotiation before the contract was signed*".

a) To what extent did concerns over commercial confidentiality affect the information provided to and from Council members? What steps were taken to address any such concerns? Do you consider that concerns in relation to commercial confidentiality adversely affected Councillors' understanding of the project (including the problems that arose) and their ability to take informed decisions?

It was not uncommon for information to be commercially confidential. It would not have been included on a B agenda. I do not consider that it would affect Councillors ability to take decisions.

b) What conditions did you understand the contractors wished to impose in relation to carrying out works?

I do not recall in particular now, although I believe it was in relation to the contractors gaining access for various parts of the work.

c) The report also stated that a "*fixed price*" contract had been entered into for the delivery of the Trams Project and that prior to Financial Close TIE had agreed an additional sum with BBS which had "*cemented the risk allocation position*" agreed by the parties. What was your understanding of these matters? Did you still consider the contract to have been a fixed price contract? Did your understanding in that regard change at any time (and, if so, when and why)?

It was understood that the contingencies would cover the areas which were not fixed price. We were still being told at the time that it was a fixed price contract with those contingencies. I have responded on this matter in previous questions.

d) The Report to CEC dated 12 March 2009 [CEC01891494] refers to a report submitted to the Policy and Strategy Committee for a meeting dated 24 February 2009. It is apparent from the Minutes from the Council website that the Report to the Policy and Strategy Committee related to the

contractual problems. As a member of the PSC do you recall this report and what was said regarding the contractual difficulties [CEC01891494]?

The report dated 12 March to CEC refers to a report submitted to the Policy and Strategy Committee for a meeting dated 24 February 2009. It was probable that whatever was discussed in February 2009 went on to the full Council in March but that report does not seem to contain that. It was probably a B agenda but cannot trace it.

e) At this stage were the Council, given their interest as funder of last resort, receiving any legal advice about the contractual dispute and, if so, from whom?

I cannot trace any written detail in that and I do not recall.

60. In an email 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].
By email 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) To what extent, if at all, were you aware of the matters noted in these emails? To the extent you were aware of these matters, what were your views on them?

I do not recall having seen those emails as they were not circulated to me. I do not recall being aware at all of those matters and so I did not have any views on them at that time.

b) Were members of the Council aware of these matters? If not, ought they to have been made aware of these matters?

I do not know what other members knew but I can only summarise that perhaps senior Councillors did, but I cannot guarantee that. Yes CEC members should have been made aware.

c) 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?

In order to raise the issue I would have sought briefings and taken appropriate action. I cannot speak for other members.

61. Amongst the papers for the meeting of the Tram Project Board on 15 April 2009 [CEC00888781] are the minutes of the 11 March TPB, in which it is noted that David Mackay was going to meet John Swinney and Stewart Stevenson on 17 March.

a) Can you recall the purpose and outcome of that meeting? (Item 1.1)

As far as I can recall, the issues would have been those that had been discussed at previous Board meetings.

b) Can you recollect what use was made of PwC for advice on commercial issues during the DRP (see 3.2?)

No.

At 10.3 the Board agreed to the Princes Street change which would lead to an increase in project costs.

c) What did you understand the Princes Street change the change to be? Did the Board discuss the need for a change order? Were the Board told how much a change would cost?

I cannot recall any verbal discussions apart from what was written in the minutes. I am not sure if there was any more information given in the previous minutes and the content of the verbal discussion.

- d) It is noted that lessons had been learned through the Princes Street process. What was your understanding of the lessons that had been learned?

My understanding would have been based on what we were told verbally at the time at the TIE Board and what was contained in the TIE minutes.

In the 24 March TPB minutes at item 1.4 Steven Bell stressed that the Supplemental Agreement for Princes Street would not increase liability to TIE, compared to that previously, and that there would be no material difference in the way costs would have been agreed.

- e) Was that, in your view, a correct analysis?

I do not recall having any reason to think otherwise at the time.

At 1.8 it is noted that the PSSA would allow work to be completed in the first week of November, as originally anticipated. "However, there would be no guarantee that this will be the case if there is a compensation event (same basis as the original contract)".

- f) Did you and other members of the TPB understand how the PSSA was to work? What were the benefits of the PSSA?

I do not recall any verbal discussions at the time. I cannot speak for others.

- g) Given what had been happening with the project and its current situation, were the Board now worried that the project would not be delivered within budget? Was this issue discussed by members of the Board?

I recall that there was concern but I cannot recall the content of any verbal discussion. However as far as I recall there was growing concern.

62. On 30 April 2009 the Council were given an update on the Trams Project by way of a report by the Directors of City Development and Finance [CEC02083772].

The Report indicated that there had been negotiations which had led to a supplementary agreement for the construction of the Princes Street infrastructure works. This allowed the works to proceed on the basis of "demonstrable cost". The report did not spell out exactly what was meant by this. It did say, however, that this meant that the contractor would be paid on this basis should they uncover unforeseen ground conditions.

The Report claimed that this represented no further transfer of risk to the public sector. However, it appears to be an agreement to reimburse BSC for the costs that they actually incurred in carrying out the works, placing the whole of the risk of unforeseen and additional costs on the Council.

Similarly, while the report noted that the matters that had arisen could impact on both cost and timescale, it did not state that the practical effect of these disputes was that costs were rising and the budget limits would be breached. There was a statement that work had been undertaken by the Council and TIE to consider the strategic options available. This had involved providing a range of cost and confidence levels for phase 1a. These were not, however, provided. The Report stated that,

"the range of numbers indicates the base case scenario remains that the full scope of the project can be delivered within previously agreed funding levels".

It is difficult to reconcile this with the other statements within this Report.

In relation to timescale, the Report notes that TIE was conducting a review of the entire programme with the contractor with a view to reaching a revised commercially agreed programme. This clearly contemplated that there would be delay but the report did not state the cause.

- a) What were your views on these matters?

As far as I can recall the report was somewhat confusing as highlighted in the question. There was concern at the time as noted in the motions and amendments in the minutes of that meeting. The issue of unforeseen utilities had been a problem in various parts of the project but it was hoped that there was a more accurate record of what existed in Princes Street. I cannot recall more detail on the issue now.

b) What involvement, if any, did you or other members have in the negotiation, conclusion or approval of the Princes Street Agreement [TRS00016944]?

As can't recall being involved but I cannot speak for others.

c) What did you understand to be the rationale behind the Princes Street Agreement [CEC00934643]?

As far I can recall that the rationale was to move the project along. However I can only refer the reports new to give detail.

d) The decision to concede a supplementary agreement appears to have been taken quickly. Were Councillors given a sufficient opportunity to consider and comment on the agreement before it was entered into? Was the effect of the agreement explained to Councillors ie that it changed the price for these works from a "fixed cost" to a demonstrable cost basis?

I do not recall receiving any verbal discussions or briefing at the time but I cannot speak for all 57 CEC members.

e) Do you regard the statement that the full scope of the project could be delivered within previously agreed funding levels as correct or in any way misleading? Should officials have made it clear to the Council that a likely outcome of the agreement was that the budget limits would be breached?

As far as I can recall I had my doubts but was still hopeful. Officials should have made it clear to CEC that a likely outcome of the agreement was that the budget limits would be breached.

f) What was the strategic review carried out by the Council and TIE and why was the entire programme subjected to review when there had been an exercise conducted to review the effect of the slow start just four months earlier?

I as far as I can recall the project was dynamic and strategic a review was probably necessary to update the position at that time.

g) In hindsight, do you think it was appropriate or sensible for TIE to enter into a supplementary agreement to the contract when there was still disagreement about the original contract terms?

In hindsight, probably not.

63. You received papers for the meeting of the Tram Project Board on 6 May 2009 [CEC00633071] in which;

a) There was consideration of removal of Carillion from the MUDFA contract (page 12 and paper at page 26). Three reasons for removal are suggested – performance, quality and cost. What were your views on the proposed removal of Carillion and what did you understand were the cost implications of the proposed change? Did the planned savings materialise?

I cannot recall the verbal explanation that may have been given by officials. It may contained in the minutes. I cannot recall if the planned savings materialised, that may be contained in later papers.

b) It had earlier been identified that the payment terms under MUDFA were such that Carillion were probably making a loss (email from

Thomas Caldwell to Graeme Barclay of 5 March 2009 – [CEC00956515]).

Why was it thought that it would be possible to get better terms?

I have not seen that email previously and I cannot comment about the content.

c) It seems that initially the intention was that the works at the two ends of the line would be handed on (page 29). However, later it seems that works in the city centre were also handed on. If this is so, what was your understanding of the change in approach?

I do not know, I do not recall and I cannot trace any written documentation in the reports.

d) The dispute as to and the movement between the “Base Date Design Information” (BDDI) and the “Issued for Construction” (IFC) drawings had arisen by this time and was considered at the meeting (page 9). There is a reference on page 9 to ‘constructive discussions’. What did you understand this to be referring to?

This was probably discussed at the meeting but I cannot recall other than what’s in the minutes.

e) At page 16 one of the identified risks is in relation to “designs which may have been altered” (page 16). Do you recall what this was referring to?

Not now.

The treatment strategy for the risk is said to be to establish a process that would act as a control mechanism for design changes (page 18).

f) What sort of process was envisaged?

I do not recall any verbal discussions on that; only what's contained in the papers and minutes.

It is apparent from a very early stage that the programme has slipped. In May 2009 it is considered that the slippage can be made up with improved productivity rates (page 11).

g) In your view, how reasonable was this, in view of the performance to that date? Did you or others voice concerns in this regard?

In hindsight it was probably not reasonable, but I cannot speak for others. I cannot recall discussion on the matter but it may show in the minutes.

It was noted that it had been necessary to defer works on Leith Walk because the MUDFA works were not finished (page 13).

h) What consideration was given to the effect that this might have on the remainder of the works and the ability to maintain or recover the programme?

Any consideration would have been in discussion and briefings the content of which I cannot recall.

i) In the TS report with the May TPB papers it is noted that work was continuing on "Princess (sic) Street, Edinburgh Park Bridge, Gogarburn Bridge and the new access road at Verity House" (page 36). The first of these were under the PSSA and the others appear to be off street structures. Is this correct?

I cannot recall and do not know.

j) Was there any concern against the background of the problems on Princes Street that BSC were not undertaking any on-streets works and that they were so far behind in achieving milestones (table on page 37)?

I do not recall any verbal discussion about concerns.

k) BSC were supposed to have almost 50% of the work completed and instead had done only 3%. In relation to some sections it is noted that the problem is that MUDFA works were not finished (page 37). In your view, to what extent was that the real problem as opposed to the disinclination of BSC to do on-street works?

I can only give a view now as I do not recall it at the time. It now comes across that it was the latter of those and BSC disinclination. However MUDFA works were always a problem.

l) In relation to works to the west of the city centre, there are several references to re-design of temporary and permanent works. What did you understand to be the issue here? Did it concern you that the TS report did not contain this information?

I do not recall. Any concern would have been verbal again. There would have been discussions at the TPB but I can't recall the detail of that.

m) Can you explain why there was both an 'approved' and an 'unapproved' figure and what the purpose or function of each figure was? What did you understand had to be done before the figure would become approved?

I do not recall why there was an approved and unapproved figure. As far as I was aware, before the figure would become approved it would have to be agreed by all the parties involved.

n) There was an increase in the AFC to reflect risk. What risk did you understand was being reflected here?

I do not recall.

In the PD report (page 14) and the TS report (page 46) there is reference to £15.1m of the risk allowance having been used. This is difficult to reconcile with the table at 3.3 on page 46 and Report on Change Control Update at page 22.

o) Can you explain how they fit together? Can you explain the first bullet point under that table? The same issue also arises in relation to the months that follow.

I cannot explain now how they fit together or explain the first bullet point under that table.

