

## Marshall Poulton – Areas for Discussion

This note identifies the broad subject areas which we would like you to include in your statement. We have tried to include all documents that may assist you in answering the Inquiry's questions. We would be grateful if you could, in addition, provide a full CV setting out your vocational qualifications and experience.

The following matters are covered in this Note:

- Introduction
- May to December 2008
- January to June 2009
- July to December 2009
- January 2010 to January 2011
- Carillion Claims
- Mediation, Settlement and Operation of the Project thereafter
- Project Management, Governance and Contractors
- Bonuses
- Impact on Public
- General

### Introduction

1) Please set out in overview your professional experience and qualifications, particularly in so far as relevant to your involvement in the Edinburgh tram project.

I graduated from Glasgow University in 1977 with BSc in Civil Engineering. In 1984 I was successful in becoming a Chartered Engineer. At that point in time the letters after my name included Marshall Poulton, BSc, MICE, CEng.

In joining City of Edinburgh Council (CEC) in April 2008 I had absolutely no experience in delivering or assisting in any form of tram project. Indeed, at my

appointment to CEC I was very clear with my Director Mr Dave Anderson, that I was interested in accepting the Head of Transport role on offer on the basis that I had minimal involvement in the Edinburgh Tram Project. Mr Anderson accepted my position and we both agreed that my involvement would be no greater than 5% of my time and would be reviewed in the future.

- 2) What role did you have prior to joining CEC? What were your responsibilities?

I was employed by Transport for London (TfL) before I joined CEC. My main role and responsibilities in TfL was Head of Technology and Systems.

- 3) How did you come to join CEC?

In order to further my career and get back to my home country I applied for the Head of Transport in CEC and was successful in early 2008.

- 4) It would be helpful if you could attach your CV.

Please find attached my CV.

---

We understand you were CEC's Head of Transport and the Tram Monitoring Officer. Questions about those matters are below.

- 5) What other roles did you have in relation to the tram project (if any)?

As mentioned above my role as TMO only amounted to 5% of my weekly time. My main role in relation to the Tram Project was one of interface between the tram project and the need to keep Edinburgh moving as efficiently as possible during the construction period.

- 6) Insofar as you had other roles, please state what they were; the dates between which you carried them out; and your responsibilities?

My responsibilities included traffic signals, car parks, development control, road safety, structural maintenance and transport policy and planning. I carried out these duties between April 2008 and August 2013. It should be noted that my TMO role started in January 2009 and was terminated by agreement with Mr Anderson in December 2010. From January 2011 onwards I had no involvement with the Tram Project.

- 
- 7) What committees or other bodies relevant to the tram project did you attend or

participate in? Please specify approximate dates and the nature of your role.

On occasions I attended the Tram Project Board solely as an observer. In addition I attended a CEC internal group meeting IPG. The dates I attended these meetings were from approximately late May 2008 until November 2010.

### **Head of Transport**

We understand that you were the Head of Transport Services at CEC. (See, e.g., **CEC02083599**, item 7.)

8) Between what dates did you hold that position?

April 2008 to August 2013.

9) What were your responsibilities in that role?

My responsibilities included traffic signals, car parks, development control, road safety, structural maintenance and transport policy and planning.

10)What responsibilities in that role, if any, specifically related to the tram project?

As mentioned before my main role in the Tram Project amounted to the interface between the Tram Construction and ensuring that traffic flowed as freely as possible in Edinburgh. This involved ensuring that any temporary road closures where kept to a minimum in an effort to avoid disruption to the travelling public. Once again, my involvement in the Tram Project only amounted to 5% of my overall time.

11)To whom did you report, and who reported to you?

I reported to Mr Dave Anderson who was the Director of City Development but for the purposes of the Tram Project was the Senior Responsible Owner (SRO).

Two Service Managers reported to me namely Mr Bob McCafferty and Mr Ewan Kennedy.

### **Tram Monitoring Officer**

We understand that you were CEC's Tram Monitoring Officer.

12)Between what dates did you hold that position?

Approximately January 2009 until December 2010.

13) What were your responsibilities in that role?

My responsibility in this role was limited. As mentioned before the sole responsibility for the Tram Project in CEC lay with Mr Dave Anderson who was the SRO. My main duties included advising Mr Anderson as and when required along with keeping Edinburgh moving as a result of temporary road closures to allow tram construction works to proceed.

14) How did you come to be appointed?

Through competitive interview.

15) What experience did you have which was relevant to your responsibilities in that role?

Absolutely no experience with regard to the delivery of a Tram Project. My main skill sets revolve around a subject matter expert with regard to Traffic and Transportation.

We understand that the role of TMO was created by the operating agreement between CEC and TIE dated 12 May 2008 (**CEC01315172**), but that you were not appointed until January 2009 (see, e.g., the Highlight Report to the Chief Executive's Internal Planning Group, 28 January 2009, noting your appointment as Tram Monitoring Officer on 5 January 2009 (**CEC01075882\_2** and **\_11**).

16) Had there been a Tram Monitoring Officer prior to your appointment

Not to my knowledge.

17) If not, why not?

Not Applicable. I have no knowledge of why there was no TMO role before January 2009.

The operating agreement between CEC and TEL (**CEC00039231**, 12 and 13 May 2008) made provision for a 'Company Monitoring Officer'.

18) Did you fulfil that role too?

No.

19) If not, who did?

Not applicable I have no knowledge of this.

20) What were the responsibilities of the TEL company monitoring officer?

I have no idea, I would assume that Mr Donald McGougan would have been responsible for this role or delegated officer in his department.

The TIE operating agreement (**CEC01315172**) described the Tram Monitoring Officer as:

"the council officer nominated by the Council to monitor TIE in relation to the Project".

In clause 2, there is a long list of TIE's obligations to CEC.

Similar provisions appear in the TEL operating agreement (**CEC00039231**).

21) What activities of TIE (and, if appropriate, TEL) did you consider to fall within your monitoring duties?

As mentioned before my role only amounted to 5% of my working time and a clear direction from my SRO, Mr Dave Anderson was to ensure the smooth coordination of roadworks associated with the Tram Project and a very high level overview of any issues that I needed to draw to his attention.

22) To what extent did they include the obligations of TIE and TEL listed in clause 2 of the respective operating agreements?

No direct obligations with regard to TIE and certainly not TEL, however, my SRO Mr Dave Anderson asked me to highlight any issues with regard to overrun of the Tram Project and indeed work with Mr Alan Coyle to ensure budgets were being adhered too.

23) How did you carry out your monitoring role?

I asked Mr Max Thomson to carry out the main monitoring duties on a day to day basis with a view to me presenting the findings to the IPG meeting. In addition, Legal, Planning and Finance colleagues would highlight to me any overruns in the Tram Project.

24) How, and to whom, did you report?

All reporting was done through my SRO Mr Dave Anderson.

It may also be helpful also to note **CEC00478603**, the agreement between CEC and TIE signed on behalf of CEC on 16 September 2005.

Each of the TIE and TEL operating agreements provided for the monitoring officer to be a director of TEL and a member of the Tram Project Board (**CEC01315172**, clause 3.5; **CEC00039231**, clause 3.5).

25) Were you in fact a director of TEL and a member of the TPB?

No to being a Director of TEL and only an observer on occasion at TPB.

26) What did you consider to be your role on (or in relation to) the TPB?

Solely as an observer at TPB.

A Memorandum of Understanding between CEC, TIE and TEL dated 18 December 2009 (**CEC00645836**) provided, at clause 1.11, that the TMO would not formally be a member of the TPB or a director of TEL, but that CEC would use reasonable endeavours to procure that the TMO, ex officio, attended all meetings of the TEL board and TPB.

27) Why did you understand that provision to have been made?

I have no knowledge of the reasoning behind this. I was not party to the decision making process.

28) What change, if any, did it bring about in the nature of your role, and/or the manner in which you performed it?

None, at this point in time I did point out to my Director of City Development, Mr Dave Anderson that my involvement in the Tram Project was adversely affecting my prime responsibility as Head of Transport. It was agreed at this time with Mr Anderson that he would endeavour to replace me as TMO in the not too distant future.

The Memorandum of Understanding (**CEC00645836**) made changes to the TIE operating agreement. CEC entered into a revised operating agreement with TEL at that time (**CEC00645836**). One of the changes was that the name "Tram Monitoring Officer" was adopted for the officer nominated to monitor TEL.

**CEC00645836  
should be  
CEC00039231**

29) What changes in your role, if any, resulted from that?

Basically none as I had no involvement in monitoring TEL. This was a very clear

instruction given to me by my Director as the competing demands on my time was not allowing me to concentrate on my prime responsibility of looking after CEC's Head of Transport role.

30) In broad overview, did you at any stage have any concerns about

- a) TIE's performance?

Yes, it was obvious to me that there was poor governance in TIE surrounded by the lack of a clear decision making process. Also, the approach that TIE took to rectifying mistakes made by the contractor were poor in my opinion. TIE's constant response to any failures on behalf of the contractor was to say that the contractor is duty bound to make good any failure to comply with the specification.

- b) TEL's performance?

I cannot comment on this.

31) If so, again in overview, what were they and what was done about them?

Not applicable.

32) Please explain your understanding of the tram project governance structure, and where the role of TMO fitted in. Your explanation should include the following:

- The Tram Project Director?

The Tram Project Director (TPD) was the main person responsible for delivery of the Tram Project. There was very little interaction between the TMO and the Tram Project Director, there was however, more of a dialogue between the TPD and the Head of Transport. The conversations that happened quite frequently were from the TPD asking for relaxation of the amount of temporary closure time to allow construction of the Tram Project.

- The Board of TIE?

I have no knowledge of the roles and responsibilities as I was never invited to attend any of their meetings.

- The Tram Project Board?

This was a joint board meeting between TIE officials, Elected members of CEC and

CEC officers to oversee delivery of the Tram Project. As mentioned before I had no official role in the TPB however, I was invited on occasion to act as observer.

- The board of TEL?

I have no knowledge of the workings or responsibilities of TEL, I was instructed by my SRO Mr Dave Anderson to avoid any responsibility here as I was lose focus on my day to day duties.

- CEC officers (including, in particular, the Directors of Finance and City Development and the chief executive)?

The TMO role was to advise both Directors and the Chief Executive of any delay or significant cost overruns with the Tram Project.

- CEC elected members (full council, the Transport Infrastructure and Environmental Committee, and the Tram Subcommittee)?

The TMO role was to advise the SRO Mr Dave Anderson of any significant issues with regard to Tram delivery. It was the SRO's responsibility to decide whether the issues needed to be escalated to either the Chief Executive and or the various committees.

- The TMO and the TEL Company Monitoring Officer?

The TMO had no interaction with the TEL Company Monitoring Officer.

See, e.g., the Close Report ([CEC01338853](#)) at appendix 2, which sets out the project governance arrangements at financial close.