64. You were sent the papers for the Tram Project Board meeting on 3 June 2009 [CEC01021587]. In terms of the Infraco contract, where the contractor was of the view that circumstances were such that there was a deemed change to the contract requirements, they were entitled to serve an Infraco Notice of TIE Change ("INTC"). This might entitle them to additional payment under the contract or additional time in which to complete the works.

a) Was this the first time that the issue of INTCs had been explained to the Tram Project Board? If so, do you think this should have been explained earlier?

I cannot remember if it was the first time or not, but certainly it should have been explained from day one if it was not at that stage.

b) How many INTCs had been served on TIE by the contractors by the end of June?

I do not recall, I do not know.

c) Do you know what had given rise to them?

No.

d) In the minutes of the May TPB at 3.8 it is recorded that there is a lack of an agreed programme. Why was there a lack of an agreed programme?

I do not recall now as I cannot recall any verbal discussions. From reading the minutes it would have been discussed verbally at the time.

e) What were the TPB being told in relation to a lack of an agreed programme?

Again that would have been a verbal discussion.

f) What effect did the lack of an agreed programme have on the project?

It would have had a negative effect.

g) A meeting was organised with John Swinney and Stewart Stevenson on 7 May (3.9). Can you recall what happened at that meeting? What was the purpose of such meetings with Ministers?

As far as I can recall, the various issues would have been discussed that came up previously.

At 4.3 it is noted that some SDS design is being delayed by TIE and some due to redesign and that Siemens detailed design was delayed. It is noted that there is no issue with CEC processing the approvals.

h) Can you explain why design is being delayed by TIE?

No I cannot explain why.

i) Why were designs being re-designed?

I do not know why, we may have been informed verbally at the time but I do not recall.

j) Why was the Siemens detailed design delayed?

I do not know why now. We may have been informed verbally at the time, but I do not recall.

k) Is it correct that there were no issues with CEC processing approvals at that stage?

I do not recall any issues but I would not necessarily have been made aware. It seems that they did not go to CEC meetings but it looks as though CEC officials were dealing with this.

l) Why was design being done on phase 1b at that point (5.4)?

I cannot recall any explanation given other than what's in the papers and minutes.

m) Was the cost for phase 1b included in the overall cost of the project?

In the early days it was meant to but by that time it was becoming unlikely that it could be achieved.

65. The Minutes of the TPB meeting on 8 July [CEC00983221] note that there was discussion of strategic options (page 7). This is introduced as if the strategic options had already been defined or had previously been the subject of a paper.

a) Is that correct?

I do not recall now that it had been the subject of a previous paper.

b) Was the paper presented to the TPB?

I do not recall if was presented.

c) Who produced the paper?

I do not recall.

In the reports to TS in early July the Time Schedule Report indicates that many matters have slipped but that recovery can be achieved (page 41). This same table and statement appear month after month although the degree of slippage increases.

d) In this position and in light of the history, were you happy with this statement?

We would probably been professional assurances and hopeful that recovery could be achieved.

e) What basis did you consider there was to say that there could be recovery?

As above.

f) Did you discuss this matter at the meeting of the TPB or raise it at other times with anyone else?

We may well have discussed it at the TPB but it would have been a verbal discussion and I cannot recall the detail. I do not recall now raising the issue but may have at the time.

g) Was it clear to the Council at this stage that the tram could not be built for £545m [**TIE00763898**].

Not as I recall but it was clear that entire project could not be achieved.

66. 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.

a) Did you as a Board member feedback to other elected members on this matter?

Given the confidentiality; probably not.

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?

In hindsight, it was becoming obvious that the contract was no longer fixed price

67. On 19 August 2009, Tom Aitchison emailed you stating that at a meeting of the Tram Internal Planning Group, Marshall Poulton advised that at the recent TOG meeting there was a very strong view that buses should return to Princes Street in November. Retailers were reporting poor sales performance and were clearly worried about the Christmas period and he thought the Council should listen very carefully to what the retailers were saying and be prepared to meet their request. You agreed that buses should return to Princes Street by November [CEC00669246].

a) Did this decision give rise to delays in carrying out the works and, if so, what was done to mitigate these delays [CEC00863479]?

That email only appears to have been sent to Jenny Dawe. I had not seen that letter previously. The issues were in the public domain and retailers, were concerned. That was in the press at the time and I cannot recall any detail now.

68. The report to the Council on 20 August 2009 [CEC00308517] was the first report to state that phase 1a could not be delivered within the budget price of £545m. The report noted that a revised programme and costs baseline had not been agreed.

The report further noted that utility works had given rise to additional costs of £7m. This was said to have arisen from programme slippage and also additional costs associated with measured works. In relation to the latter, the Report stated,

"While the slippage to the programme is regrettable it should be acknowledged that it has been a very challenging project with unexpected ground conditions, including the discovery of a number of underground chambers and inaccurate data held by utility companies and the Council having a significant impact."

a) Why were the ground conditions unexpected? What is your understanding of what was done to investigate ground conditions and what could or should have been done to investigate the position prior to works starting?

The ground conditions would have been unexpected due to inaccurate records and because presumably no one had tested them out. I do not know what was or was not done by professionals. Presumably they could have tested the ground conditions beforehand.

b) Are you aware of whether the utility companies offered an assurance that their data was accurate? What investigations were carried out to verify information obtained from those sources?

I did not have any information on that. I do not know if the utility companies made assurances whether their data was accurate. We know now that their data was not particularly accurate. I do not know what investigations were carried out to verify the information obtained.

The report continued to note that TIE were invoking formal contractual dispute mechanisms. It was noted that TIE had taken Counsel's opinion but, given the nature of the process and the complexity of certain issues, it was unreasonable to expect that all adjudication outcomes would be awarded in favour of TIE Ltd.

c) What was your understanding at that time of TIE's prospects of success in the dispute with BSC?

I cannot recall now but I agree that it was unreasonable.

d) What was the basis of your understanding?

My experience on the issue and reassurance from officials of TIE and CEC.

e) Did your views on TIE's prospects of success change at any time (and, if so, when and why)?

My views changed over time about but I cannot recall when. They changed for reason given above.

f) Most significantly, the report noted that in view of the disputes, it was not possible to forecast accurately the budget outturn.

g) Did that cause you any concerns (and, if so, what did you do to address these concerns)?

I agreed. The concerns would have been discussed but I cannot recall the discussion now.

h) Why did the Council affirm their commitment to provide the whole of the tram line to Newhaven, notwithstanding that it was not considered possible to accurately forecast the cost of the project?

CEC were still being somewhat optimistic.

69. You were provided with papers in advance of the meeting of the Tram Project Board meeting on 26 August 2009 [CEC00739552]. These contained the minutes of the previous meeting in July.

At the meeting in late July Richard Jeffrey had been in the post for three months and gave his thoughts to the TPB on the five strategic themes (page 5).

a) Can you recollect what his thoughts on the five strategic themes were?

Richard Jeffrey would have discussed it and told us what he thought, but I cannot recollect now what his thoughts in particular were other than what was recorded in the minutes.

The Minutes of the July meeting (page 7) note that Infracore works were held up due to commercial issues arising from design changes.

b) What did you understand was meant by this?

The minutes were fairly brief. The minutes show that Richard Jeffrey noted that the commercial issues included factors such as holidays, BSC possibility of working in the key areas and sub-contractor issues. I don't recall detail.

c) Were these commercial issues solely related to movement between BDDI and IFC drawings or were they related to other design changes? What were the reasons for the other changes?

I do not know.

Those Minutes also suggest that the DRP process that had been undertaken need not go all the way to a conclusion (page 9).

d) What sort of agreement did the TPB consider could be reached?

I cannot recall any verbal discussions. If anything, that information would have been contained in the minutes.

e) This is tied to the terms of the Project Director's Report. It is accepted that not all the arguments will go in TIE's favour ("it is unreasonable to expect that adjudication outcomes will be awarded in favour of TIE"). What consideration was given to what consequence this would have for the project?

I do not recall any verbal discussions. The best I can recall was that it was a growing concern.

f) In the reasons for delay given in the Project Director's report for the August TPB, there is still reference to BSC failing to submit preparatory paperwork (page 13). What did you understand to be the subject of this paperwork? Which of the various listed reasons for delay did you understand to have the greatest effect?

My understanding of the subject of that paperwork was as outlined in the minute of that meeting. I cannot recall which of the various listed reasons for delay had the greatest effect. The most obvious reasons were the second, third and fourth bullet points on page 13 of the PD Report, "*Incomplete utility diversions*", "*the slow mobilisation of INFRACO*" and "*Failure of INFRACO to submit preparatory paperwork*".

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).

g) What did you understand to be this reason for this increase?

I do not recall why that was as we would have been told that verbally.

A note in the Costs section of the Project Director's report states that TIE may not have "sufficient contractual leverage to instruct commencement" of works.

h) What did you understand the problem to be?

I do not recall any verbal discussion about that. It would have been about the contract being silent on that matter.

- i) What was your understanding of what was missing from the contract?

I do not recall what my thoughts were at the time.

In the TS report for August 2009 there are references to "Temporary and permanent works re-design" (page 46).

- j) What was the nature of the re-design and why was it required? Why did you understand it to have arisen at this time?

I do not know and I do not recall. I can only say now that in a project of that size some re-design would sometimes be required.

- k) Was it, in your view, part of the problem that BSC would not start work until the cost impacts of the changes were agreed? Is that matter the "commercial resolution" noted as delaying works (table on page 46)?

I do not recall it now but it may have been all or part of the commercial resolutions, which was referring back to the contract and saying that commercially there was still a debate about who was paying for what.

- l) To your recollection, was there discussion at the TPB of the issue of 'betterment' in relation to recovery of the costs of the MUDFA works from statutory utilities? If so, what was the content of the discussion?

I do not recall verbal discussions. However it was always hoped and expected there would be betterment and TIE would have been reimbursed.

- m) What was being done in relation to recovering a proportion of costs?

As far as I can recall the statutory utilities were being pursued by TIE.

There is a statement in the minutes for late July that Steven Bell was to prepare a summary statement for the August meeting of the outstanding areas where betterment would arise (page 7). However, there is no such document in the papers for the next meeting or referred to in the minutes of that meeting (see next document).

n) Are you aware of whether this exercise was carried out? If it was done, to whom was the paper submitted/sent? If it was not done, was the omission raised at any TPB meeting?

I do not recall seeing a document or one being presented to us.

70. You were provided with papers in advance of the meeting of the Tram Project Board on 23 September 2009 [CEC00848256]. In relation to progress, the August minutes record that, "Steven Bell reported that progress remains slower than desirable for the Infraco works, largely due to ongoing contractual matters. Progress" (page 6 – emphasis added).

a) What was your view of performance at this time?

As far as I can recall it was not particularly good. I do not think that any one was particularly satisfied on the performance.

b) The August minutes record that works on the Shandwick Tramstop had not started due to ongoing discussions with BSC regarding treatment of on-street sections (page 6). What was your understanding at this time of the disputes that were holding up works at Shandwick place? Were you aware of the position taken by the contractors? Did your understanding change later and, if so, when and as a result of what?

I do not recall the verbal discussions but I recall that the problems were with utilities. There had always been problems with the utilities at Shandwick Place. There was certainly more to be

diverted than the usual gas, water, and electrical utilities. I cannot recall when that was in particular, but we there were problems with some modern utilities such as fibre cable. I don't recall being aware of the position taken by the contractors. My general understanding was that BSC could not start and we could not hand it over to them to work on until we had the utilities sorted out.

In September 2009 the Report to TS still notes that it was expected that programme recovery could be achieved in respect of the majority of items (page 57).

c) Was there a reasonable basis for this view? Did you personally remain confident that there could be recovery? As matters had now moved on a few months from the statement made in the papers for early July (see above) what was it that made you remain confident that there could be recovery?

We were still being reassured at the time but I was not very optimistic going on official reports.