33) Did you have any concerns about the governance structure? If so, please explain what they were and what, if anything, was done to address them. Matters which you might consider include:

- The number of layers in the structure
- The extent to which responsibilities were clearly defined or overlapped
- The fact that the structure continued to evolve as the project was underway
- Reporting: whether it was sufficient, accurate and effective

Any issues I had with the inefficient governance structure were relayed to the SRO Mr Dave Anderson. My comments were not solely related to any one particular aspect but more around how cumbersome the decision making process was around

the Tram Project.

We understand that you attended, and reported to, CEC Chief Executive's Internal Planning Group.

34) What was the role of that group?

The role of IPG was to highlight progress or lack of progress on the Tram Project in particular the group looked at cost overruns and programme delays.

35) How did it fit into the other project governance arrangements?

It tended to be stand-alone however, if there was any impact to other projects or schemes, issues would be referred to the appropriate committee(s).

36) What was your role in respect of it?

Mr Duncan Fraser, and latterly Mr Andy Conway, tended to service the IPG with the help of the TMO who could advise Mr Dave Anderson or the Chief Executive on various matters.

The operating agreements reserved to the Council decision-making over cost increases and programme extensions beyond certain levels.

37) Having regard to the nature of the Infraco contract (and in particular the provision for Notified Departures in schedule part 4), to what extent (in your view) did the Council have any meaningful control over cost and programme?

This was not my area of expertise and I left this to my SRO to form any opinions.

### **The Tram Project Board**

38) Please describe in overview how the TPB worked. For example, were issues discussed in detail? Were 'executive' attendees questioned and were they able to provide answers?

This was a joint board meeting between TIE officials, Elected members of CEC and CEC officers to oversee delivery of the Tram Project. As mentioned before I had no official role in the TPB however, I was invited on occasion to act as observer.

Executive attendees were questioned by elected members, however, there were certainly times where questions were not answered concisely and there was a lack of clarity around some answers.

39) When was information supplied to you for the TPB meetings? Were you happy

with the quality and volume of information made available to you?

The information was generally supplied 3 days before TPB meetings. However, on some occasions information was only provided one day in advance giving very little time to brief elected members properly. This issue was reported to the TIE CEO and was rectified.

40) Do you consider that the Project Director's reports, and the Transport Scotland reports, included in the TPB papers, gave an accurate and complete picture of the project as it progressed?

I would say no to this question as there were certainly times when reports were left quite vague.

41) It is apparent that there is a large degree of repetition in these reports from one month to the next. Do you agree? Did this make it difficult to determine precisely what was happening? Did you find the material straightforward to understand?

In relation to the first question I agree that there was a repetition from one month to the next month.

With regard to question 2 it made it very difficult to get a clear understanding of what was happening and when.

As a result of the large degree of repetition it made it extremely difficult to get any meaningful understanding of the exact position.

42) Was project risk reported on, considered and discussed at the TPB? Please explain how.

Yes it was and this was the responsibility of the Tram Project Director.

### **Financial Close, May 2008**

We understand that you received Tram Project Board papers, and attended Tram Project Board meetings, with effect from the meeting on 9 April 2008. See, e.g.:

- Papers for meeting on 9 April 2008 (**CEC00114831, CEC01359563**)
- Minutes for meeting on 9 April 2008 (**CEC00079902\_5**)
- Papers for meeting on 7 May 2008 (**CEC00079902, CEC01282186**)
- Minutes for meeting on 7 May 2008 (**CEC00080738\_5**)

43) What was your understanding, immediately prior to Infraco Contract close in May

2008, of the following:

- a) The arrangements for diverting utilities in advance of tram infrastructure works;
- b) The state of progress with that work, relative to programme;
- c) The design of the tram network, including the granting of consents and approvals in respect of it;
- d) The state of progress with that work, relative to programme;
- e) The negotiation and terms of the Infraco contract;
- f) The risk allocation in that contract in respect of incomplete design and utility works, and, in particular, delay resulting from those matters;
- g) And the provision made for any such risks borne by TIE in the project budget's risk allowance.

With regard to the above points I had no fixed position on these as it was outwith the scope of my remit.

44) What was your understanding based upon?

Not applicable.

45) To what extent, and how, were you briefed about these matters when you took up your post as Tram Monitoring Officer?

As mentioned before my role in the Tram Project only amounted to 5% of my overall time. The TMO role was not clarified and indeed was not invoked until January 2009 so any briefings that took place were at a very high level.

46) Were you aware of any problems, and did you have any concerns, at that stage about the tram project? Please explain your answer.

At this stage in the project I had no concern about the Tram Project as assurances were given by the Tram Project Director to the SRO Mr Dave Anderson that all was

running to programme and budget.

On 3 April 2008, Duncan Fraser sent a letter to Willie Gallagher (copied to you) (**CEC01493639**) setting out concerns about CEC's technical approval process. He said his concerns were fundamentally the same as those expressed by David Leslie, Development Management Manager of CEC, in relation to the prior approvals process in a letter of 28 March 2008 (**CEC01493318**).

47) What was your understanding of the concerns being raised?

This letter was sent to Willie Gallagher before my appointment and I was never fully briefed by Duncan Fraser on this issue. From my recollection at the point of starting my appointment in CEC, Mr Duncan Fraser was reporting directly to the SRO, Mr Dave Anderson on all tram matters.

48) How, if at all, did you understand these matters to affect (or to be likely to affect):

- a) CEC's task in approving the tram project designs;
- b) the project programme;
- c) the cost of the project

As I was new to the organisation it was left to the SRO Mr Dave Anderson to address these matters which allowed me to focus on my prime responsibility.

49) Whose responsibility was it, in your view, to resolve these matters?

The Tram Project Director, Mr Stephen Bell.

50) Were the concerns in the letters addressed, and if so, when and how?

As previously mentioned Mr Duncan Fraser was reporting directly to the SRO Mr Dave Anderson on all tram matters. I cannot comment on whether Mr Anderson and/or Mr Stephen Bell addressed these matters.

At the TPB on 7 May 2008 (minutes, **CEC00080738\_5**, item 2; papers, **CEC00079902**), Willie Gallagher gave an update on the Infraco Contract

negotiations and "outlined his and the Boards' frustration and disappointment in Bilfinger Berger's strategy". The board decided to continue with negotiations for the best deal. A subcommittee of the board would then meet to make a decision, which would then be ratified by the Council's Policy and Strategy Committee.

51)What was your understanding of Bilfinger's actions which had caused such frustration?

I cannot comment as I was not involved in the decision making progress.

52)What was your understanding of Bilfinger's explanation and motive for so acting?

Once again I cannot comment on this as I was not involved.

53)What discussion took place about these issues at the TPB?

I have no recollection of the discussion.

54)Why did the TPB decide to continue with negotiations?

I have no clear recollection of this decision. However, from my memory I think the decision was taken to avoid confrontation and reach a negotiated agreement.

55)Why did the TPB decide to allow a subcommittee to decide what to do following those negotiations, rather than have the matter decided by the full TPB?

I have no knowledge of this decision. I can assume that this decision was taken by Elected members on the advice of the SRO, Mr Dave Anderson.

56)Did you consider Bilfinger's attitude, or approach to commercial matters, constituted a risk for the project? If so, to what extent was that taken into account in the risk allowances?

I had no direct contact nor was ever introduced to any person in Bilfinger so I cannot comment.

The minutes refer to an emergency meeting of the TPB on 30 April (item 2.2).

57)Was this minuted? Were you present? What was discussed?

I cannot comment on this as I have no recollection of the discussion. I only started getting introduced to the Tram Project in late May 2008.

## **May to December 2008**

Over the period May to December 2008, you received TPB papers and attended its meetings. See, e.g.:

- Papers for meeting on 4 June 2008, **CEC00080738, CEC01312258**
- Papers for meeting on 2 July 2008, **USB00000005**
- Papers for meeting on 30 July 2008, **CEC01237111**
- Papers for meeting on 27 August 2008, **CEC01053601**
- Papers for meeting on 24 September 2008, **CEC01053637, CEC01155850**
- Papers for meeting on 22 October 2008, **CEC01210242, CEC01167539, CEC01053682**
- Papers for meeting on 19 November 2008, **CEC01053731**
- Papers for meeting on 17 December 2008, **CEC00988024, CEC01115646**
- Minutes for meeting on 17 December 2008, **CEC01053908**

58) What was your understanding over this period of the progress being made in respect of:

a) Design

Design development was taking place and approval process was quite slow.

b) Utility diversions

Utility diversions were taken significantly longer to complete due to the lack of survey information on Edinburgh streets.

c) Infraco construction work

Seemed to lack professional programming although in retrospect this could have been a tactic deployed by the contractor to dig up parts of the road network and make it very difficult for CEC to appoint another contractor to complete unfinished work.

59) To the extent that there were problems with those matters, what was your understanding of those problems and the reasons for them? (Please focus on problems which had cost and delay implications.)

I had no clear understanding of the problems or reasons behind them as I was not party to the various meetings.

60) What was your understanding of the extent to which any delays threatened (a) the programme for the Infraco works, and (b) the cost of the Infraco works?

Once again it is difficult for me to form an opinion of this as I was not directly involved in any meetings between TIE and Bilfinger. It appeared to me that the whole purpose of delays to programme were an effort by Bilfinger to strengthen their case for additional monies.

61) To what extent did your understanding derive from the material circulated for meetings of the TPB?

My understanding derived primarily from information fed to me by the Tram Project Director, Mr Stephen Bell who, in fairness, articulated his thoughts into various papers he presented to the Tram Project Board.

62) Was the information made available to the TPB satisfactory on these matters?

I deemed the information to be less than satisfactory. Whilst not being critical of the accuracy of the information I felt that there was not enough thought given to clear options or a solution to resolve issues.

63) What was the nature of discussion about these matters, over this period, at the TPB?

The discussion usually tended to focus on programme delays and potential cost overruns. This led to extreme frustration with the Elected members present and also Senior Officers of CEC.

64) What role did the TPB play in addressing the problems?

The TPB fully discussed the problems and more often than not the Board were strongly suggesting that the Chairman, Mr David MacKay visit Germany on occasions to get clarity and certainty from Bilfinger.

---

In an email exchange, copied to you, in August 2008 (**CEC01057495**), Duncan Fraser raised the prospect of TIE having

*"to engage on extensive compensation events discussions with their contractors".*

He proposed that CEC appoint its own expert legal adviser.

Colin MacKenzie, in his response, said

*"This sounds rather ominous, but not altogether surprising. I cannot recall the number of warnings given by the "B Team" about the risk of claims materialising in this project."*

He suggested a meeting to discuss matters.

65) What was your understanding at this time of the extent to which claims were likely to be made by BSC against TIE under the Infraco contract, and the extent to which they were likely to be well-founded?

I had no direct knowledge of the number of claims or value that could be directed at TIE.

66) What was your understanding of the “*warnings given by the ‘B Team’*” to which Mr MacKenzie referred?

This would be best answered by Mr MacKenzie. I have no idea who the “B Team” were.

67) What was your view on the extent to which TIE (and CEC) were adequately resourced to deal with claims from BSC?

TIE and CEC were woefully under resourced to deal with potential claims. It was fairly clear from the outset that the amount of claims were totally under-estimated.

68) What steps, if any, were taken in response to Mr Fraser and Mr MacKenzie’s concerns?

I have no recollection of this.

69) To what extent were these matters discussed at, and understood by, the TPB?

My own feelings were that the TPB did not understand fully the extent of the claims or validity of these.

At the TPB on 27 August 2008 (minutes, **CEC01053637\_6**), issues about consents were raised, with a key area of concern being roads technical approvals (2.12).

70) What was your understanding of this issue?

My understanding was that there was a delay in the delivery of roads technical approvals due to the complexity of the Tram Project. An effort was made to supplement the resource for the approvals process by seconding specialised staff from CEC to the TIE office in an effort to speed up the process.

71) What was its effect, and what was being done about it?

As above technical expertise from CEC was seconded to TIE.

In the Project Director's report to the September 2008 TPB (**CEC01053637\_12**), in the section on risk, it states that "*The detailed development of the Infraco element of the Project Risk Register and associated treatment plans has progressed well in Period 6 and the QRA will be updated in Period 7.*"

72) Can you explain this?

No this is for Mr Stephen Bell to explain.

73) How had Infraco-related risks been treated prior to that?

In my opinion the risks had not been clearly understood and there was no clear plan of action drafted.

74) What was your understanding of the steps being taken to mitigate the risk of delay in utilities affecting Infraco works (see the risk register at \_13)?

This was outwith my role so I have no comment to make.

75) Was there discussion at the TPB about the adequacy of these steps, or about what else should be done?

I have no recollection of this.

In the Project Director's report to the October 2008 TPB (**CEC01210242\_10**) there is discussion of what happened when the traffic management measures for the Mound were implemented.

76) What is your understanding of what happened and why?

Like most of traffic management measures that were implemented for the Tram Project the only thought given was to facilitate access for the contractor. Very little consideration was given to the travelling public at large and indeed additional delay time to drivers was overlooked.

77) What implications, if any, did it have for the project thereafter?

It resulted in a very bad reputation for TIE and the contractor especially from small businesses and shopkeepers alike.

In the minutes for the October TPB 2008 (**CEC01053731\_7**, at 5.0) the decision was noted to provide for one-direction bus access to Princes Street (a change from the base case programme, which had assumed unimpeded access to Princes Street)

78)What was the reason for the change?

The reason for the change was to allow more safe working space for the contractor to construct the foundation for the rails for the tram.

At the November TPB (minutes, **CEC00988024\_5**, at 3.18 and following), a discussion about the Princes Street '*blockade*' is recorded.

79)Please explain that issue and the discussion about it at the TPB?

Mr Stephen Bell was keen to allow unfettered access to the contractor so as the contractor had no grounds for future claims and also that the contractor could gain time on the programme. This was fully discussed by the TPB.

An email from Duncan Fraser to Dave Anderson dated 7 November 2008, copied to you (**CEC01093202**), identified a number of issues

*"that require consideration by the management team or require advice to the tram team to enable them to engage timely and more effectively with TIE and their consultants".*

This included dealing with the substantial claims expected from Bilfinger, in relation to which he said:

*"relationship management is critical"*

and suggested discussion with the board in Germany to build co-operation and trust. He also said there was a need for

*"a reality check in terms of programme and funding which I suggest is inhibiting effective progress and resulting in a claims based daily environment, which experience suggest will cost time and money and reflect poorly on PR".*

80)What was your understanding of these concerns?

My understanding of these concerns were a constant frustration to Duncan Fraser. He wanted to put his concerns in writing to the SRO, Mr Dave Anderson in order for him to escalate these issues to the Chief Executive of CEC in the hope that action was undertaken by TIE.

81)What was done about them?

I have no knowledge of any actions as I was not involved in any meetings between

the SRO and the Chief Executive of CEC.

A report by Alan Coyle entitled "*Edinburgh Tram Governance Report*", 23 October 2008 (**CEC01053689**; circulated 23 October 2008, **CEC01053688**), raised some issues in respect of compliance with the TIE/CEC operating agreement. Some of these were in respect of matters which should have been reported to the TMO (see, e.g., paragraphs 3.10, 3.11, 3.12, 3.15).

82) Why was this report prepared?

Best person to answer this is Mr Alan Coyle as he will know the background and his reasoning for generating this report.

83) Did you have concerns about TIE's reporting to the TMO?

I felt I was not kept in the loop. In addition, I felt it is if I was only provided information at a time that was suitable to TIE and for the most part the information was left the 11<sup>th</sup> hour. In other words I was given limited information which was usually only provided a day or so before Board meetings which gave me little time to react.

84) What was done about TIE's reporting in response to this report?

I have no direct recollection about the outcome.

## January 2009 – June 2009

The papers for the Tram Project Board over this period are:

- Papers for meeting on 22 January 2009, **CEC00988026**, **CEC01150181**, **CEC01050506**, **CEC01056094**
- Papers for meeting on 11 February 2009, **CEC00988034**, **CEC00988035**, **CEC00988036**
- Papers for meeting on 11 March 2009, **CEC00573427**, **CEC00933351**,
- Papers for meeting on 15 April 2009, **CEC00971385**, **CEC01010129**, **CEC00888781**
- Papers for meeting on 6 May 2009, **CEC00633071**, **CEC01026346**,
- Papers for meeting on 3 June 2009, **CEC01007729**, **CEC01021587**
- Minutes for meeting on 3 June 2009, **CEC00983221**

85) What was your understanding over this period of the progress being made (and the reasons for lack of any progress) in respect of:

a) Design

The design process slowed up during this period. I cannot comment on the reason

for this. I can only assume that for some tactical reason Bilfinger and their consultants were deploying delaying tactics.

b) Utility diversions

Utility diversions continued at a pace however, due to the lack of programming, supervision and coordination these were delivered in a very haphazard manner.

c) Infraco construction work

Virtually came to a standstill.

d) Changes under the Infraco contract

As c above.

86)What was your understanding of the extent to which there was a threat to (a) the programme for the Infraco works, and (b) the budgeted cost of the Infraco works?

My lay person view of Bilfinger's approach was that they were doing everything possible, within their powers, to be in a position where they could negotiate a significant amount of money to make up for their loss at the tendering process.

87)To what extent did your understanding derive from the material circulated for meetings of the TPB?

My understanding was mostly derived from speaking to the Tram Project Director, Mr Stephen Bell rather than the materials circulated.

88)Was the information made available to the TPB satisfactory on these matters?

My view is that the information was less than satisfactory.

89)What was the nature of discussion about these matters, over this period, at the TPB?

The discussion focussed around programme delays, cost overruns and latterly claims that were likely to be lodged against TIE.

90)What role did the TPB play in addressing the problems?

The TPB fully discussed all the issues with a view to coming up with a plan of action which could be relayed to the Chairman and discuss the way forward face to face with the contractor in Germany.

A Transport Scotland briefing note (**TRS00016780**) referred to a meeting on 3 February 2009 to which you had been invited. The note referred to programme slippage, to an anticipated final cost of £530m (which it noted did not take account of further claims relating to change) and to CEC having accepted that “*significant work is required to re-align programme and costs*”.

91)What was your understanding of these issues at the time?

My understanding of these issues were very similar to my previous concerns in other words, the contractor was deliberately trying to prolong the contract to get more money out of TIE. TIE seemed to lack the expertise and negotiating skills to resolve the issues.

92)Were you at the meeting?

I have no recollection of attending the meeting.

93)What was discussed?

I have no knowledge of the discussion.

The Highlight Report to the chief executive's IPG dated 25 February 2009 (**CEC00867662**) noted:

*“In accordance with the TIE Ltd operating agreement, it is recommended that the Tram Monitoring Officer (TMO) request a formal written update report from TIE Ltd surrounding the options being considered at this stage.”*

An email from Alan Coyle the following day attached a note for a meeting (**CEC00858138, CEC00858139**), which noted that the Council should seek a report from TIE

*“explaining the actual root of the contractual dispute”,*

that the Council had to be absolutely confident in the costed options in scenario planning, and that

*“TIE need to update the Council on a daily basis on matters relating to the dispute. Currently there is a vacuum of knowledge from the Council’s perspective.”*

94)What was your understanding at this point in time of the dispute affecting the Infraco contract?

My view had not changed, in other words the contractor, Bilfinger was very litigious and claims orientated. In effect, the contractor was doing everything in his power to get additional money from the contract.

95) Do you agree that there was a “vacuum of knowledge”?

Yes.

96) If so, what information was CEC lacking, and why?

Certainty around the programme and potential cost overruns.

97) If CEC were suffering from a “vacuum of knowledge” despite attendance by its officials at the TPB, did it follow that the TPB also suffered from a “vacuum of knowledge”?

To some extent but this is hard to quantify.

98) What explanation was given by TIE, if any, as to the “actual root” of the dispute?

There was a strong naivety about TIE as they tended to be professional rail engineers delivering a project on a road network which they did not understand. In addition, they completely under-estimated the robust nature of the contractor who was strongly claim orientated.

99) Up to this point, to what extent had the reporting obligations in the operating agreements been complied with by TIE and TEL?

I have no recollection of this.

Emails between you and Steven Bell (the tram project director) dated 2 March 2009 ([CEC01010783](#)) indicate he was to give you a daily briefing, at least until the end of the month. For a sample report, see [TIE00896719](#). He also supplied weekly reports. (See, e.g., [CEC00863074](#).)

100) What reporting did you seek, and receive, from TIE?

Clarity on the programme and certainty on traffic management issues which would affect Edinburgh's roads.

101) If the reporting to you changed over the course of the project, please explain why and in what way?

The reporting changed in order to give CEC comfort that there was a good communication flow between TIE and CEC.

102) What other reporting did you understand to be taking place between TIE and CEC officials?

I have no knowledge of any other reporting regime.

103) What was the purpose of the reporting to you, having regard to the fact that (a) TIE were reporting to the Tram Project Board, on which CEC were represented by senior officers, and (b) TIE were also reporting direct to CEC officers?

The purpose was to ensure that CEC were indeed not in a vacuum and that knowledge was being transferred from TIE to CEC.

In an email to you dated 4 March 2009 (**CEC00901758**), in advance of a gateway review meeting, Colin MacKenzie suggested a series of questions about the dispute between TIE and Bilfinger. He noted that

*"These are my initial promptings, without the benefit of knowing in any detail what the dispute is about".*

104) What was the purpose, and outcome, of the gateway review?

I have no recollection of the gateway review.

105) What was the extent of your knowledge about the dispute at that point in time?