In the TS Report for September, there is a note that the fact matters had entered DRP means that TIE could instruct BSC to progress.

d) What did you understand to be the significance of the Dispute Resolution Process? Was there discussion as to whether this was likely to make it possible to break the deadlock? What was the cost basis of work to such an instruction? Was the giving of such instructions the subject of consideration at the TPB or elsewhere?

The significance was that it was hoped that the Dispute Resolution Process would resolve matters. Full support was given to TIE. I do not recall any discussion on the matter as to whether it was likely to make it possible to break the deadlock. The cost basis of work to such an instruction would be contained in the minutes. I do not recall if the giving of such instructions was the subject of consideration at the TPB or elsewhere. I do not know where that instruction would have been given.

e) By this time, what did you consider was/were the real causes(s) of delay in the Infracore contract?

The contract was actually poor, not in favour of the client and with too many opportunities for the contractor.

f) Despite all the problems discussed in earlier months, the relevant section of the TS report still begins with reference to the appointment of direct BSC resources and the final appointment of package contractors (page 32). Was this, in your view, really the issue?

Those were the issues which were reported to us and we were given assurances. I would have been coming doubtful.

There is reference in the September 2009 report to a "Challenge Process" to which possible disputes were subject before referral to DRP (page 33).

g) Can you explain this process?

No, I may have been able to explain at the time but I could not explain the process now.

In the September 2009 Report to TS, there is a statement in relation to design that,

"This slippage has been addressed as part of the re-calibration of the programme. TIE is identifying and implementing opportunities to mitigate the impacts of this slippage."

h) How did you understand that slippage has been addressed as part of the re-calibration of the programme?

We would have been told verbally but I cannot remember detail.

i) Were opportunities identified to mitigate the effect of the slippage? Were any implemented and, if so, with what success?

Again we would have been told verbally but I cannot recall the detail.

j) For how long did you understand works at Shandwick place to be held up as a consequence of the disputes [CEC01891463] [CEC01891622]?

I do not think that was contained in these minutes. I do not recall having a particular date. As it transpired the works took a long time but I cannot answer for how long.

71. You were provided with papers in advance of the meeting of the Tram Project Board on 21 October 2009 [CEC00842029].

a) What information were you given about the various disputes that existed between TIE and BSC?

I cannot recall anything other than what was in the report.

There is a note in the September Minutes that Steven Bell was to prepare a summary report to the next TPB outlining areas of dispute within the current supplementary agreement arrangements ([CEC00842029], page 8).

However, no such document is included with the papers for the October meeting despite the fact that it was covered in his Project Director's review.

b) Do you recall whether such a document was ever provided to you? Did anyone request that they be provided with the promised Report? Was it an oral briefing?

I do not recall an oral briefing and I do not recall any verbal discussion. I cannot recall if the Report was provided.

c) What was the position in relation to the Supplementary Agreement for the Infracore works?

I do not recall the detail of that.

- d) Was this discussed at meetings of the TPB?
- e) If it was, what were the issues that were discussed?

I do not recall if it was discussed.

72. You were provided with papers in advance of the meeting of the Tram Project Board on 18 November 2009 [**CEC00681328**].

The Minutes for 21 October 2009 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).

- a) Was this a surprise to you or had you received prior notice of this?

I do not recall the detail or receiving a prior notice.

- b) At this time, what was your knowledge of the delays, the lack of on-street works and their causes?

I do not recall the extent of my knowledge but, as I recall, it was becoming a repetitive situation. In this particular case I am not sure if it was for the same reasons.

Despite the recognition noted above that there was a refusal on the part of BSC to undertake works, the Minutes for October also state that there have been no on-street works due to lack of agreement on programme, suitable sub-contractor arrangements and completion of final design assurance checks.

In the Minutes for October, Steve Bell is charged with preparing a quarterly report on betterment contributions for MUDFA.

- c) What was your understanding of why there was a lack of agreement on programme, lack of suitable sub-contractor arrangements and a lack of completion of final design assurance checks? Were these matters reported to the full Council?

That was the reason that Steven Bell was charged with preparing a quarterly report in general terms. I do recall it being reported to any Council Committee.

d) Did the Board ever receive report on betterment contributions for MUDFA from Steve Bell?

I do not recall and I do not see it in any of the minutes.

The minutes for the meeting which took place on 18 October also noted that there are discussions with Carillion regarding their exit from the contract (page 7). The MUDFA works were said to be 98% complete.

e) What is your understanding of why it was thought necessary and appropriate to make the change?

I do not have the detail of that and if it was discussed it would have been verbally. MUDFA works were said to be 98% complete, however, that was perhaps questionable.

In the table on page 40 of the November report, all the figures showing the cumulative fall behind schedule (the right hand column) are inaccurate. The same is true of the table in the December Report ([CEC00416111], page 52), the January report ([CEC00473005], page 53), the February Report ([CEC00474418], page 33) and the March report ([TIE00894384], page 34).

f) This appears not to have been noticed, commented on or corrected. Were you aware of this at the time? If so, did it concern you? If not, had you been aware of this would it have concerned you?

I do not recall noticing it at the time and I cannot recall if others did. I would have been concerned.

The decisions of the Carrick Knowe and Gogarburn adjudications were made available.

g) Who was conducting the review and what considerations were applied? To what extent was the TPB involved in the issue of that review?

I cannot recall who was conducting the review and I do not recall the TPB being involved.

h) One of the issues in relation to these disputes was whether certain matters constituted "Changes" under the contract. Was there discussion as to what approach TIE intended to take on this issue?

If it was a verbal discussion then I cannot recall.

By the time of the November 2009 report to TS it is apparent that nearly all the risk provision is exhausted and the Infracore works are only 10% done (pages 18, 40 and 61).

i) Was this a source of concern?

It would have been was a source of concern but I cannot recall a verbal discussion.

j) It does not appear that a great deal of the drawdown was attributable to the movement between BDDI and the IFC drawings – would you agree?

I would agree.

73. 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.

a) Did you (or members) ever receive briefing from CEC officials or TIE on this overview? What was your understanding of the result of these decisions including the extent to which the decisions favoured TIE or BSC?

b) What was the basis for your understanding in that regard?

I do not recall being briefed and I cannot speak for others on that.

c) Did you read these decisions at the time (or later)?

Not that I can recall.

Events in 2010

74. 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.

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, "*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.*"

The effect of this wording was that "*Changes of design principle, shape and form and outline specification*" 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].

a) Did you (or members) ever receive briefing from CEC officials or TIE on this opinion?

The opinion was provided to the Solicitor of the Council on that particular document [CEC00356396]. I do not recall receiving briefings from CEC officials or TIE; that does not mean to say that it did not happen. It may have been verbal and if so it may have been without full detail and I cannot speak for others. I would not have been briefed by the CEC officials so I can rule them out. At the time I did not see Richard Keen's opinion which was attached to that email and marked "*Strictly Private and Confidential*".

b) The contractual dispute had been ongoing for some time. Do you have any views on whether this opinion have been sought by TIE sooner? Do you have any views on whether the Council as ultimate stakeholder, should have taken separate legal advice at an earlier stage?

Yes that opinion should have been sought by TIE sooner and CEC as ultimate stakeholder should have taken separate legal advice.

c) Do you have any views on why parties had differing interpretations of the contract?

I wouldn't speculate.

d) Did TIE or Council officers, ever report to the Council on what was covered by the price in the original contract, and why departure from that was necessary?

I do not recall it appearing on any Council minutes or any Council papers going to committees.

e) In Jan/Feb 2010 CEC appear to have instructed their own legal advice from Dundas and Wilson [CEC00450359], [CEC00479797], [CEC00480029], [CEC00551307]. Were you informed of the outcome of that advice?

Not that I can recall.

75. By email 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.

a) To what extent were the different options discussed with you? 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?

I do not recall seeing those briefing notes or being involved in any discussion on estimated cost. I do not recall the different options being discussed with me. At the time I did not have a view on the best option as I was not in that group.

b) Were you aware of these cost estimates? Were these options and the cost estimates put to Council and, if so, how and when (the estimates are not, for example, mentioned in the report to Council on 24 June 2010 noted below)?

I would only know if they were put to a Council committee or the full Council and I do not recall that happening,

76. 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 pricing assumptions indicated that this was not the case.

a) Did you (and other members) see that letter? Did Councillor Gordon Mackenzie, for example, bring these matters to the attention of yourself or elected members?

Not as I recall but I cannot speak for others.

b) 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?

I do not recall seeing that letter.

c) Did you give any consideration at that time to meeting with BSC?

No as I was not in possession of the content of that letter.

d) What were your views at this time on TIE's strategy for resolving the dispute?

From what we were being told at the time, it appeared that TIE had been following a logical strategy. However in retrospect that was doubtful.

77. You were provided with papers in advance of the meeting of the Tram Project Board in 14 April 2010 [CEC00420346] [CEC00379024].

a) What were the next steps outlined by Richard Jeffrey and the strategy presented by the Executive Team and referred to in the minutes of the April meeting [CEC00245907], page 7)?

I do not recall verbal discussion but as far as I can recall Richard Jeffrey spoke to reports and gave an update at meetings.

The question is obviously asking about that discussion but you will not remember I guess?

b) What discussion was there about the strategy and the advantages and disadvantages of any particular course?

I cannot recall any verbal discussion.

c) Steven Bell reported on TIE's audit of BB's performance. It was noted that whilst TIE Changes have driven some of this delay, for example in areas such as Gogar Interchange and Picardy Place, there had been no clear justification from BSC as to the reasons for overall delay or any evidence of design management and mitigation of delay. The minutes noted that the scope of what SDS has been asked to deliver compared to the base scope had increased substantially, though the reasons for this had not been communicated to TIE by BSC. Did this concern you? What was done in response?

TIE officials usually defended their position and that most of the problems were coming from the contractors. I don't recall my response now or what was done in response.

d) Richard Jeffrey confirmed that whilst TIE has no dispute that utility diversion delays, which are to TIE's account, have caused substantial delay to the construction programme, BSC have not demonstrated that they have effectively sought to mitigate delay. In your view, were BSC seeking to mitigate delay? Please provide reasons for your answer.

I agree that utility diversion delays had caused further delays to the construction programme. I am not aware of whether or not BSC had demonstrated that they had effectively sought to mitigate delay at the time. I can't provide any other answer.

e) The minutes note that TIE have expressed concerns about BSC's approach to fulfilling certain obligations and interpretation of particular clauses in the contract. In your view were TIE's concerns well informed?

TIE usually viewed that the contracts favoured TIE/CEC. I cannot be sure of how well they were informed.

f) Richard Jeffrey confirmed that independent legal advice including advice from Counsel had been analysed and this had affirmed TIE's approach to these matters. Were you as a board member aware of what legal advice Richard Jeffrey referring to? Were you provided with a copy of this advice and were you content that it affirmed TIE's approach interpretation of particular clauses in the contract?

I do not recall being provided with any information or seeing a copy. I do not recall if there was any paper given to us; it would probably have been a verbal update.

g) Richard Jeffrey further confirmed that TIE had attended a series of detailed reviews of the current financial position with CEC and Transport Scotland. Stewart McGarrity reported that a detailed financial analysis had been undertaken over a range of possible outcomes and presented the results of this analysis to the Board. What were your views at this time about the affordability of the project?

I cannot recall there were any written reports on the matter. If so that would have been recorded in the minutes. If not then presentations would have been verbal. My views would have been dependent on to what extent the project could be built.

h) A strategy was noted for the way forward. Amongst this was to confirm a new way of working with BSC to mitigate against further dispute risk. What was your understanding of the new way of working that was to be adopted in order to mitigate against further dispute risk?

I do not recall what the new way of working was to be. I don't recall being given a written report so it may have been explained verbally.

78. You were provided with papers in advance of the meeting of the Tram Project Board on 5 May 2010 [**CEC00245907**].

The April Minutes note that MUDFA works were 94% complete (page 6). Six months earlier in the October minutes they were reported to be 98% complete.

a) What was your understanding as to why it was that the percentage complete had gone down over this period?