My knowledge was limited as I was not involved in meetings between the SRO and the Chief Executive of CEC. In addition, there were certain regular meetings/phone calls between the TIE CEO and CEC's SRO, Mr Dave Anderson.

106) Why did TIE officials, such as Mr MacKenzie, not have a greater understanding?

To my knowledge Mr MacKenzie was not a TIE official so I have no comment to make.

On 4 March 2009, Steven Bell sent to David Mackay and others a peer review report by Malcolm Hutchison and others dated 2 July 2008 (**CEC00902657**, **CEC00902658**). In forwarding it (**CEC00902656**), you said

*"It's funny these documents appear out of the woodwork just before the Peer*

*Review."*

107) Had you or (so far as you know) anyone else in CEC seen this report before March 2009? If not, why not?

No I have no recollection of this. I do not know who Malcom Hutchison is.

The report made various points, including:

- That the review team were unclear where the risk lay for design development, with BBS and TIE in interview each considering the risk lay with the other (page 6)
- That the bespoke nature of the contract introduced uncertainty (page 6)
- That it was clear the project programme was three months behind schedule (page 7), with significant programme risk arising from: delay in design development, a failure to complete CEC approvals in line with the programme, and the MUDFA contract not being complete by the time the main contract works started (page 8)
- Its recommendation that the MUDFA works packages be prioritised as soon as possible to minimise the impact on the Infraco programme (recommendation 5, page 6)
- Its recommendation that TIE management consider whether it had sufficient legal skills to understand and execute the contract on a daily basis (page 8, recommendation 7)

108) To what extent had you (and, as far as you know, others within CEC) been aware of these issues either before contract close, or around the time of the report itself (shortly after financial close)?

I was not employed by CEC before contract close so cannot comment,

109) To what extent had the TPB been aware of these issues?

Apart from the written reports I have no idea.

110) How concerned were you by the issues raised in the report?

My concerns were around programme delay and cost overruns.

111) What was done to address these issues, either before or after you received the peer review report in March 2009?

Clear plans of action were put in place to address these issues and once again it was strongly suggested that Mr David Mackay travel to Germany to raise issues with

Bilfinger to get certainty over the programme.

In an email dated 6 March 2009, you agreed with Stewart McGarrity's view that it would be inadvisable for Stewart Stevenson to meet Richard Walker of Bilfinger (**CEC00869282**).

112) Please explain your view?

In my view it was not prudent for a Scottish Government Minister to meet a contractor in the middle of a dispute.

In an email dated 10 March 2009 (**CEC00902726**), after having been advised by Stewart McGarrity that TIE intended to supply a copy of the Infraco contract to Transport Scotland, Alan Coyle said:

*"Bearing in mind TS will have a copy of the contract, they will be able to ask CEC questions to which we may not be able to answer. TIE have always resisted giving us this information, should we perhaps be getting a little more familiar with the contract?"*

113) Had CEC not previously seen, or considered, the Infraco contract? If not, why not?

From my point of view I had never seen a priced or unpriced copy of the Infraco contract but I cannot speak for others in CEC.

114) Were there concerns within CEC about TIE's reporting?

Yes.

115) If so, what if anything was done about them?

Repeated requests were made to the TPD, Mr Stephen Bell to improve the flow of information.

This email suggests that the principal funder (TS) and the funder of last resort (CEC) had not seen the Infraco contract, or at least were unfamiliar with its terms.

116) Is that correct? Did that concern you?

I have no knowledge of this so I cannot comment. The SRO for the contract Mr Dave Anderson maybe in a better position to answer this question.

Your Tram Weekly Report of 10 March 2009 (**CEC00869525, CEC00869526**) referred to a "constructive proposal" made by Siemens which

*"did not compromise parties' contractual entitlements but was a proposed way*

*forward to break the current impasse".*

117) What was your understanding of that proposal?

I have no recollection of this.

118) What became of it?

Not applicable.

Papers on "*Infraco Options Analysis*" (**CEC00933931**) and "*Dispute resolution procedure*" (**CEC01001220**) were put to the TPB on 11 March 2009. The TPB supported the DRP approach (TPB minutes, **CEC00888781\_5**, items 3.0 and 4.0).

119) What was your understanding of, and what were your views on, these proposals?

I have no recollection of the detail of the Dispute Resolution Procedure (DRP) and was never going to be part of the DRP process as it was completely outwith my skill set.

120) To what extent was there discussion of these proposals, or any alternatives, at the TPB?

I have no recollection of the proposals.

On 12 March 2009, Alan Coyle sent Donald McGougan a report on strategic options for the project put forward by TIE (**CEC00864044**, **CEC00864045**). It appears to have formed the basis for the report to the IPG on 25 March 2009 (**CEC00892626**), and to have been based on the report to the TPB on 11 March. It noted that three of the five options presented to the TPB were considered sub-optimal:

- termination of the Infraco contract,
- TIE stepping in to perform the civil engineering works and
- negotiating a settlement of the contractual disputes and programme.

The two remaining options were:

- to facilitate removal of BB from the consortium and their replacement by another civil engineering contractor, and
- pursuing all significant contractual disputes through dispute resolution procedures.

The paper also noted that, taking account of the costs now quoted by TIE for the two

preferred options,

*"we are now in the territory of potentially de-scoping the project to maintain affordability".*

121) What were your views on these options at the time?

I had no strong view on any of the options and saw this as a matter for the SRO to deal with.

122) What was your understanding of the reasons why some of the options were considered "sub-optimal"?

As mentioned above, I saw this as a matter for the SRO Mr Dave Anderson to form a view on.

The analysis of the options appears to have been predicated on the view that the problem lay essentially in the attitude of the civil engineering contractor (Bilfinger Berger), and its failure to comply with its contractual obligations.

123) Do you agree?

Yes.

124) Do you consider in hindsight that that view was accurate? Please explain your answer.

In my view the civil engineering contractor, Bilfinger shouldered the bulk of the blame. However, there was a general lack of understanding in TIE on how to deliver such a complex project on a road network, coupled with a confrontational stance this did not auger well for a successfully completed project.

There was discussion of the Princes Street dispute at the TPB on 24 March 2011 (minutes, CEC00888781\_8, item 1.2 onwards).

125) What was your understanding of nature and origins of the Princes Street dispute?

I couldn't understand the nature and origins of this Princes Street dispute as I am aware that everything possible was done by TIE to facilitate the unfettered access to Princes Street for the Contractor.

126) What was your understanding of the agreement reached to resolve it, and

why it was resolved in that way?

I cannot recall the agreement reached to resolve the Princes Street dispute as I was never involved in any of the high level meetings.

127) What were the benefits of it to TIE?

The programme could continue.

At 1.4, it was noted that the settlement agreement should lead to no increase in liability to TIE.

128) Was that a correct analysis?

I cannot comment as I am not a subject matter expert in this field.

An email from Stewart McGarrity dated 25 March 2009 (**CEC00903037**) noted:

*"it's my intention two write up an evolution of the next volume of the options paper which will inter alia explain a process and timetable by which we improve confidence in programme and costs. ... The process itself will be continuous for a couple of months or more up to the point where we have an agreed programme with BSC and resolution of all major contractual issues."*

129) To what extent were TIE able to improve confidence in programme and costs?

None.

130) What obstacles were there in that regard?

A litigious contractor focussed on raising claims against TIE.

Attached to the email is a summary by PWC of the issues affecting the project and suggestions for dealing with them (**CEC00903038**).

131) Does that document fairly summarise the issues as you understood them at the time?

I am not an expert in this matter but I would agree.

132) What were your views on PWC's suggested means of addressing the issues?

I had no views on the matter.

The Highlight report to the chief executive's IPG dated 25 March 2009 (**CEC00892626**) noted that you were to give a verbal update on the BSC dispute (2.1 and 3); that TIE had yet to provide a formal reply detailing the "*root of the contractual dispute*" and that a letter should be sent to them seeking confirmation of when it would be given (2.1 and 11).

133) Why had TIE not supplied that information?

I cannot answer this question on behalf of TIE and would suggest that the TPD Mr Stephen Bell should be approached on this question.

134) What did you understand, at the time, to be at the root of the problems?

Money.

135) Whilst TIE had not supplied a '*formal reply*', what (if anything) had they said informally? What did you understand the position to be?

I have no recollection of any informal contact being made.

At paragraph 3, it was noted that:

*"It is recommended that independent expert dispute and project management advice is sought to ensure that the Councils best interest are being met and that a full understanding of the Council's liabilities are identified."*

136) What were your views about this? What did this say about the role being performed by TIE?

My view was that a professional independent expert should be employed as TIE did not have the competencies to address the issues.

137) Was any such independent advice obtained? If so, when and what was it? If not, why not?

I wasn't aware of any independent advice being obtained. I was not party to the reasons why an independent advisor was not sought.

The report continued:

*"A two stage approach is being adopted by TIE Ltd to manage the ongoing contractual dispute. The first stage of the negotiation process is to obtain short term commitment from BSC, and BB in particular, to start work on Princes Street and the Depot whilst demonstrating effective engagement through the Management Framework Group. The second part of the strategy*

*will be to give careful consideration to the Strategic Options noted below."*

- 138) What was your understanding of the 'two stage approach'?

I have limited knowledge of the two stage approach and would suggest that the SRO Mr Dave Anderson would be the best person to answer this question on behalf of CEC.

Of one of the rejected strategic options (negotiating a settlement with BSC of contractual disputes and programme), it was said it was

*"likely to be a very (likely prohibitively) expensive option indeed. Under the current BB stance this would involve working on a 'cost plus' basis out with the contract".*

- 139) Why was a negotiated settlement thought likely to be "prohibitively expensive"?

Because of a claims orientated contractor who was very commercially astute and knew how to optimise their profits and such civil engineering contracts.

- 140) What understanding of TIE's bargaining position underlay that view?

I cannot comment on this.

The report went on:

*"It should be noted that taking the costs quoted by TIE Ltd under the two options above, we are now into the territory of potentially de-scoping the project to maintain affordability in the event that no other marginal cost savings can be made. It is imperative that a thorough evaluation of project costs is undertaken."*

- 141) What were your views about this?

This was outwith my remit and views similar to this were in the domain of the SRO.

- 142) What impact was curtailment likely to have on the Council's funding of its own share of the costs?

I have no idea what the impact on the Council's funding would have been. This would be better answered by CEC Finance Experts.

On 7 April 2009, Colin MacKenzie emailed you and others, in the context of a report on strategic options (**TIE00888226**). He wanted you to raise certain matters with the

CEC chief executive, Tom Aitchison (**CEC00900419**). His remarks included:

- *"SMcG described a "tipping point" in the contractual relationship, which may be reached around the end of June 2009. This would arrive once all BSC Sub-contractors are on board; MUDFA is finished; all designs have reached IFC status. After that point it is not really in BSC's interest to be difficult in the contract execution".*

143) What were your views on that? Did you consider it to be a realistic view?