I probably didn't notice the small percentage change or recall the previous report it at the time. I cannot speak for others.

The same Minutes note that a progress report was given by Susan Clark (page 7).

b) Did you receive this report and if so, can you recall the content or general tenor of that report?

I do not recall if a paper was circulated; it was probably given verbally.

The Minutes note that the project budget increased to £530m (page 9).

c) What was your understanding as to why the project budget had increased? Did it appear to you that the budget was simply being made to expand as the risk elements grew?

The Budget was increasing due to extra project work being required. No doubt the risk element was a factor.

d) Is this the normal way to manage risk in this context? What else could have been done?

I'm unable to comment on the best way of managing risk. However I imagine that every step should be taken to avoid the risk and only increase the budget if that fails.

The May Project Director's Report states that works cannot be started on street where sites are available as BSC have failed to satisfy their contractual obligations ([CEC00245907], pages 18 and 19).

e) Which obligations did you understand BSC to have failed to satisfy?

The Project Director's Report, page 18, stated that "*work cannot be started on-street where sites are available, as BSC have failed to satisfy their contractual obligations*". That referred to the contract clauses and again TIE were saying that BSC had failed to satisfy their contractual obligations. I do not recall which obligations in particular BSC had failed to satisfy.

f) This seems at odds with the statements elsewhere that the problem is that BSC refused to work on street without a new agreement. Can you comment?

I do not recall that being discussed at the time.

g) Was the problem a refusal to work by BSC or the fact that they had not done works required to enable a permit to be issued?

I do not recall that being discussed at the time.

In the May report to TS, it is apparent that SDS are causing problems (page 31).

h) Do you know what the problems were?

I only know what was given in the report; I do not recall any verbal explanation.

i) Were these difficulties having a practical effect on the progress of the works? If so, how?

I only know what was written in the report. There would have been some verbal update but I do not recall what that was. However such problems did hold up work.

j) We note that there is reference to a design audit on page 32. What was the outcome of this? Was there a written report produced and circulated?

I do not recall receiving a written report and I do not know what the outcome of that was. If a written report was available it would probably have been noted in the minutes.

k) We note that there is a new design programme almost every month at this time. Did this cause you concern? Were you provided with any reassurance or explanation?

New programmes appeared to be produced from time to time to cope with changing circumstances. I don't recall what explanations were given.

79. By email dated 16 April 2010 [CEC00266715] Richard Jeffrey wrote to Board members to inform them that himself and Tony Rush had met with Michael Flynn (Siemens) and Richard Walker (BB).

a) What was your understanding at that time of the relevance of clause 80, a clause 65 based approach for on-street, and the Siemens 33 initiative? Had these clauses and their relevance been explained to you as a Board member?

I don't recall if it was explained, if so it was probably verbal.

b) Did it concern you that the Infracore were alleging that they were owed £15m for work done that they had not been paid for? What was done by Board members in response to this?

I cannot recall any discussion on this matter. Hopefully this will be covered in the minutes.

c) What was your understanding of the positive signs from Siemens before the meeting and what were your views on Richard Jeffrey's observation that the position of (BB) (namely, that they will not work in any areas where there is an alleged change until that change is resolved) had hardened?

I do not recall being aware of what the positive signs were. Siemens had a more straightforward contract with fewer potential problems so to give positive signs. It was the civil engineering

contract with BB that was difficult. I recall BB often seeking to enforce the contract as they saw it.

- d) Were you satisfied that Richard Jeffrey had provided a balanced view and were actively seeking solutions and compromise?

I had no reason to think otherwise at that time.

- e) What next steps were discussed at the Board and what next steps did you understand to be required at this stage? What did you understand the timing of those next steps to be?

I cannot not recall verbal discussions and I cannot locate any written information.

80. 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 as a member of the Tram Project Board shortly thereafter [CEC00245727].

Mr Jeffrey noted that "*there is disagreement over what is or is not included in the original 'fixed price' contract*" and BBS are "*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*". He would not allow the city to be "*held to ransom*". In relation to the adjudication decisions Mr Jeffrey noted, "*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*".

- a) What were your views on the email?

The email was reported to the group leaders and it was copied to us. I do not recall having any reason to disagree with what was in Richard Jeffrey's email at the time.

b) The email mentions legal advice having been received from a number of sources. Did you ever see or seek that advice? Did you give any consideration around that time to whether CEC should seek its own legal advice, independently of TIE?

I cannot recall what legal advice I saw and I do not remember what, if any, advice CEC obtained. CEC probably should probably have obtained its own legal advice.

c) Did you ever see or seek the adjudication decisions? What were your views on the assertion that you and other members 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 Trams Project? Did you, or CEC officials, give any consideration to requesting that BSC agree to the adjudication decisions being disclosed to members?

As I recall basic outcomes of adjudications would have been reported to the TIE Board but not necessarily in detail. I do not now regard the position as satisfactory that I could not be fully briefed on the adjudication decisions because they were confidential. I cannot provide a view on that for the other Council members.

81. 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 Andrew Square for a guaranteed maximum price and a new completion date.

a) To what extent were you, and other members, aware of this meeting and the discussions that followed [CEC00387018] [CEC00247389]?

I do not recall having previous notice prior to the email or oifdiscussions that followed at that time.

82. The minutes of the TPB meeting on 5 May 2010 [CEC00261936] (page 7) note 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.
- a) Was this report provided to you? When?
 - b) Who prepared it?
 - c) What was the basis of the conclusion that it reached?

I do not recall that report being provided to me, I do not know who prepared it. Any discussion would probably have been verbal.

84. On 24 June 2010 the Council were given an update on the Trams Project by means of a joint report by the Directors of City Development and Finance [CEC02083184].

The report stated that "*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*" (para 3.3)

It was further noted that "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" (para 3.10) and that "*The outcome of the DRPs, [Dispute Resolution Procedures] in terms of legal principles, remains finely balanced and subject to debate between the parties*" (3.12).

The Report stated that it was "prudent" to plan for a contingency of 10% above the approved funding of £545m because of the current lack of clarity on programme and cost.

- a) What were your views on the report?

The Conservative Group moved an amendment which can be seen in the minutes of that meeting. That shows what our view was at that time.

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

It was assumed that the contingencies would cover anything out with the “fixed price”.

c) 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?

I cannot speak for the other Councillors but, in hindsight, I am not convinced that any briefings were adequate.

d) What was your understanding of and views on whether the outcome of the Dispute Resolution Procedures was “finely balanced”?

As I recall, the statement that the outcome was “*finely balanced*” was a reasonable, if optimistic, statement at that time. However I cannot speak for other Councillors views.

e) 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 (ie £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?

As far as I can recall CEC was still hopeful at that time that a line from the Airport to Newhaven could be built for £545 million plus the 10% contingency. If members were not informed about the significant risk that the cost of phase 1a was likely to be much higher, they should have been.

f) It appears that, in general, members were given notice of cost overruns and difficulties only after overruns and difficulties had occurred? Do you agree? If so, should members have been advised of these matters at an earlier stage? Should members 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)?

Yes that appears to be correct. Members should have been advised.

85. You were provided with papers in advance of the meeting of the Tram Project Board on 30 June 2010 [CEC00223543].

The PD Report for late June notes a new twin track approach to Infracore ([CEC00223543], page 12).

a) Was there a change in approach to BSC at about this time in view of the decisions of the adjudicators in the disputes?

b) What was the new approach?

c) The Minutes of the meeting in early June 2010 note that Richard Jeffrey outlines the current position regarding the options available in relation to BSC and that two options were being worked on ([CEC00223543], page 6). Do you recall what the two options were?

Answer to A, Band C, Richard Jeffrey was concentrating on contractual strategy and dispute resolution. On page 12 there were the two strategies stated, BSC to complete the infrastructure work at least as far as Haymarket, and the other was termination of the contract.

- d) Those Minutes also note that a contract was to be let for utility works in Baltic Street (page 8). Did it concern you were new contracts for these works being awarded at this late stage?

As far as I can recall it was expected.

The papers for the meeting include the letter from David Mackay to Marshall Poulton explaining that the contract could not be completed within the funding envelope of £545m. It had been reported since August 2009 that this was unlikely to be possible.

- e) What tipped the balance such that the letter was sent at this time?

That was flagged up under question 84 as a possibility and was included in a report to Council [CEC02083184]. As far as I can recall it was part of what had been going on for some time. At the same time we were told that £545m gave sufficient headroom. We were still being told that at various stages. I do not know why that letter was sent at that particular time.

- f) The decision taken to instruct the sending of the letter is noted at page 13. What factors lead to the decision?

It was about delivering the whole of Phase 1a and part of Phase 1b. As far as I can recall members of the TPB were of the view that getting to Newhaven was becoming unlikely. However I can't speak for the others.

g) Did Marshall Poulton participate in the making of the decision?

I do not know.

In the PD report for late June 2010 it is noted that there were two such independent reports to the effect that recovery was possible (page 24).

h) As with the June Report, were these provided to you and what was the basis for their conclusions?

I do not recall the reports being provided. Again that would have been a verbal discussion and I cannot recall the detail of that. It would have been unusual to receive written reports at TIE Board meetings.

The PD Report for late June notes a new twin track approach to Infracore ([CEC00223543], page 12).

i) What was the old approach and why was it jettisoned?

As far as recall it was similar to option 1 but now it was for a reduced track length. Instead of going to Newhaven the line would reach St. Andrew Square.

j) What did you understand to be the advantages of the new approach?

It was apparently being realistic.

k) The following paragraphs in the report refer to the outcome of the adjudication decisions. Do you consider that they accurately represent the position?

I did not have any reason to doubt the position at that time. I cannot recall if there was any discussion about what could be said of these decisions in the report to TS, or others.

At page 14 of the PD report for late June there is a note that Cllr Gordon Mackenzie had called for the termination of BB's contract.

l) Is this the same Gordon Mackenzie as sat on the TPB? Had he been calling for this at TPB meetings? Did this public statement cause problems? Was it discussed in advance that he was going to make such a statement? Was he able to continue on the TPB?

It will be the same Gordon Mackenzie unless there was another Gordon Mackenzie involved in the Trams Project. I believe that statement caused some issues. I do not recall discussions in advance that he was going to make such a statement. I am certain that there was something contained in the next paper about this which showed Gordon Mackenzie's name, so he would have continued on the TPB.

Page 26 of the papers sets out what the causes of problems in the Infraco works. Conflicting causes appear to be put forward.

m) What did you understand the position to be? Were you provided with information in addition to what was stated in these reports?

I do not recall anything other than what is in the report itself. I do not recall receiving anything written and I do not recall any verbal discussions.

86. You were provided with papers in advance of the meeting of the Tram Project Board on 28 July 2010 [CEC00244400]. The new twin track approach is discussed in a bit more detail in the Minutes of the June meeting (page 7).

a) Was the intention to terminate the contract or merely to cause concern to BSC?

I do not know.

b) What would have been done if the contract was terminated at that time?

I can only refer to the minutes and reports which would contain that information because I do not recall verbal discussions.

c) In how much detail was the issue of service of Remediable Termination Notices discussed?

I cannot recall discussion.

d) What was being discussed in the negotiations with BSC as to the second approach?

I do not recall being told however, I cannot recall any verbal discussions there may have been at the time.

e) If Option A failed to produce a change and the agreement necessary for Option B was not forthcoming, what position did you understand TIE, and the Council, would be in?

I do not recall the details of the discussions. As far as I can recall we would have been waiting to give them more information on that.

f) It appears from the minutes of the July meeting [CEC00013703] (page 7) that advice had been taken on the merits of the RTN approach. Who had given the advice?

I have no written note or minutes and I do not know who gave the advice. I do not recall any verbal discussions.

g) In relation to the option B, what approach did you understand was being taken to the negotiations?