I held no strong views on this as it was a contractual matter and outwith my expertise.

- *"It is very clear that the Council (particularly the TMO) was not in receipt of full disclosure from TIE in the latter part of 2008 and early 2009. The Chief Executive should not have had to write formally to his counterpart in TIE requiring the provision of crucial information post declaration of the Princes Street dispute. Whilst much of that is now history, nevertheless it does highlight that TIE need to be much more transparent with the TMO, complying with the terms of the Operating Agreement."*

144) Can you comment?

As mentioned before, the TMO was kept in a vacuum of knowledge and only used when it suited TIE's reporting regime.

145) Was any lack of reporting attributable to the fact that CEC had not formally appointed a TMO until January 2009? (See, e.g., the Highlight Report to the Chief Executive's Internal Planning Group, 28 January 2009, noting that you were appointed as Tram Monitoring Officer on 5 January 2009 (**CEC01075882\_2** and **\_11**).)

- *"As I have recently pointed out to the Chief Executive, Council officers do not know if the Infraco contract is sound and in all respects in the Council's best interests as client and funder. This contract may not be robust enough to deal with a claims oriented approach by BSC, which could then impact upon affordability for the Council."*

In hindsight I would agree that the TMO should have been appointed earlier and should have been a full- time appointment in my opinion.

146) What were your views?

I strongly maintain a TMO should have been a permanent appointment for the

duration of the Tram Project.

147) Were you concerned that Council officers did not know whether or not the Infraco contract was sound or in the Council's best interests?

Yes and this was relayed to the SRO.

148) Given CEC were the funder of last resort, why had that situation arisen?

I cannot comment on this as it is outwith my competency.

- *"The subject matter of the contentious points comes as no surprise. The B Team clearly stated what it believed to be risky areas for the project before a premature Financial Close; some of these matters are now heading towards DRP"*

149) What was your understanding of this?

I was unclear of the above.

150) Why had the concerns of the B Team not been addressed prior to financial close?

I have no idea why these concerns were not addressed, I would suggest that this question be put to whoever the "B Team" are.

151) Had they been fully understood, prior to financial close, by (a) senior CEC officials, (b) the TPB or (c) council members?

They had certainly been fully discussed however, whether they had been fully understood or the implications understood is debatable.

The report to the IPG, 29 April 2009 (**CEC00860021**), noted:

- *(\_2): "TMO and other chief officers are now briefing political Group Leaders on a monthly basis"*
- *(\_12): "Weekly tram update reports are now being received from TIE Ltd and the TMO is now passing these onto the Chief Executive and the Council Leader."*

152) What briefings did you provide to CEC officers and elected members?

They tended to be adhoc meetings or briefings to the SRO, Chief Executive of CEC and Leader of the Council.

153) What was the subject matter of these briefings?

The subject matter of these briefings mostly focussed on the progress and programme for the Tram Project and cost implications mostly to do with cost overruns.

The report to the chief executive's IPG, 29 April 2009 (**CEC00860021**), provided an update on dispute resolution process and strategic options. It noted:

(At \_3): "*there are a number of disputed issues and there appears to be a significant difference of interpretation in relation to certain terms of the contract. Realistically these points of principle will need to be agreed via the adjudication process, which may take several months. Once the broad principles have finally been established, this should allow the specific disputed issues to be agreed, hopefully relatively quickly. Council officers will be working closely with TIE Ltd and DLA Piper over the next few weeks to establish levels of confidence with regard to the current and future disputed issues.*"

154) What was your understanding of the basis on which issues were selected for the dispute resolution process?

I had no involvement in the disputed issues as this was likely to increase in the future and my Director was keen for me to fully focus on my prime responsibilities as Head of Transport for City of Edinburgh Council.

155) Do you consider that approach worked? If not, why not?

CEC officers and TIE officials were doing the best they possibly could to get the Tram Programme moving however, it was fairly obvious that as the contractor had his own agenda to seek additional monies he was doing everything in his power to delay the programme and put pressure on CEC and TIE.

The Highlight report for the IPG dated 27 May 2009 (**CEC00886674**) noted (at \_3) some success following three meetings of the Project Management Panel, including constructive discussion on the movement between BDD and IFC drawings.

156) What was your understanding of the Project Management Panel, and the work it did?

I was never involved in the Project Management Panel so cannot comment.

- 157) What progress did you understand it to have brought about?

On paper the progress indicated that this was a new approach and if there was a willingness on all participants to make a success of this it would have happened. Unfortunately, in my opinion, this willingness was not demonstrated by all partners therefore the positive vibes in the paper were never truly demonstrated.

The report also noted (3) that:

*"During the period TIE commenced an independent forensic planning exercise to validate the work done by TIE in capturing all reasons for delay to date. This exercise will review the contractual liability for delay and put TIE in a strong position when BSC and TIE seek to agree the recalibration of the programme and any potential acceleration costs, mitigation and recovery."*

- 158) What was your understanding of the work being done in that regard?

Not my area of expertise so have no views on the matter.

- 159) To what extent were you, others in CEC, or experts appointed by CEC, involved in that exercise?

I had no involvement in the exercise whatsoever. I cannot comment on others from CEC as I had no knowledge of this.

- 160) How thorough did you understand it to be?

As I had no involvement I have no comment to make.

- 161) Did you consider it to have succeeded in putting TIE "*in a strong position*"?

No.

- 162) If not, why not?

In my opinion TIE were kidding themselves on that they could make this contract work through strong contract management techniques. In essence, because of the claim orientation of this contractor this was never going to be achieved.

It was reported to you, throughout May and June 2009, that meetings were taking place between TIE and BSC in attempts to resolve the contractual issues and agree

a revised programme.

For example:

- TMO weekly report, 31 May 2009, **TIE00896910**: reported agreement on the preliminaries dispute; “*a constructive approach from BSC and TIE*”. Richard Jeffrey and Steven Bell had a “*constructive and frank*” meeting with BSC representatives.
- TMO weekly report, 7 June 2009, **TIE00896928**: reported a “*constructive meeting*” of Richard Jeffrey and Stewart McGarrity with the BSC consortium board, which committed to pushing work on a recalibrated programme, and on the design of critical BDDI to IFC structures.
- The report to the IPG, 24 June 2009 (**CEC00877629**), noted (\_11):
  - *“The TMO remains concerned that TIE Ltd and the BSC consortium have still not established a commercially agreed programme. Such agreement is vital to establishing likely outturn cost and delivery timescale and fundamental to our intention to supply Council with a major project update report in August.”*

- TMO weekly report, 28 June 2009, **TIE00896900**, noted that a mediation from 29 June to 6 July was to seek agreement on the core outstanding issues and to resolve the revised programme.
- TMO weekly report, 5 July 2009, **TIE00896918**, noted that a number of proposals had been developed at the mediation and were to be discussed

163) What was your understanding of the reasons why the discussions did not resolve the difficulties?

My understanding of the reasons why the discussions did not resolve the difficulties were simply around the fact that my own personal feeling was that the contractor never wanted to deliver the programme to the contracted price in the first instance.

164) Were you happy with the accuracy, nature and detail of the reporting to you about these matters?

In the early stages of reporting ie from January 2009 until June 2009 I was relatively unhappy as I felt I was only given information on a “need to know” basis. From approximately June 2009 onwards I felt there was a big improvement in the accuracy, nature and meaningfulness of the information provided.

165) Were you happy with the approach being taken by TIE to address the problems with the project?

No and this was relayed to the SRO.

## July to December 2009

166) In overview, what was your understanding over this period of:

- a) the progress being made on the project work? (and the reasons for lack of any progress),

I was split this question into two:-

- significant progress and willingness was shown to deliver the Princes Street works and to my mind this was a success story after a difficult start where there was approximately a two month stand - off before works started. After the works started the progress made was almost exactly to programme.
  - The same cannot be said for the rest of the Tram works throughout the rest of the City. Progress was very slow and I felt this was a deliberate ploy to frustrate TIE and use it as a lever to extract money from TIE further down the line.
- b) the steps being taken by the TPB and CEC to address delays and cost increases?

Once again full discussions took place at the TPB to address programme overruns and costs increases and it was urged that Mr David Mackay , Chairman travels to Germany to have face to face meetings with Bilfinger to resolve issues as soon as practicable.

The papers for the Tram Project Board over this period are:

- Papers for meeting on 8 July 2009, **CEC00983221, USB00000177,**
- Papers for meeting on 29 July 2009, **CEC00376412, CEC00791514, CEC00843272**
- Papers for meeting on 26 August 2009, **CEC00739552, CEC00834460**
- Papers for meeting on 23 September 2009, **CEC00848256, CEC00849011, CEC00680385**
- Papers for meeting on 21 October 2009, **CEC00842029**
- Papers for meeting on 18 November 2009, **CEC00835831, CEC00681328**
- Papers for meeting on 16 December 2009, **CEC00376427, CEC00416111**
- Minutes for meeting on 16 December 2009, **CEC00473005**

An email to you from Andy Conway dated 7 July 2009 (**CEC00701217**) reported that the mediation had not been successful, and that

*"The consortium is now openly asking for £80m to £100m to get on with things! All parties of the consortium were apparently standing shoulder to*

*shoulder so it would appear that one of the Strategic Options, of getting rid of BB looks rather unlikely now.”*

*“One of the actions for CEC was that Marshall (as TMO) and Gill would need to get involved in the DRP process via the Financial, Legal and Commercial committee.”*

- 167) What was your view on the stance being taken by the consortium at that time? Is your view different with hindsight? If so, please explain why.

I made my feelings known very clearly at this stage that I was not the best person to get involved in the DRP process as I had more previous experience in this field and that other subject matter experts be deployed either in house or external. This was fed back to the SRO Mr Dave Anderson.

- 168) Why had it been decided that you and Gill Lindsay would get involved with the DRP process?

It was never decided that I would get involved in the DRP process for the reasons stated in 167 above. With regard to Gill Lindsay being involved I can only assume that her name was put forward as she was the Legal expert in CEC.

- 169) What was the nature of your, and her, involvement?

As per my answer in 167) above I was never going to get involved in the DRP process. With regard to Ms Linsday's involvement I would with respect suggest that she should be contacted to answer this question directly.

- 170) Please explain in overview what you understood the strategy to be in relation to dispute resolution under the Infraco contract?

For the reasons mentioned in 167 above I bowed out of any dispute resolution discussions.

- 171) Did you, or others, have any concerns about the approach taken? If so, please explain what they were.

For the reasons mentioned in 167 above I can't comment on the DRP approach taken.

We understand you sat on the Finance, Commercial and Legal subcommittee of the TPB.

- 172) Is that correct?

No. I was invited on ad-hoc basis to some meetings however, after discussing the

time implications on my day to day job with my Director Mr Dave Anderson it was decided that I would not attend all the meetings.