Only what was in the reports and in the minutes.

h) The July Minute notes that Board members were to be kept informed of each step of progress though the coming week and beyond. By what means were they kept informed? Is there email correspondence?

The Board members were not kept informed that I am aware of and I do not recall by what means. I have checked my emails and I cannot find any email correspondence.

The TS report for July 2010 appears to be the first time it is recognised that programme recovery is not possible [CEC00244400] page 47).

i) What caused the change of heart?

I do not recall any verbal discussion and I do not see any written content in the report as to what caused a change of heart.

87. By email dated 1 August 2010 [CEC00473789] Nick Smith sent Alastair Maclean a document, "Tram-Potted History" [CEC00473790]. Mr Smith's email noted "*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*".

a) Do you have any comments on Mr Smith's email and accompanying document?

At the last line of that email it stated that "*TIE have kept them on a restricted info flow*". However, without checking back in detail, that appeared to be a fairly accurate potted history that he had given from what was known at the time. Going through that document it seemed fairly obvious that what he said was roughly in line with what was the situation at the time.

b) Do you consider that CEC Directors and/or TIE kept you on a "restricted info flow"? Did you have any concerns in that regard at the time?

Apparently we were kept on a restricted flow but I could not be 100% sure about that. I could not have had concerns at the time.

c) 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 Trams Project?

I do not know what Council members were not given so I could not have had any concerns. If members were given restricted information then that probably could have affected their ability to take informed decisions.

88. 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.

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.

a) Were you (and members) informed of these discussions? If so, what were your views on these proposals?

I do not recall being informed of those discussions. I do not think that report was given to everybody. I do not recall seeing that previously.

89. You were provided with the papers for the Tram Project Board meeting on 22 September 2010 [CEC00013818]. The papers contained the minutes of the meeting that took place on 25 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.

a) What is the significance of this? As matters progressed, did TIE take the view that termination was no longer the correct course of action?

As far as I can recall TIE were concentrating on one course of action rather than on both. As matters progressed, I do not recall any verbal discussion whether or not TIE was of the view that termination was no longer a course of action, but that may be contained in a document elsewhere.

b) At Item 2.4 of the minutes and in the SPD Report (page 15) there is a note that no further Dispute Resolution Process referrals would be made. Why was this? Was it because there was acceptance of the decision in Carrick Knowe and Gogarburn which has gone against TIE? Who took this decision?

TIE were not as confident as they were previously about Dispute Resolution Processes and must have decided at the time that no further referrals would be made. The adjudications were not particularly going in TIE's direction. As far as I can recall the decision that no further DRP referrals were to be made was taken by the senior management within the Chief Executive, Richard Jeffrey, Steven Bell, and their engineers.

c) What is your understanding about the Contractual Strategy in the Project Director's Report (page 29)?

I only know what was in the report and I do not recall any verbal discussion. TIE was always being assertive throughout.

90. 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.

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.

a) What were your views on that letter?

I am not sure if the letter was to all Councillors but I will assume that it did. I was used to receiving two sides of the story and this was BBS's side of the story. I was not particularly surprised at BBS's side of the story.

b) Did you see or seek the adjudication decisions at that stage?

As far as I can recall I went on what information we had been given at the TPB.

c) Were the adjudications decisions made available to members at that time (and, if not, why not)? Ought they to have been made available to members? If were they not made available to members did that affect the ability of members to make informed decisions in relation to the Trams Project?

If members were not told then they should have been.

d) What was your understanding and 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)?

Again there were differing versions of events. I, and other members, were given TIE's side of events which they would justify.

e) How did the information provided to Councillors by BBS contrast with the information being provided by TIE at that stage [TIE00463778]?

That was apparent from looking at the reports. Comparing what BBS were saying with what was being presented to Councillors elsewhere, there were two versions of events. That email was from Mike Connelly of TIE where he put forward the TIE case, some of which showed up as being positive.

91. 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 (eg anticipated development) that either no longer applied or whose timescales had now substantially changed.

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, "*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*" (para 3.1).

It was, again, noted that "*The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties*" (para 2.50).

Termination of the contract was one option. It was noted that extensive legal advice had been taken and continued to be taken.

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.

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?

The minutes for that meeting shows what the various political groups were moving and what the Conservative Group moved **(CEC02083139)**.

If there is a particular item or anything that you wanted quoted.

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?

I would refer to the minute I mention above for the Conservative Group view. The statement re. the DRPs is somewhat optimistic.

c) What legal advice was provided to you (and to other members) in relation 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 available to members, to what extent did that affect the ability of members to come to informed decisions in relation to the Trams Project?

I do not recall what legal advice if any was provided. It was possible that the controlling group would have had more information than we had. If legal advice was not provided and/or made available to Council members then it could have affected their ability to make informed decisions. I do not know who legal advice was given to, if any one.

92. You were provided with papers in advance of the meeting of the Tram Project Board on 21 October 2010 [**CEC00014055**]. The PD Report for October notes that BB were intending to ramp down their workforce.

a) Was this a response to the new TIE tactic?

Not that I can recall.

- b) What justification did BB give?

I do not recall. It would have been a culmination of everything which had been going on up to that point, such as lack of agreement on various locations.

- c) What was the reaction within TIE to this news?

Apart from what was shown on the minutes of that meeting, the rest would have been verbal and members would probably have been discussing the issue. However I cannot recall the content.

The TS Report for October notes all that has been done by way of serving notices on BSC (page 33).

- d) Was this with a view to terminating unilaterally for breach, pressuring BSC to agree a termination or getting the works done more quickly and to the correct standard?

I could not say for sure but I believe it was to try and get BSC to move along with the work. As far as can recall TIE wanted the work done and if BSC did not then they might terminate. However I could not say with any certainty if that was the view at that time. There may be more detail in the minutes.

- e) What does it mean when the TS report refers to a "financial metric" (page 31).

I do not recall verbal detail being given at the time but from what I understand it was a percentage of the spend to that date.

93. An email dated 4 November 2010 by the Council Solicitor, Alastair Maclean [CEC00012984], stated that CEC were to instruct "*our 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.

In emails 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]).

In an email dated 30 November 2010 [CEC00013550] Nick Smith listed his personal view on the performance of TIE and DLA.

In an email dated 24 November 2010 to Mr Maclean [CEC00013441], Richard Jeffrey stated, "*if the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation*".

a) Were you aware of the above matters at the time?

I do not recall being aware of those emails.

b) What was your understanding as to why CEC had decided to instruct their own QC at that stage (and why that had not been done earlier)?

I do not know as I do not recall being in a position to have any views on it at that particular time.

c) To what extent, if at all, did you consider that CEC officials were starting to lose confidence in TIE and/or their advisors in late 2010?

I do not know.

d) Did there come a time when you started to lose confidence in TIE and/or their advisors (and, if so, when and why)?

I was starting to have concerns at the time but I could not confirm exactly when that was.

94. Following the resignation of David Mackay, the Chairman of TIE, Bilfinger Berger wrote to yourself and other elected members on 5 November 2010 [CEC00013011] [CEC00013012] 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.

We understand that a meeting took place between BSC and John Swinney on 8 November 2010.

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.

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.

On 18 November 2010 Jenny Dawe tabled an emergency motion proposing mediation as a means of progressing the Trams Project [TIE00306955].

a) It would be helpful; if you could explain 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?

I note that we lost the vote for the Conservative amendment to the emergency motion put forward by Jenny Dawe. I cannot comment what the administration Councillors and officials discussed and I cannot comment on their decision to meet with BSC. There was not any great surprise that CEC wanted to meet with BSC but I cannot speak for others.

b) Are you aware what was discussed at the meeting with Mr Swinney? What were his views?

I do not know and I do not recall being made aware of the meeting.

c) Were these matters discussed with members?

Not as I can recall but maybe with some members.

- d) Do you consider that CEC ought to have met with BSC earlier in an attempt to better understand and/or resolve the dispute?

Retrospectively they should have as it might have helped.

95. 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.

- a) Were you made aware of these concerns? If so, what were your views?

I do not recall being made aware of this. I did not know about the concerns and I do not know how it was followed up. I imagine that senior CEC officials did more about that but I do not know.

- b) What steps, if any, do you consider ought to have been undertaken by the Council's Monitoring Officer in response to these concerns?

It was difficult for me to know, as a lay person, the best legal course of action to have taken. I probably would have gone to Alastair Maclean and discussed it with him if I was aware of the issue. I would think that the monitoring officer would investigate the situation thoroughly.

96. 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.

a) To what extent, if at all, were you (and other members) made aware of these figures around that time?

I do not recall being made aware of that but cannot speak for other members.

97. You were provided with papers in advance of the meeting of the Tram Project Board on 17 November 2010 [CEC00014175]:

a) What was the effect of the resignation of David Mackay on the workings of the TPB?

As far as I can recall it had to continue on without him. I cannot recall much verbal discussion.

b) Where had discussions got to in Project Carlisle?

I cannot recall the content of any verbal discussions.

c) What was the intention at this stage in relation to the contract with BSC?

I can only go on what was in print or in the minutes. I cannot recall any verbal discussion on that.

d) How much feedback were you getting from the TIE officers dealing with BSC?

A lot of that would have been discussed verbally but I cannot recall the content. Having read through the various other questions and documents, we may have had "a restrictive flow" of information here but I cannot be certain about that.

98. An exploratory meeting took place on 3 December 2010 between Alastair Maclean and Donald McGougan on behalf of CEC, Richard Walker of Bilfinger Berger and Antonio Campos of CAF (a record of the meeting was produced [CEC02084346]).

- a) Were you advised on what was discussed?
- b) If so, what were your views on BSC's position?

I do not recall that being copied to CEC members and I cannot recall seeing the record of the meeting or being advised on what was discussed.

99. You were provided with papers in advance of the meeting of the Tram Project Board on 15 December 2010 [TIE00896978].

- a) The November Minutes note the possibility of mediation. What prompted this?

Mediation was an option. I do not recall any verbal discussion on those matters. A desire to try and move the project along would have prompted the possibility of mediation.

- b) In particular, what was said by the Scottish Ministers/TS?

I do not know.

- c) There is discussion of the outcome of the adjudication on Landfill Tax (page 16). What was your understanding of the result?

My understanding was as stated in paragraph 3, page 16, of the papers.

- d) Were you provided with copies of the decisions in this and the other adjudications?

Not that I can recall.

100. On 16 December 2010 Tom Aitchison provided the Council with an update on the refreshed Business Case [CEC01891570].

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.

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).

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?

It was hoped that the route to Andrew Square could be constructed within that funding.

b) Do you consider that members were provided with sufficient detail in the report to enable them to come to informed decisions? See eg 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 'high level' as possible, focussing on strategy rather than detail".

I do not recall being given information on that note of the IPG meeting, others may have been but I cannot speak for them.

c) Were you (and other members) consulted in relation to CEC/TIE's proposed approach to the mediation?

Not as I can recall.

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 Trams 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?

It seemed logical and sensible to do in the circumstances at that time. I cannot recall if it was carried out and if so by whom, that should be in Council reports and minutes. In retrospect, a review probably should have been carried out at an earlier stage, it would have been useful.

2011

101. You were provided with the minutes of the Tram Project Board [TIE00897052] meeting on 12 January 2011. The papers contain the minutes of the meeting that took place on 15 December. Both the papers for the meeting on 12 January and the minutes of the meeting on 15 December consider mediation and the Board are said to want it progressed asap.

a) Why was mediation the preferred option?

I was present for part of that meeting. I cannot remember how long I was there. I do not recall why mediation was chosen as the preferred option, it may have been decided during my absence. It appeared as though the Board, in general, agreed that was the best way forward. It seemed the logical way to go forward.

b) What had brought about the change of heart from the other remedies that had been pursued since about April 2010?

It seemed to be logical at the time.

In the PD report for January 2011 there appears to be inconsistency between the statements as to BSC progress on page 16 and page 18 (both in the table and in the section headed 'Issues for the Period'). This inconsistency is even more marked in the PD Report for March which notes that Infracore progress is focussed on the off street section between Haymarket and the Airport (**TIE00897064**, page 17) but also notes that the only progress has been at the depot and the depot access bridge (page 15) or that there has been a cessation of works across the site (page 16).

c) What was your understanding of the position?

Aar as I'm aware that was contained in the PD report. My understanding of the position was only what was in the report.

d) Was this issue raised at any meeting?

Not as I recall but it may have been when I was absent.

102. The Highlight Report for the meeting of the IPG on 21 January 2011 [**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.

The report noted that, "*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 [RTNs] which do not set out valid and specific grounds for termination*" (p7). The consortium were noted to be extremely well prepared.

It was further noted, "*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”.

- a) What was your awareness of, and views on, the matters noted above?
- b) To what extent, if at all, were these matters discussed with members?

I do not recall seeing that document or being there or being made aware of it. I cannot recall any discussion on it.

103. You were provided with the papers for the meeting of the Tram Project Board in February 2011 [**TIE00897058**] for information only.

It contains the minutes of the January meeting, where there was discussion of the Audit Scotland report (page 13).

- a) 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 a greater role?

I do not recall reading the Audit Scotland report at that time.

- b) In the same Minutes it is noted that there was discussion about the objectives to be secured at any mediation. As far as you are aware, was there a difference of opinion as to what would represent a desirable/ necessary outcome? If so, how was the matter resolved and what factors swayed the final decision?

I can only refer to the minutes of the meeting because I was not there.

There is also a note that the responsibilities of directors of TIE and TEL were discussed.

- c) What was the content of this discussion?

If there was a discussion then I do not know what content of that discussion was. I cannot comment on how the matter was resolved and what factors swayed the final decision as I was not present.

In section 11 of the Minute, Brian Cox is tasked with writing to CEC to express concerns as to the existing governance arrangements.

d) What were the concerns?

The concerns would have been verbal which will not be noted as far as I am aware. I cannot say what the concerns were, only what is contain in the minutes.

e) Are the concerns related to the letter from Brian Cox To Marshall Poulton of CEC on 18 January 2011 [TIE00081663]?

I was not involved in any of that.

In the paper on Project Change Control submitted to the February 11 meeting [TIE00897058], page 23), there is a reference to a "write back budget" of £13m. This increased the risk allowance. It is referred to also in the TS Report on page 54.

f) What was the "write back budget" and how did it operate?

It was probably be for amounts underspent but I couldn't be sure.

104. Mediation talks took place at Mar Hall in March 2011.

a) Did you (or other members) play any part in the preparations for the mediation and/or the mediation talks?

No, I did not but I cannot speak for the others.

b) Do you consider that you (and other members) were provided with adequate briefing in relation to the mediation?

I do not recall being given a briefing and I cannot speak for others.

c) Do you consider that you (and other members) were provided with an adequate opportunity to express their views before, during and after the mediation?

Not as I recall.

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?

I do not recall a particular briefing as it would have been verbal. I do not recall that being given a written report. I don't know how members were advised, we would have been eventually have been told but I cannot remember when.

105. You were provided with the papers of the Tram Project Board meeting which took place in April 2011 [**TIE00897066**].

a) Can you explain the paper concerned with utility works at page 40 of this set?

I cannot explain any more than what was contained in the papers.

106. You received papers for the meeting of the Tram Project Board on 11 May 2011 [**TIE00896987**].

a) What is your understanding of the concerns expressed by Kenneth Hogg in the May TPB meeting (page 3) in relation to the mediation agreements?

b) What were your views on this?

There may have been other discussions around that but what was recorded in the papers was an accurate record on what those concerns were. I do not recall any more than is recorded there.

The intended benefits of the Tram Project are considered in the Business Cases approved by the TPB.

c) Looking at the benefits that were taken into account at the time of the Business Case, in view of the extent of the tram network that has been completed to date, are there some objectives which have not been attained at all? Which, in your view, have been achieved in whole or only part?

Some benefits were not attained because only a part route was built. For example some of the benefit would have been for development around Newhaven. As the tram did not go beyond York Place the benefits expected from there to Leith docks weren't attained.

d) Where did you understand the cost estimates used in these plans to come from and on what data were they based?

e) How were the sums in the Business Cases made up – how much was for utilities works, how much infrastructure, how much trams etc?

As far as I am aware those cost estimates came from data that was shown in previous reports to TIE/CEC.

f) What discussions took place in relation to the FBC?

I cannot recall the details of the discussions.

g) When were you first given a copy of the Business Case to consider?

It would have been the same time as others but I cannot recall when.

h) What provision (if any) was made for risk and Optimism Bias when considered in the estimate of cost?

I do not recall receiving information or having any great discussion on that other than what was written in the FBC.

i) What was the Quantified Risk Assessment?

I do not recall other than what was given in the FBC.

k) How was it used?

I couldn't be sure.

l) The FBC states expressly that CEC must balance its desire to support the project with its fiduciary responsibility and limited resources. Once TS made it clear that they were funding £500m and not penny more, the whole risk of overrun fell on CEC. A 10% overrun on the contract as a whole would have cost an additional £55m and would have more than doubled the Council contribution. What consideration was given to this fact and the risks it presented?

If any consideration was given to that fact at the TPB then it would be contained in the minutes. TS had said they were providing £500 million and no more and the whole risk would fall on CEC. However as discussed earlier in these questions, it was hoped that developers contributions would cover a major part of the Council's costs.

m) How was risk managed, how did the provision for risk 'work'? What was its purpose and what was the function of drawdowns against the risk allowance?

I do not know how the details of how risk was managed. It is probably explained in reports.

n) What factors were taken into account in making a decision whether to approve a drawdown?

I do not recall.

107. A report to the Council on 16 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.

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 (ie a price of £362.5m for the off-street works and a target price of £39m for the on-street works)? If members were not advised of these sums at that meeting why were they not advised of these sums?

I cannot recall any more than what was in the report but I cannot speak for others. Members may have been given briefings out with the Council meeting.

108. On 30 June 2011 the Council were advised of the options for the Trams Project in a report by the Director of City Development [CEC02044271]. 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.

The report stated that in the 12 months between preferred bidder stage and Financial Close of the contract there were significant negotiations on 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?

Amendment 3 was what our group put forward. Our view on the best option available is contained in that report.

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

We did not go along with the Director's report as such. our amendment shows our view.

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 arrived?

I, and my group, was a bit surprised and disappointed at the time. I do not recall being aware of how and by whom that estimate was arrived at.

d) We understand that confidential appendices to the report were made available to members. What documents comprised these confidential appendices, why were they considered confidential and how (and when) were they made available to members?

The appendices would probably have been considered confidential due to commercial reasons. The meeting was on a B agenda so I cannot trace them now. Members would have access to them.

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

Yes but I cannot speak for others.

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?

That position was not known at the time of Financial Close and that was probably why it would not have been reported at the time.

g) Was consideration given to the interest that would accrue on the large sums that the City of Edinburgh Council was borrowing?

The only consideration given was stated in that report/minute. I cannot recall verbal contributions.

h) Claims were made that terminating the Edinburgh Trams Project would be more expensive than building it to St Andrew 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, in 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 Square **[TIE00687940]**?

I did not have the full details of that and was not deeply involved with it at the time. I was not copied into all the relevant emails at the time. I am sure David Anderson's response to that would answer the question.

109. On 25 August 2011 the Council were given a further update by way of a report by the Director of City Development **[TRS00011725]**.

The report noted that Faithful and Gould had worked with Council officers in validating the base budget for the proposed works.

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).

Additional funding of £231m 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).

At the Council meeting, members voted in favour of an amendment that a line should be built from the Airport to Haymarket.

At a Meeting of the Council dated 2 September 2011 however, the Council 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.

a) What was your understanding of, and views on, the Council's decision in late 2011 to build a line from the Airport to Haymarket before, shortly afterwards, voting to build a line from the Airport to St Andrew Square/York Place?

That was something that I would have only agreed with as a group. At the full Council meeting on 25th August 2011 the minutes show that our Group submitted amendment 3 (page 9, CEC02083194), which was moved by Councillor Balfour and I seconded. That amendment stated what our view was at the time.

b) What was your understanding as to why Transport Scotland were unwilling to provide further payment of grant if the line stopped at Haymarket? Who did you understand to be behind this decision? What were your views about this decision?

That was in that briefing from Sue Bruce. It appears that TS took that decision on behalf of Scottish Government Ministers. My view would have been that we had no choice.

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]. Were members provided with the report or only a summary of the report? The full report by Faithful and Gould noted, in the Executive Summary, that the current costs for the on-street works for Siemens were "extremely high and not value for money" and that the cost of the other on-street works was "grossly inflated". Were you (and other members) aware of these conclusions? Why did the Council nonetheless agree to instruct these works?

I do not recall seeing that full report at the time. but I am not surprised about the statements about extremely high cost, not value for money and grossly inflated prices in the report. I agreed with those statements. The report stated that CEC nonetheless agreed to instruct those works. I do not know why CEC went ahead with the works, that will be contained in the minutes.

110. 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.

a) What were your views on the settlement agreement reached in September 2011? What advice was given to members?

I do not have details of the settlement agreement as the main features were set out in a confidential appendix (CEC01914665). I do not recall being given advice as it may have been verbal and I cannot speak for others.

b) The main features of the contractual arrangements were set out in a confidential appendix to the 30 June 2011 Council report and included [CEC01914665] 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. Do you remember being provided with this confidential appendix and if so, what was your understanding of the contractual arrangements set?

My understanding of the contractual arrangements was as written in the confidential appendix.

c) Did you understand there to be any realistic alternatives to the settlement agreement? Again, what advice was given to members in that regard?

It did not look as if there was any realistic alternatives. I do not recall what advice was given to members, who gave it and how many people it went to, and I cannot speak for others.

d) The additional funding of £231m 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?

I believe that carrying on with the Trams Project was probably the right course of action. In future CEC will be able to proceed to Newhaven, hopefully, at a sensible cost. I cannot speak for other members with regard to constituents.

111. An announcement that Ministers/TS would oversee the project and 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].

a) What role did TS play after the settlement agreement?

b) What role did Turner and Townsend play after the settlement agreement?

I had little or no involvement at that stage. I can't report with any certainty what TS's role was after the settlement.

As in a) I had little involvement after the settlement. I Don't recall having seen any documents on this or any detail of Turner and Townsend's role.

112. At a meeting of City of Edinburgh Council on 24 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.

a) Did you think that a public inquiry was necessary? What did you hope a public inquiry would achieve?

On balance, it was probably the correct course of action. The Inquiry had been given specific aims to achieve and I agreed with that.

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?

Yes, an Inquiry shouldn't commence until the tram was up and running agreed with that.

113. 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.

By way of overview:

a) What were the main changes introduced as a result of the Mar Hall mediation and the Settlement Agreement?

I do not recall having full knowledge but the issues that had given problems previously had been ironed out and the project could go ahead.

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?

It appeared that the increased cost meant the disputes would be minimised and BBS would continue mainly unheeded. Therefore, at the time it looked as if those agreements were going to work.

Project Management and Governance

114. In general:

a) What did you understand to be the respective roles and responsibilities of CEC, TIE, TEL the Tram Project Board and Transport Scotland in relation to the Trams Project?

The respective roles were detailed in the many reports to CEC. My understanding was based on what was contained in the reports to CEC and TIE.

b) Did you have any concerns at any time in relation to the performance of any of the above bodies, 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)?

Concerns were building but not in the early days. In retrospect the Council and TIE didn't get a realistic grip on the project or the

contract. I do not recall discussing this with anyone in detail other than with senior members of my group.

c) What were your views on the governance arrangements for the Trams Project including whether each of the relevant bodies etc were able to, and did, exercise effective governance and control over the project?

I can say now that CEC did not appear at that time to have sufficient control and that had not come across in various CEC reports.

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?