173) When, and why, did you join it?

Not applicable as in 172) above.

174) What was the role of that committee, and what was your role on it?

I am not aware of the Terms of Reference of the sub - committee and my attendance was only on an ad-hoc basis.

175) In particular, what was its role in relation to setting, and implementing, the strategy for dealing with disputes under the Infraco contract?

As I mentioned in 174) above I was never informed of the Terms of Reference.

176) Over what period did it carry out that work?

I am not aware of the duration of this sub-committee.

177) How did the committee carry out that work?

As I didn't attend the sub-committee I cannot comment on the efficiency or effectiveness of this group.

See, for example:

- TPB minutes, 29 July 2009, **CEC00739552** (at 3.7)
- Paper to the TIE board, July 2009, in the papers for the TPB meeting on 29 July 2009, **CEC00843272\_32**

The paper to the TIE board about the FCL committee (**CEC00843272\_32**) says that a document entitled "*Resolution Strategy*" would be presented for TPB approval on 29 July 2009. The document may be the one at **CEC00750538**. However, there is no record of a document of this name in the papers for the late July meeting and no reference to it in the minutes.

178) Is **CEC00750538** the relevant paper? Did it go to the TPB for discussion?

I cannot recollect the paper being presented.

179) Can you explain the resolution strategy, and in particular the basis on which issues were chosen to go into the dispute resolution process (see pages 9 and 10)?

As I was never going to be involved in the DRP process I did not get into the details of the resolution strategy and left it to the SRO to progress.

180) Were you involved in the “challenge team” (page 11)? What did that involve?

No.

In an email dated 23 July 2009 (**CEC00666481**), Dave Anderson noted:

*“I am now very anxious about the reliability of the information we are getting from TIE. Since last November we have been pressing them to provide a detailed review of budget estimates and programme timetable. They have failed to do this and, in the past few months, their best case estimate has moved from £534m to £560m without adequate explanation.”*

Alan Coyle’s response in the same chain:

*“I would also like to bring your attention to further developments I learned of earlier in the week. There has been further delay to MUDFA with completion now programmed for November 9th, this has slipped from September over the last few weeks. The cost estimate is now between £6/£9m over budget and it seems likely TIE will be heading for legal dispute with Carillion. The information on MUDFA seems to change continually and there are still concerns regarding the resources being deployed by Carillion to complete the job.”*

181) What were your views on the nature and accuracy of the reporting that you, and other council officials, were receiving from TIE?

I agree with Dave Anderson’s comments in that the information flow from TIE to CEC in the early stages was very poor and at best sporadic. In addition, I also agree with his assertion that the information flow was significantly better from mid 2009 onwards.

182) Did you have any concerns with their reporting to the Tram Project Board?

As previously mentioned I felt that TIE were paying lip service to CEC in late 2008 to mid 2009. I felt that TIE’s reporting to the TPB was slightly better but more relevant information and timely information could have been provided by TIE over the same period.

183) What implications did these reporting issues have for proper decision-making on the project?

In my opinion the proper governance was not set up at the outset of the contract and

this led to inefficient decision making for the Tram Project.

184) What, if anything, was done to address concerns about reporting?

The SRO Mr Dave Anderson made numerous calls to the CEO of TIE and the Tram Project Director to improve the information flow and reporting procedures.

On 19 August 2009, you were asked to look into Bilfinger Berger's contracts elsewhere in the world where there had been significant delays, cost overruns or major disputes with clients (**CEC00705861**).

185) Why was this done?

This was done to establish if there was a trend and pattern to their delivery on contracts and what the implications were to their clients especially with regard to costs.

186) What was the outcome? (See, e.g., **CEC00706262**, **CEC00706263**)

My own professional view of Bilfinger's commercial strategy was that they were claim orientated and this was a common occurrence throughout global contracts.

187) What was your understanding of the process by which reports to Council on the tram project were drafted and, in particular, the role played by TIE and CEC officials in it?

I felt that the governance was not clear of the outset of the contract and fed this back to the SRO.

In early stages of the reporting process I felt that TIE were simply paying lip service to CEC officials as they had all the powers and duties to deliver the Tram Project. In mid 2009 I felt that there was a sea change in TIE's attitude to the reporting process. They now understood the importance of informing CEC and more importantly Elected Members about contract implications as soon as possible.

188) Were there particular challenges in reporting fully to Council members on the project? (See, e.g., **TIE00031196**, and **CEC00682388**)

Yes.

189) If so, what were they, and how were they addressed?

There was more of a frequent and formal reporting process put in place which tended to be almost weekly in nature to give Elected Members and CEO of CEC

meaningful information as timely as possible.

The report for the IPG on 30 September 2009 (**CEC00668079**) noted:

*(\_6): "...early indications are that we will not have a clear picture of estimated final costs and timescales for some time, perhaps not until well into 2010. This obviously means timing of reporting back to Council with a revised position will be uncertain, but reflects the realities of the dispute. Monthly briefings have been set up with the group leaders and are proving valuable in keeping members informed."*

190) What was your understanding of the difficulties in estimating time and cost?

My understanding of the difficulties once again revolved around the contractor's willingness or more importantly lack of willingness to reach a satisfactory and agreed approach by all to find a way forward.

191) How were members kept informed of progress with these matters?

Through regular briefing sessions.

In October 2009, a paper was circulated on the Financial Commercial and Legal committee (**CEC00690508**, **CEC00690509**) proposing that its focus be changed. One reason for this was:

*"the significant amount of complex detail in each DRP requiring to be examined to fully understand the issues, as well as CEC being asked to formally "sign off" on each DRPs, sometimes with little notice".*

192) What was your understanding of this issue?

As mentioned previously I did not have a role in the DRP process so can't comment.

193) How (if at all) did the work of the FCL committee change as a result?

I had very little involvement the FCL committee so cannot comment.

A note of the FCL committee meeting on 3 November 2009 (**CEC00703163**) noted "*a positive shift in engagement by both TIE and BSC*", referring to:

- settlement of EoT1 at £3.5m;
- the recent "*encouraging*" appointment of David Darcy at Bilfinger;
- TIE having granted BSC (in relation to EoT 2) 9 months extension of time and

6 months costs;

- BSC having said they would act on TIE's instructions to start 15 items of work with immediate effect; and
- progress on the supplemental agreement for the remaining on-street sections.

The 15 items which BSC undertook to address are listed in **CEC00490881** (circulated by Alan Coyle, 8 January 2010, **CEC00490880**).

194) What was your understanding of these matters, and why progress was being made in resolving differences?

It appeared to me that at long last an understanding of where the "blockers" lay ie it tended to be in personalities. The fact that a £3.5m settlement was agreed and that a new head figure was coming in to the Bilfinger establishment gave a more positive feel to the contract that this was an encouraging way forward.

195) What did you understand to be the basis for the grant by TIE of a 9-month extension of time and 6 months costs? (See, e.g., a draft paper by Susan Clark to the TPB dated 18 November 2009, **CEC00752774**; and the TPB minutes, **CEC00416111\_7** at 3.3).

I was not close enough to the "commercials" in the contract so I would suggest Mr Alan Coyle would be the best person to answer this question.

196) What was your understanding of the differences between the parties in relation to the programme?

Right from the very start it was quite obvious to see that there were fundamental differences between TIE and the contractor with regard to the programme. They both viewed the contractors programme through a "different pair of eyes". TIE saw the programme as being built into the contract and could be developed by agreement as time was going on. The contractor viewed the programme as being provisional and expected recompense as design development progressed.

197) What was your understanding of the work being done by TIE to record evidence relating to, and analyse, delay?

A substantial amount of work was being done by TIE through its Programme Director and section engineers to monitor progress v programme. One of my main concerns lay around the fact that there was not the proper sight supervision regime in place for such a large and complex project.

The note recorded that no further BDDI to IFC matters would be referred to the dispute resolution procedure at that time.

198) Why was that?

I have no knowledge of this.

199) Why had it taken so long to reach agreement on the financial implications of EoT 1?

I was not close enough to the detail around this so I am unable to comment.

The minutes for the TPB on 18 November 2009 (**CEC00416111**) record that you were asked by Richard Jeffrey to form part of a committee to approve entry into the on street supplemental agreement.

200) What work was done in that regard?

I was invited onto the committee with my expertise on road matters. I cannot recall the actual work that was done as my role was solely advisory.

201) Who else was involved?

Andy Conway.

202) What was the outcome?

I cannot recall the outcome.

The report to the IPG dated 25 November 2009 (**CEC00677450**) noted, at \_6, that in the Gogarburn Bridge and Carrick Knowe Bridge adjudications, TIE's argument on the principle of design development had been rejected.

Gill Lindsay's email dated 26 November 2009 attached the adjudicator's decisions (**CEC00479429**, **CEC00479430**, **CEC00479431**, **CEC00479432**), and noted

*"Andrew has advised further that Counsel have been provisionally identified who could consider merits/grounds of challenge to the decision. Strong DLA recommendation that this is done."*

The weekly TMO report dated 6 December 2009 (**TIE00896922**) noted:

*"No formal challenge is being pursued..."*

Gill Lindsay later referred to revised advice from McGrigors (12 April 2010, **CEC00242042**).

203) What was your understanding of, and views on, these adjudication decisions?

I had no clear view on the adjudication decisions as it was not my area of expertise. I left this up to the SRO.

204) What did you consider their wider implications to be (if any)?

Once again I cannot comment on this matter as it was outwith my area of expertise.

205) Why were the decisions not challenged?

From memory this was discussed by the CEO and SRO in CEC so I am not in a position to give a clear answer on the lack of challenge.

206) Did these decisions bring about a change in BSC's attitude to resolving disputes (which, it had recently been reported, had started to improve)? (See, e.g., the minutes for the TPB on 16 December 2009, **CEC00473005\_6** at 2.1: "*BSC's recent behaviour reflects a hardening of their tactical commercial position*").

No

The report to the IPG, December 2009, (**CEC00469787**) noted, in relation to the negotiations for an on-street supplemental agreement:

- (5): "*Negotiations are currently ongoing with BSC for a supplemental agreement covering the remaining on-street works on a demonstrable costs basis. There are still significant commercial difficulties to overcome through negotiation before this can be concluded. The major issue is the credit TIE Ltd would receive based on the demonstrable costs under the supplemental agreement compared to the sums already embedded in the BSC core contract.*"
- "*There is a large cost exposure relating to the on-street supplemental agreements of between £20m to £35m. This number is based on experience gained from the Princes Street on-street agreement and the likely incremental cost of full depth road reconstruction on all on-street sections.*"
- "*It is envisaged that a presentation will be given to the Board/sub-committee detailing the full sensitivities, risks and cost exposure around the supplemental agreement prior to authorisation. CEC Finance will conduct a robust examination of the assumptions underpinning the cost estimates.*"

207) What was your understanding of these matters?