In retrospect the delivery and governance of the project could have been much clearer and there were probably too many bodies and organisations involved in the governance of the project.

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

TIE and CEC were ultimately responsible. However other bodies were kept informed of progress or the lack of it throughout the project.

115. The report to Council on 25 August 2011 [TRS00011725] noted that "The existing governance arrangements for the Trams Project are complex and have not been effective", the governance arrangements had had to take account of the complexity of the arm's length bodies that were proposed to deliver an integrated transport service once trams had become operational

and that there was a need to revise the overall arrangements "to ensure effectiveness, accountability, probity and integrity going forward".

a) What are your views on the conclusions noted above? Do you agree with them?

In retrospect, I agree with the conclusions noted above.

b) Why had effective governance arrangements not been introduced at an earlier stage (in particular, at the time of Jim Inch's Briefing Paper on Governance dated 20 July 2007 [CEC01566497] which had noted that it was "vital that more rigorous financial and governance controls are put in place by the Council")?

I am not sure where that paper went; it seems to be between Jim Inch and the Chief Executive of CEC at the time. I am not sure whether I saw it at the time. Having seen it now, in retrospect, I agree with what it noted.

c) Whose responsibility was it to ensure that effective governance arrangements were in place?

The governance arrangements would have been put in place by the Council.

116. Slides setting out a new governance structure [TRS00014775] were agreed by Council on 25 August 2011 and 2 September 2011.

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?

I was no longer a member of TIE. The changes made will be contained in the minutes of that meeting. At the time I did not have any reason to think that the changes were not effective.

b) The slides note that you were a member of the "All Party Oversight Group". We understand that the role of this group was to ensure that elected members remained informed of progress on the Tram Project and to allow a formal channel through which key issues could be raised. Why was this Oversight Group developed and how did it benefit the delivery of the project [CEC01890123]?

The Oversight Group would have been developed to keep a watching brief on progress. In retrospect, there were so many people involved that it was difficult to tell if we were receiving all the information. It provided benefit in that we were able to look at the project and discuss it.

TIE

117. In general:

a) By what means did CEC exercise oversight and control over TIE?

I understood that CEC officials would be in close contact with TIE and report back to members through reports to Council and its Committees.

b) Did you have any concerns at any time about the performance of TIE, either as an organisation, or in relation to individual Board members or senior employees?

I did not have any recall having concerns about Board members. I think senior employees did their best but probably stuck too rigidly to their take on the contract.

c) By what means did the Council's senior officers and members receive information and updates from TIE?

By the usual means. After looking through the various reports provided to me in previous questions, it may well be that senior members of the ruling administration received more information, but I cannot say for sure.

d) 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?

TIE did not do a great deal of reporting directly, they reported through CEC officials. I did not have any reason to have any concerns at any time about TIE's reporting to CEC.

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 Trams Project?

In retrospect, TIE probably did not. At the time I did not see any reason to think otherwise.

f) Was any consideration given to instructing an organisation (eg 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 do not recall any consideration being given to that at the time. With the benefit of hindsight, I agree that such an organisation ought to have been instructed.

118. A TIE report on Ingliston Park And Ride One dated 14 September 2007 [CEC01465362] noted the following "lessons learned":

- "No clear definition of roles and responsibilities between TIE and CEC.

- No check processes in place for design.
- Responsibility was given to Halcrow for the day to day management of the process and light touch management employed by TIE.
- Extension of existing consultancy contracts for new commissions needs to be properly evaluated to ensure that this is appropriate”
 - a) What was your awareness, if any, of this report and the matters in the report? Were you aware around this time of any concerns in respect of TIE's project management of the Ingliston Park and Ride project?

It does not appear from going through that report that it came to the Board. I do not recall seeing that report at the time and it does not appear that it went to anyone other than the officials.

- b) If so, did any such concerns give you any concerns in relation to TIE's project management of the Edinburgh Tram Project?

No, as I do not remember seeing the report at the time.

119. There is a suggestion that concerns had been raised about TIE's project management of the Stirling-Alloa-Kincardine ("SAK") Railway, which was reported as costing more than double the original budget of £37m (and which opened in May 2008, apparently three years behind schedule) (see eg the article in the Sunday Herald on 12 July 2009, [CEC00784171]).

- a) What was your awareness and understanding of any such concerns?
- b) Did any concerns about TIE's project management of the SAK Railway project give you any concerns about TIE's project management of the Edinburgh Tram Project?

I was not involved at all in Stirling-Alloa-Kincardine and I do not know much about SAK. I do not recall being given any information because it happened prior to me becoming a Board member in 2007.

120. A report to Council on 26 June 2003 [CEC02083550] noted that a performance related bonus scheme had been introduced for TIE staff.

a) Why was a bonus scheme introduced for TIE staff?

That report was not challenged at the time. It did not seem unreasonable at the time given that TIE was in its infancy.

b) What was the formal means by which the Council were to exercise supervision and control over the TIE bonus scheme?

CEC expected Council officers and senior TIE officers to be in close contact and take such action that was deemed necessary.

c) In practice, how did Council officers and members exercise supervision and control over TIE bonus payments?

More information may have gone to senior members of the administration in 2003, which was Labour at that time. I do not know what they received. Others were to exercise supervision through the various reports that came back to CEC.

d) Were Council members aware of the sums paid in bonuses to TIE staff each year (including the amounts paid to individual members of staff and the criteria in respect of which bonuses were paid)?

I do not recall it being reported back but I cannot speak for others.

e) What were your views on the TIE bonus scheme, including whether it was appropriate that large bonuses were paid to senior TIE employees in addition to their salaries?

It did not seem unreasonable at the time.

f) Do you consider that CEC exercised sufficient and effective control over these bonus payments?

I do not know if CEC did or not.

121. By email dated 23 September 2009 [CEC00672873] David Mackay sent Tom Aitchison a paper [CEC00672874] containing proposals to revise the TIE bonus scheme.

An accompanying slide presentation [CEC00672875] noted "No formal linkage between bonus payments and corporate performance ... linked mainly to individual performance" and "Inadequate performance management processes to underpin/justify payments".

By email dated 25 September 2009 Jin Inch set out a number of concerns in relation to TIE's proposed revised bonus scheme [CEC00673126].

Mr Inch appears to have met Richard Jeffrey to discuss these concerns (see email dated 9 October 2009 from Richard Jeffrey to Mr Inch [CEC00674778]) and by email dated 23 November 2009 Mr Inch advised Tom Aitchison [TIE00034046] that he was content with the mechanics of the new scheme.

a) What was your awareness of, and views on, these matters?

I do not recall being made aware of those matters as I was not copied into them all those emails.

b) Were these matters discussed with you (or with members) by Council officers? Ought they to have been?

I do not recall if they were discussed. I was not involved and they were not discussed with me. I cannot speak for the other members and perhaps the senior Councillors in the ruling group were aware but I cannot say that for sure. There was the Remuneration Committee in TIE itself, of which I was not a member. I recall that one of our Board members may have chaired the Remuneration Committee but I was not a member of that.

122. We understand that that the post of Chief Executive of TIE became vacant around June 2006 and that Willie Gallagher acted as both Chairman and Chief Executive of TIE between around June 2006 and November 2008.

a) Was Mr Gallagher's appointment as both Chairman and Chief Executive of TIE ever discussed with you? If so, what were your views?

I was made a member of TEL in May 2007 and on TIE in January 2007. All of that was just as I arrived at TIE and I remember Willie Gallagher chairing the meetings. As I recall Mr Gallagher was doing both roles when I arrived. I do not recall that being discussed with me but I accepted it at the time. I thought it was a bit unusual but that was the way it appeared to be and I just accepted it as such. I assumed it had been approved previously before I became a member.

b) Do you consider that it was consistent with good corporate governance for Mr Gallagher to be both Chair and Chief Executive of TIE? Did you have any concerns as to whether that could be detrimental to the TIE Board's ability to exercise independent and effective oversight over the company? Did you receive any advice from Council officers on that matter?

In retrospect it probably was not the best corporate governance to have Willie Gallagher as both Chair and Chief Executive of TIE. I do not recall receiving any advice from officials on that.

The City of Edinburgh Council

123. In general:

a) How did CEC officers exercise oversight and control over the Tram Project?

I do not know exactly how CEC officers exercised control but it was assumed that they were doing so as I answered earlier.

b) How did members exercise oversight and control over the Trams Project?

CEC members were informed in reports and act as appropriate.

c) Did you have any concerns, at any time, about the oversight and control over the Trams Project exercised by officers and/or by members?

As far as I understood it at the time, Council officials had an oversight and reported it to members in reports to Council committees. I cannot speak for others and what else they were told or were not told. In hindsight, reading through the new information I now would have had concerns but not at the time.

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

I do not know whether they were keeping good control or not.

e) Do you consider that members were able to, and did, exercise effective oversight and control over the Trams Project (and, if not, why not)?

Again I do not know if they were able to keep good control or whether or not all the relevant information was reported.

f) Do you consider that members who sat on the Tram Project Board and the Boards of TIE and TEL had sufficient experience and expertise (including of major infrastructure projects) to inform their decisions as members of these Boards? Was training provided? Ought it to have been? If you were given some training was it sufficient to enable you to fully consider the issues relating to the Trams Project that were brought before the Council? If not what was missing [CEC01515433]?

As far as CEC members were concerned, different members had a variety of experiences and professions and qualifications that they brought. My experiences were in the electrical contracting business. I was not sufficiently experienced on a huge infrastructure project like the Trams Project. Having said that, any elected member when they were elected to CEC or to any Board had to consider and scrutinise information and advice given by professionals and take decisions from there. I do not think that any of the other Councillors were fully qualified.

- g) 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 ie TPB, TIE and TEL?

I do not consider there was conflict of interest. Members declare their interests Council meetings

Tram Project Board

124. In general:

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

The TPB was created to run the Trams Project. I cannot recall when the TPB was created.

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

The role, remit and responsibilities of the TPB were as mentioned in previous reports and what I have stated above.

- c) What powers were formally delegated to the TPB, by whom and when?

What was formally delegated to the TPB will be in Council reports at the time it was created, they would have given terms of reference.

d) To whom did the TPB formally report?

I was not a member of the TPB when those matters were being decided. The Business Plan showed who the TPB were to report to.

e) How did the above matters change over time?

Eventually the Tram Project Board was incorporated into the TIE Board to avoid duplication.

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?

It was not uncommon to appoint Councillors to Boards of arms-length companies. Your first duty if you were on a Board was as a non-Executive Director to that company. As an opposition Councillor I didn't report back to full Council.

g) Was there representation of all parties on the TPB (and, if not, why not)?

The SNP opted but and I cannot remember when. However one of their Councillors was circulated with Board papers for information as was a Green Group member. Liberal Democrats, Labour and Conservatives were represented.

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?

Previously answered.

125. The joint report to Council on 20 December 2007 by Andrew Holmes and Donald McGougan [CEC02083448] sought approval for the proposed new governance arrangements (as shown in appendix 1 of the report). The report explained that the TPB would be formally constituted as a committee of TEL (para 4.2).

a) When was the TPB formally constituted as a committee of TEL? What powers, duties and responsibilities did you understand had been formally delegated to the TPB before then (and by whom)?

As in my answer to question 124 part (c), powers that were formally delegated to the TPB will be in Council reports at the time it was created as they would have given terms of reference.

TEL

126. In general:

a) What was your understanding as to why TEL was created?

It seemed the logical thing to do at the time. I do not have any particular reasons to think that it was not done for good reasons.

b) What was the role, remit and responsibilities of TEL [CEC00475228] [CEC00475229]?

That was contained in the various reports such as [CEC00475229].

c) What powers were formally delegated to TEL, by whom and when?

Again that was contained in the reports such as [CEC00475229].

- d) To whom did TEL formally report?

TEL reported to CEC.

- e) How did the above matters change over time?