Once again this was not in my area of expertise and from memory I think Mr Alan Coyle would be the best person to answer this.

208) Why was the cost of the on street works likely to be so significantly greater

than anticipated in the Infraco contract works price?

This could be attributed mostly to design development issues as well as unexpected and unknown problems on the underground road network as a result of poor survey information at the outset.

The minutes for the TPB on 16 December 2009 ([CEC00473005\\_6](#)) note (item 2.1) that:

- The TPB instructed Richard Jeffrey to investigate withdrawal of the offer to BSC of a 9 month extension of time; and
- That RJ had “*taken steps to dedicate commercial resources to deploy the agreed strategy, including the services of Tony Rush who has a considerable reputation in the construction industry; specialising in disputes and claims.*”

209) What was your understanding of these matters?

I was not involved in these issues I had no knowledge on Tony Rush so cannot comment on this.

210) Who was Tony Rush; what was to be his role; and what was said to the TPB about his expertise?

I have no knowledge of Tony Rush and was not involved in drafting any part of his role or his responsibilities to either TIE or TPB.

On 24 December 2010, Nick Smith circulated his thoughts on options for the project, concluding “*if ever there was a case of rock and a hard place*” ([CEC00451089](#)).

211) What was your view at that time?

I had no view on this.

## **January 2010 to January 2011**

212) In overview, what was your understanding over this period of:

- a) the progress being made on the project work? (and the reasons for lack of any progress),

A lack of progress was essentially down to a difficult contractor who had a track record of delivering similar schemes throughout the world but tended to generate their profit through claims.

- b) the steps being taken by TIE, the TPB and CEC to address delays and cost

increases?

In my opinion every possible method was adopted by TIE, TPB and CEC to address all these issues however, at the end of the day it was down to a very difficult contractor who never had any intention of delivering the contract for the tendered price.

The papers for the Tram Project Board over this period are:

- Papers for meeting on 13 January 2010: **CEC00559596**, **CEC00473005**,
- Papers for meeting on 10 February 2010: **CEC00474418**, **CEC00376422**,
- Papers for meeting on 10 March 2010: **TIE00894384**, **CEC00575128**
- Papers for meeting on 14 April 2010: **CEC00420346**, **CEC00379024**
- Papers for meeting on 5 May 2010: **CEC00245907**, **CEC00373764**
- Papers for meeting on 2 June 2010: **CEC00261936**, **CEC00246401**
- Papers for meeting on 30 June 2010: **CEC00223543**
- Papers for meeting on 28 July 2010: **CEC00244400**
- Papers for meeting on 25 August 2010: **CEC00013703**, **CEC00088902**
- Papers for meeting on 22 September 2010: **CEC00013818**
- Papers for meeting on 21 October 2010: **CEC00014055**
- Papers for meeting on 17 November 2010: **CEC00014175**
- Papers for meeting on 15 December 2010: **TIE00896978**
- Papers for meeting on 12 January 2011: **TIE00897052**
- Minutes for meeting on 12 January 2011: **TIE00897058**

On 14 January 2010, Richard Jeffrey noted increasing concern about progress on the project (**CEC00450935**). He proposed a 'campaign' approach in the run up to the TPB in March.

213) What was your understanding of this?

This was an idea created by Richard Jeffrey to apply pressure to the contractor to get the programme and final costs agreed. His idea focussed around getting a joined up approach by TIE, CEC and Elected Members to rally around, exert pressure and demonstrate to the contractor the significant reputational damage his approach was having on Edinburgh's businesses and citizens.

214) The report to the IPG, January 2010 (**CEC00450032**) noted:

- (\_5): "*Negotiations continue between TIE Ltd and BSC on a commercially*

*agreed programme encompassing a solution for an On-Street Supplemental Agreement (OSSA). ... There is still a significant difference between TIE Ltd and BSC regarding an OSSA to the extent that, in current form, the OSSA will not be signed up to."*

- *"Aside from the work on strategic options, TIE Ltd are about to embark on a more aggressive approach to auditing BSC. Particular attention will be given to audit of Design Issues, Failure to provide a programme and Failure to mitigate programme delays. The findings of these audits will help demonstrate failure by BSC to comply with the contract terms."*
- *"The result of the Dispute Resolution Process (DRP) on Russell Road Bridge has now been received. The adjudicator has deemed that TIE Ltd must pay for the design changes, which counters TIE Ltd's view that the design changes were part of design development. The cost of the changes is £1.5m, which is less than TIE Ltd have allowed for in the recent review of costs."*

215) What was your understanding of these matters?

The fact that adjudicator deemed that TIE must pay for the design changes demonstrated how out of touch TIE were with the detail of the contract.

216) The report to the IPG, February 2010 (**TIE00896564**) noted:

- *(\_5): "...negotiations continue between TIE Ltd and BSC on a commercially agreed programme encompassing a solution for an On-Street Supplemental Agreement (OSSA), though a delta of £10m exists between the commercial position of TIE Ltd and BSC. Under the present terms it is unlikely a revised OSSA will be signed in its current form as it does not represent best value and presents potential procurement issues."*
- *"The commercial impact and financial implications of the Princes Street Supplemental Agreement (PSSA) have yet to be finalised. An interim meeting to look at financial and technical issues took place between Council Finance, City Development and TIE Ltd in order for the Council to get a better view on the lessons learned from the PSSA."*

217) What was your understanding of these matters?

I had little involvement in the OSSA so cannot comment on this.

The TMO report dated 14 February 2010 (**TIE00896841**) noted that the MUDFA rev 8 mediation had been reactivated by Infraco.

218) What is your understanding of the reasons why that had happened?

I cannot recall the reasons for this.

The weekly TMO report dated 14 March 2010 (**CEC00551258**) noted that at the TPB on 10 March,

*"Clear support was given, together with direction to focus on enhanced contractual rigor and further work on hastening resolution of matters with BSC."*

219) What was your understanding, and what were your views on, that matter?

I cannot recall the reasons for this.

220) The report to the IPG on 17 March 2010 (**CEC00462004**) noted:

- *(\_7): "The final account for Princes Street Supplemental Agreement (PSSA) has yet to be settled. The costs continue to escalate as a result of poor and inefficient supply chain management of plant from BSC under the PSSA. Costs for overtime working to ensure the 29 November deadline was met has also contributed. The current view is that the costs incurred under the PSSA are a £9m addition to the contract price, though elements of this would have been payable in any case."*

221) What was your understanding of those matters?

Once again TIE had completely under estimated the spirit and letter of the contract therefore this £9m was a huge cost increase that was never envisaged by CEC.

222) Did that have any impact on the negotiations for the On Street Supplemental Agreement? If so, what?

I cannot answer this as I was never involved in any negotiations for the OSSA.

At \_9, it was noted that a review had taken place of the Tram Monitoring Officer's duties and records. Additional resources were said to be needed to assist the TMO undertake regular reviews. It was also noted that it was essential for CEC to get a better understanding of the AFC. (See also appendices 4 and 5.)

223) What was your understanding of those matters?

At this point in time my suggestions were getting taken onboard in the sense of additional resource was required to support the TMO as undertaking the role on a part-time (5%) of someone's time was totally ludicrous.

224) What was done in respect of them?

I suggested that Max Thomson be made available to support the TMO in his duties.

Richard Jeffrey emailed the Council leaders on 19 April 2010 (**CEC00249137**) reviewing the state of the project.

225) Does his summary reflect your understanding of, and views on, the project at that time?

I think it is a fair reflection at that point in time.

226) Was there anything you disagreed with?

No.

Mr Jeffrey referred to BSC having failed in relation to the management of design and appointment of subcontractors

227) What was your understanding of these matters, and the impact they had on the project?

My view was that Richard Jeffrey was right in his assertions however, he underestimated the strong contractual and commercial position of Bilfinger to extract as much money as possible from the contract.

228) What evidence was there in support of Mr Jeffrey's views? What evidence was there of these matters having caused any delay?

Clear evidence was apparent with RJ's views by the fact that sub-contractors were only appointed at the 11<sup>th</sup> hour and only after extreme pressure had been applied by TIE.

He also referred to the biggest issue being lack of progress resulting from Bilfinger's tactic of not progressing work until a change had been agreed.

229) What was your understanding of Bilfinger's, and TIE's, contractual rights in that regard?

Bilfinger were essentially holding TIE to ransom in my opinion. I cannot comment on the contractual rights as I am not a contract management expert.

230) What was your understanding of the extent to which that, as opposed to delay resulting from utility works (or any other cause), was the dominant cause of overall project delay?

In my opinion to the dominant cause was down to a lack of agreement about design development.

The report to the IPG, April 2010 (**CEC00236405**), noted (\_2) that you (as TMO) were now based at Citypoint three days a week, and that (\_7):

*"Following a decision taken by the IPG, due to lack of progress and concerns on the project, the TMO is now undertaking a more intensive role in the project, with particular focus on Project Management and Programme related issues. The TMO will provide a comprehensive report to the IPG in June on these issues and has written to TIE Ltd to obtain information (a copy of that letter is attached as Appendix 1)."*

(For that letter, and your list of items to focus on, see \_13 onwards).

231) Why was this decision taken?

This decision was taken with a view to getting a "fresh pair of eyes" to understand the issues.

232) What was the nature of your "*more intensive role*", and what work did you do?  
Who did you work with?

To base myself at Citypoint for three days a week for approximately a two month period. I worked with two assistants who helped compile a report into "reasons" behind the delays in the Tram Project.

233) What impressions of the project did you gain from that work and your closer involvement with TIE?

My impressions of TIE and their staff were very positive. I felt that all the staff were very professional and conscientious. If I felt that they had any weakness it was down to the fact, that although being professional project managers, their expertise lay in the fact that they were rail experts and not road experts. The competencies in dealing with roads contracts and rail contracts are fundamentally different, so this led to a claim conscious contractor being able to exploit the situation.

234) Is the Tram Project Assurance Review (**CEC02086414** and appendices, **CEC02086413**), July 2010, the output of this work?

Yes.

Your letter to Steven Bell, in the IPG papers at **CEC00236405\_13** onwards, said you wanted to see a report by Susan Clark to the TPB dated 14 April 2010 and a related Acutus report.

235) Are **CEC00301680** and **CEC00302630** the Susan Clark paper you had in mind?

Yes.

236) The papers for the TPB on 14 April 2010 (**CEC00420346**, **CEC00245907**), and the minutes, do not refer to those papers. Can you explain that?

I cannot recall the reasons behind this.

237) What was the Acutus paper you referred to, and what did it say?

I cannot recall the details of the Acutus paper.

**CEC00301680** is a paper by Susan Clark to the TPB dated 14 April 2010 entitled "*Project Pitchfork Update*". It notes (at 7.0) that McGrigors had been instructed to prepare terms of reference for use in some form of "expert determination" on the BDDI-IFC issue. The opinion of senior counsel was being sought.