The Tram Project Board and the main TIE Board were integrated to avoid duplication in reporting.

- 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?

I did not have any reason to have any concerns as I recall.

- g) Papers for a meeting of the Tram Project Board dated 7 December [CEC01400187] contain a status update on the TIE/TEL Operating Agreements from Graeme Bisset. The Operating Agreements were to be agreed by the full Council on 20 December 2007. What was your understanding of the interface, delegated authority and reserved powers between the full Council, the Council's TIE Committee, the Tram sub-committee and the two Operating Agreements including authority granted to CEC officials?

My understanding was as presented to us in the papers [CEC01400187].

127. Lothian Buses plc appear to have expressed certain concerns in relation to which body would be responsible for ensuring integration of the tram and bus services.

- a) What concerns did Lothian Buses have in that regard?

I do not recall being briefed on that.

- b) To what extent, if at all, was TEL created to address these concerns?

I don't recall if TEL was created specifically to address any concerns.

Transport Scotland

128. Following the debate and vote in the Scottish Parliament in June 2007, Transport Scotland's role in the governance of the project changed.

- 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?

As far as I was aware, TS was kept informed throughout. They would maintain an oversight but would not be so closely involved. I think it would have been better if they had remained involved

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

I do not recall being briefed of the detail other than what was in the papers but TS still kept in touch with everything that happened and they were copied into everything as far as I am aware, right up to the very end. I do not know what level of oversight they provided.

- c) Do you consider that TS's changed role had an adverse effect on the management, oversight and/or delivery of the Trams Project (and, if so, in what way)?

In retrospect it may well have been better if it had not been changed.

d) Did TS's changed role, for example, lead to less 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 Trams Project?

I am not certain what TS's actions were on reports and minutes that they received from TIE or the level of scrutiny that TS had.

However, in retrospect, that changed too much and TS should have kept a better oversight of the Trams Project and should have been more closely involved throughout.

129. A paper summarising the proposed governance and management model in the construction period as it stood at December 2007 [CEC01387398] suggest TS were still to have a role in the project?

a) What was your understanding of TS's role in the governance of the project at that time?

TS's role is shown on page 3 of the paper.

b) Were TS kept fully informed of the problems with the project as they arose?

Yes. I do not recall being told otherwise.

c) Were TS kept fully informed of the likely cost of completing the project?

Yes, I do not recall being told otherwise.

Audit Scotland

130. Audit Scotland produced reports on the Trams Project in June 2007 [CEC00785541] and February 2011 [ADS00046].

a) Did you read these reports at the time?

I do not recall being given those reports to read at the time.

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?

I do not recall as I did not see the reports at the time.

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

The conclusions appear to be positive. Usually Audit Scotland was reliable but I do not know what other members thought.

131. The TIE Board agreed on 24 June 2004 to establish an audit committee of which you were a non-executive director. The remit of the committee (at various stages) can be seen at [CEC00300925] [TRS00019622].

a) For how long were you a non-executive Director of the audit committee and what did this role involve?

I was not a member until 2007 so I do not know what happened in 2004. The document [TRS00019622] relates to the Audit Committee of the Council and not TIE. CEC had an Audit Committee as well for separate functions so that was what that document related to [TRS00019622]. I do not recall how long I was a member of TIE's Audit Committee. The role was to maintain the risk register and compare action against risk register.

b) We understand that the committee only met twice a year. What format did these meetings take and what was discussed? Was it usual for you to miss meetings [CEC01467526]?

The format of the meetings was as in my previous answer above. Occasionally did miss meetings. The meetings were at difficult times such as 7.30 in the morning. I could not always attend for a variety of personal and business reasons.

c) In your view, did the committee fulfil its intended purpose?

I do not recall what came out of all the meetings. I'm sure the committee fulfilled its intended purpose; the Chairman, Kenneth Hogg, reported back the full board.

OGC Reviews

132. In May 2006 an Office of Government Gateway (OGC) Readiness Review was carried out of the Trams 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?
- b) Did the report cause you any concerns and, if so, what did you do in light of any such concerns?

I was not a member at the time. I do not recall viewing a copy of that report. The report probably went to TIE of which I was not a member.

A second OGC review was carried out in September 2006 [CEC01629382] which resulted in an "Amber" rating.

- c) Did you see a copy of that report?
- d) Did the report cause you any concerns and, if so, what did you do in light of any such concerns?

I do not recall viewing a copy of that report because it was before I was a member.

133. A third OGC Review was carried out in October 2007 [CEC01562064] and resulted in a "Green" rating (ie "*The project is on target to succeed provided that the recommendations are acted upon*").

- a) Did you see a copy of the OGC report?
- b) Did the report cause you any concerns and, if so, what, if anything, did you do in light of any such concerns?

I do not recall seeing a copy of that report.

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?

I do not think that report went anywhere other than to CEC officials.
I do not recall seeing it.

Public relations and communications

134. a) How was information provided to the public in relation to the Trams Project?

Council reports, other than those on B agenda,s were in the public domain, they were published and available to all

b) How, and by whom, were queries or representations by members of the public addressed?

As I recall, a public relations officer handled those matters in response to contact. Council officials would refer back to TIE if relevant information was needed.

c) Do you consider that the public were kept fully informed of developments relating to the Trams Project and, if not, why not?

d) Do you consider that communications with the public could have been better handled (see eg [CEC01141370] [TIE00438069] [CEC01063375] [CEC01298101][TIE00147176])?

Again, it was as per Council reports and press releases. In retrospect it could have been handled better. TIE and the Council could have been more upfront. A tram champion, such as a senior

administration Councillor, should have been appointed to have been proactive instead of reactive.

- e) What was done to mitigate the adverse effects of the tram works and were these measures effective [**CEC01231803**]?

I have not seen that document previously. It went to Councillors that represented Leith Walk and the Leith area. Only senior members of the administration were copied in.

- f) An action note dated 1 December 2008 noted that Jenny Dawe met with Jane Wood, Chair of Essential Edinburgh who informed her that TIE's communication with traders had been severely criticised [**CEC01069093**]? Were you aware of trader's concerns? What were your views? What was done in response to trader's concerns? Do you consider this could have been avoided if the Council had become more involved at an earlier stage?"

I had not seen that document previously and I was not aware of those concerns that I can recall. Obviously work still had to be done and it would have been better if had been brought into the public domain. Traders and the Council should have been closely involved at an earlier stage.

- g) An action note from the special Tram Internal Planning Group dated 1 December 2008 noted states that a single Communications Plan for the whole project needs to be developed. Was this done?

I do not know about that note as it was an action note from the Internal Planning Group.

- h) Were members informed of PR issues in good time [**TIE00147176**]?

In retrospect, members were not close enough to PR issues in good time.

i) There were calls for the Council to hold a referendum on the Tram Project – why was this resisted [CEC01241182]?

That deputation came from Harold Nicholson who appeared quite regularly at Council meetings. He was an advocate of heavy rail. The minute shows that he was asking for a referendum on three items, heavy rail, the tram and the south suburban rail line. If there was no item specifically on the agenda it would not be discussed at Council. As far I can recall it was resisted, at that time, as was not considered appropriate, due to details of what he was seeking.

135. By email dated 26 October 2007 [CEC01507257] Graeme Russell requested that TIE give consideration to increasing the funding behind the Small Businesses Compensation Scheme. He requested this on the basis that savings of £47m had been widely reported.

a) Were the public's expectations properly handled in your view?

I had not seen any of these emails until now. I do not know what happened as a result of them. I do not know what happened with the Federation of Small Business. In retrospect, the public's expectations were not properly handled. There should have been much more PR activity with regular updates to the press and public as answered above.

b) Were savings being reported prematurely?

In retrospect, yes.

c) Was a compensation scheme the best option. What alternative options were considered to reduce the effect on Edinburgh businesses?

Someone who had a small retail business at the time were not directly affected in that area so it was people in the immediate area

A compensation scheme was an obvious option at the time as was rates relief. However no rates were payable on rateable values under £10,000. Small shops would not have benefited. The Council and TIE could have been much more proactive with their "Open for Business Scheme".

136. 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.

- 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 might be affected if the decision is made to terminate the project short of Leith Walk.
 - 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.
- a) How did the Council respond to this email?
- b) Did the Council consult with these constituents throughout the project?

I do not recall having seen that email before as I do not appear to be on the circulation list directly or copied into it. I have not been involved and so cannot comment. I do not know how the Council responded. I do not know if the Council consulted with those constituents throughout the project and I do not know what the response was.

Cost Overrun and Consequences

137. In relation to cost overrun:

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 reason(s) for that overrun?

I do not recall when I first became aware but it was becoming more obvious as time went by that there was likely to be a significant cost overrun. TIE and Council officials were still talking about having headroom up to £545m quite late on. I understood the main reasons for that overrun to be due to the MUDFA problems and difficult ground conditions found by BB. In retrospect the contract lent itself to dispute.

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?

The full details of this were contained in the report to CEC on 25 August 2011 [TRS000117]. As far as I can recall the Council was confident that it could be accommodated in future budgets.

TRS000117
should be
TRS0001725

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?

Don't consider that Councillors were not kept properly informed throughout the whole project. They were informed by the reports

that came to Council. Senior administration Councillors may have been given more information.

138. In relation to consequences:

- a) What do you consider were the main consequences of the failure to deliver the Trams Project in the time, within the budget and to the extent projected?
- b) What were the particular consequences for your constituents?

A curtailed line was the main consequence as it would not service all the areas that were envisaged, particularly the Leith Docks area. It was envisaged that the tram would connect up Leith, The City Centre and the Airport. There was also to be a link from Leith along the seafront to Granton which is a development area. I now represent the Granton area and my constituents there have been affected. The effect has had a lesser effect on other parts of the ward.

- c) What steps were taken by the Council to try and address or mitigate the effect on residents and businesses etc?

I have answered that previously in answer to question 135 part (c).

- 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?

As in answer to part (b) above, it was obvious the extent to which the shortened line failed to meet the objectives set out in the FBC.

- e) What was the effect of the additional borrowing by CEC for the Trams Project on the Council's finances and expenditure, including on services and capital projects etc?

I have answered that previously in answer to question 137 part (b).

Final Comments

139. Finally:

a) What do you consider to be the main reasons for the failure to deliver the Trams Project in the time, within the budget and to the extent projected?

I would say the main reason for failure was the Infraco contract. Looking back now it seemed to favour the contractors, principally BB who had the civil engineering part of the contract which allowed for extra charges under a whole host of circumstances such as unforeseen ground conditions. Incomplete utility records caused similar problems. Weaknesses in the contract were not conveyed to Councillors but were reported as being a good contract for the Council and that any cost overrun would be covered by contingencies. Contingencies over and above the fixed price proved to be less than what was required. The Council and TIE persisted in defending the contract as it they perceived it to be. In retrospect that was a mistake.

b) Do you have any comments on how these failures might have been avoided?

Councillors should have been better and more accurately informed over the Infraco contract. In retrospect, having now read the emails between officials, TIE officials should probably have changed tactics rather than continue to try and force the contract as they saw it.

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?

A Lib Dem SNP Coalition ran the Council following the 2007 election. However the SNP did not support the Tram Scheme Only the Lib Dems were left supporting the Tram and they should have taken a firmer grip and a proactive approach of promoting the tram scheme to the public and the media. TIE could also have done more via public relations and been proactive rather than reactive and defensive. We, as a Conservative Group, were in opposition throughout the entire process from concept to the end. Going on my previous experiences, it may be that ruling group members received more information. My group was in power at the old Edinburgh District Council from 1974 to 1984 and was given information that, perhaps, others who were not part of the ruling group were not given. The Conservative Group did not necessarily know everything that was happening in the Tram Project and could only go on what it was receiving in official reports and briefings. I now know that the Conservative Group weren't always included or copied in to various emails.

I confirm that the facts to which I attest in this witness statement, consisting of this and preceding pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature.



Date of signing.....22/7/17.....