238) What was your understanding of the proposal to refer the BDDI to IFC issue to expert determination?

I wasn't close enough to the details of this so I cannot comment.

239) What happened in that regards?

Not applicable.

In an email of 12 May 2010 (**CEC00228508**), Richard Jeffrey noted that

*"the design of the on-street works has emerged as a major issue, driving a lot of potential cost, delay and disruption..."*

*"At some point we will need to understand how this became an issue, and it is undoubtedly a complex picture involving the different members of the consortium, SDS, CEC and TIE, the management of the process by all concerned and the contract. As you know, the design is at the heart of a lost [sic.] of the issues on this project, and, no matter how much we think it should be simple, given the way the whole project is set up it is not a simple situation to understand."*

240) What was your understanding of these matters?

I cannot comment on this as I am not an expert in this area.

The action note for the May 2010 IPG (**CEC00252753**) noted:

*"TMO view that improvements are necessary in TIE's record keeping and project management, and is currently considering how best to raise this"*

241) Please explain your concerns?

My concerns lay not so much in the professionalism of TIE staff but more around the lack of site supervision and proper recording of defects.

Were they were addressed and, if so, how?

I had no direct access to records following my temporary secondment to Citypoint so I cannot comment directly on whether my concerns were fully addressed.

Steven Bell sent you an email on 1 June 2010 concerning the cost of the Princes Street works (**CEC00223322**, **CEC00223323**, **CEC00223324**).

242) What was your understanding of the actual cost of these works, compared to the price which had been agreed for them in the Infraco contract?

My view was that the contractor had exploited the contract to the best of his ability to extract money from TIE to maximise his profits.

243) What was your understanding of the reasons for the difference?

Lack of understanding of contract management on the part of TIE.

244) What did you understand the implications of that to be, for making progress with other on-street works?

My view was that there cost overruns were going to be significant and could lead to a curtailment in the length of the Tram Project.

245) Did you have any concerns with the cost of the Princes Street works, and the basis on which they had been incurred? Please explain your answer.

Yes. As mentioned previously I strongly feel that the behaviours adopted by the contractor Bilfinger were not the behaviours that one would associate with a considerate and professional contractor.

Appendix 2 to the 9 June 2010 IPG report (**CEC00271534**) assessed compliance with the TIE and TEL operating agreements. At 2.24, it noted that briefings on likely delay or cost overspend took place via the TPB, the TMO and other senior CEC officers. Alan Coyle noted:

*"Concern over FCL role in this. Briefings work but are very informal. TPB reports say nothing!"*

- 246) What did you understand these concerns to be about?

As I have no knowledge of the TEL operating agreement I cannot comment on this.

- 247) What was done about them?

Not applicable.

On 8 June 2010, David Mackay as chairman of TEL wrote to you formally advising that it was reasonably expected that the full scope of line 1a could not be delivered within a budget of £545m and by October 2012 (**TIE00084642**).

It had been reported since August 2009 that this was unlikely to be possible (see, e.g., Project Director's report to the TPB dated 26 August 2009 (**CEC00831587\_14**)).

- 248) What tipped the balance in favour of sending that letter at this point?

My view was that it was now the full realisation by TIE that the contractor had enough value in the work already undertaken, but not paid either by measurement or invoice, that the point had now been reached that the budget of £545m was going to be breached.

- 249) What discussions took place about it? Were you involved?

I was aware that there were many discussions taking place between the SRO, the Chief Exec of CEC, Elected Members and CEO of TIE, however, I was not involved in these discussions.

Mr Mackay added:

*"Until such time as commercial certainty is achieved with Infraco, I am unable to provide you with accurate details of potential final outturn costs or a final open for revenue date".*

- 250) Did that reflect your understanding of matters at the time?

Yes, that was also my understanding at the time.

In July 2010, you produced a Tram Project Assurance Review (**CEC02086414** and appendices, **CEC02086413**). (This report is marked “second draft”, but we are told by CEC that they believe it to be the latest version available.)

251) Is this the latest version of the report? Please supply any later version.

Yes, in my opinion, this is the latest version of the draft and, in effect, the final draft.

252) Why was this report prepared?

The purpose of this report was to have an independent and professional assessment of how the Tram Project was progressing without having to commission a large consultant at an exorbitant cost.

253) What use was made of it?

It was purely for CEC Internal consumption, my SRO, Mr Dave Anderson asked me to produce the report in order that he could discuss it with CEC's CEO, Mr Tom Aitchison.

254) Which of the matters covered by your report, in your view, contributed most to the cost increases and delay in the project?

I didn't feel that the cost increases could be attributed to a single issue, I felt strongly that due to the poor drafting of the tender document, along with Design Development, poor programming, including MUDFA delays, coupled with the lack of supervision and record keeping this led substantially to the cost increases. However, above all, I strongly felt that because of the behaviour of the contractor and naivety of TIE, this led significantly to programme delays and consequently cost increases.

In the report's introduction, you said that

*“TIE may have a different perception of some, if not several, elements and will wish in turn to present a response to this document”* (page 3).

The Action Note for the IPG on 4 August 2010 (**CEC00015518**), however, noted that the action points in the Project Assurance Report were being taken forward with TIE, but that the review report would not formally be issued to them.

255) Why was the report not to be formally issued to TIE?

As mentioned earlier, the report was solely meant for internal consumption in CEC.

256) Was there any response from TIE, and if so, what was it?

I am unaware of any response from TIE. I certainly didn't discuss the contents of the report with TIE although I am aware that my SRO, Mr Dave Anderson and CEC's CEO, Mr Tom Aitchison had a conversation about the report. I wasn't party to any discussions to share the report with TIE.

### **Programme**

257) What was your understanding of the reasons why TIE had not agreed any of the revised programmes submitted by BSC?

I wasn't close enough to the detail and was never involved in the discussions, although my feeling was that it was due to design development and the fact that TIE felt that BSC should be delivering to the original programme.

258) What was your understanding of the basis for TIE's offer to BSC of a 9 month extension of time?

From memory, I think this was mostly down to works on Princes St.

259) To what extent, if any, was there common ground between BSC's proposed programmes and TIE's offer of a 9 month extension of time?

I cannot comment on this as I was not involved in this level of detail.

You noted that, for TIE to protect its commercial position, it should maintain comprehensive records of progress and the reasons for delay (page 14).

260) To what extent had that been done prior to your recommendation? (for example, the draft paper by Susan Clark to the TPB dated 18 November 2009, **CEC00752774** at page 4.)

There appeared to be a lot of records but it didn't appear to me that TIE were focussing in on the correct areas.

261) To what extent was it done thereafter?

I felt that the record keeping was better and more focussed after this time.

You noted Acutus' opinion as having been that the dominant cause of delay was MUDFA works (page 13).

262) Did that remain the view of TIE, CEC and its advisors? If any other dominant cause of delay was identified, please explain what it was and when it was identified.

Yes.

You noted that Acutus considered project completion by January 2013 to be possible, but that you regarded it as a '*best case scenario*', achievable only if a long list of assumptions were met (page 17).

263) What was your view at the time of the likelihood that those assumptions would be met? Please explain your answer.

Given the delays that had happened earlier in the contract it would be very difficult to quantify the likelihood of these assumptions being adhered to. I still maintain that if the contractor was a willing partner then the contract would never have suffered the programme delays and the significant cost increases that it actually did.

You described the information supplied by TIE on the programme as having been "*limited and conflicting*", and recommended that TIE and Acutus prepare a report for senior Council officers estimating a realistic completion date, in a format suitable for a non-technical audience, by 1 September 2010 (pages 18 and 41).

264) Please expand on your comment that the programme information supplied by TIE had been "*limited and conflicting*".

Given that this report was drafted 7 years ago I cannot recall the detail for my reasoning at that time.

265) Was a report produced of the type you recommended? If not, why not? If so, what did it conclude and what use (if any) was made of it?

I cannot recall the recommendations that were taken forward as I was not party to

the decision-making process, this was done by my SRO and CEO, Mr Tom Aitchison.

### **Roads Design Approval**

In part 6 of your report, you addressed the roads design approval process, which you concluded needed to be 'overhauled'.

266) What is your understanding of the extent to which difficulties in the roads design approval process contributed to delay and cost increases in the project?

I felt the whole process was cumbersome and needed to be streamlined. It felt to me that not enough time had been given at the outset in the planning of an efficient and effective Roads Design Approval process.

267) Please explain in overview the nature of the approvals work which CEC had to do?

Any design work for Roads or Structures that was undertaken by the Contractor or their designers would have to be submitted for the Roads Authority to issue "consent to construct".

268) To the extent that you are able to expand on what is in your report, please explain your understanding of, and views on, the extent to which the technical approval process led to (a) delay, and (b) design change from what appeared in the Base Date Design Information, and the reasons why. Factors mentioned in your report which may be relevant include:

- a) the absence from the BDDI of design changes which had already been agreed by SDS (i.e., prior to the Base Date) through the Tram Design and Roads Design Working Groups;
- b) TIE's failure to involve CEC Transport in the compilation of the BDDI package;
- c) the absence of a defined process for tram technical approvals;
- d) the incomplete nature of the design packages submitted for technical approval;
- e) the extent to which there were fundamental issues with the design packages (you made reference, for example, to the Picardy Place junction layout proposed by SDS which CEC considered to be unacceptable);
- f) the granting of approval, but subject to resolution of '*informatives*' prior to

construction;

- g) problems with the Interdisciplinary Design Checks, and their implications for the approval work being done by CEC;
- h) the manner of communication between SDS and the various teams in CEC doing approvals work.

I feel my report was as comprehensive as possible and I cannot recall any of the detail to further explain the report in relation to a) to h) above.

269) To what extent have procedures subsequently been put in place to address these difficulties?

I cannot recall any additional procedures being put in place. From memory, TIE tended to focus better on different aspects of the work which was giving CEC concern following the report.

270) To what extent did the following contribute to the issues with technical approval: (a) the incomplete state of design, and (b) the fact CEC had not previously had to deal with approvals around a tram system? Please explain your answer.

I don't feel I am the best person to answer this question. Others with more detailed design experience would be better placed to answer this.

271) Was CEC's approach to the approval of roads design influenced in any way by difficulties with traffic modelling? If so, please explain how.

No, not in my opinion.

272) To the extent that you have not already done so in answer to previous questions, please explain the following comment from your report:

*Page 7: "Up until October 2008, aspects of the project management had been perceived as high-handed and uncommunicative; and concerned only with the delivery of a rail system without taking full account of the road network involved, and of stakeholder and community requirements."*

I mentioned this in an earlier question that I felt the bulk of TIE staff were professional in the delivery of essentially rail schemes but had very little knowledge of Roads regulations. Also, there high-handed approach in the early parts of delivery, especially when Mr William Gallagher was the CEO led

to a lot of tension and friction between TIE and CEC.

Page 40: "*Initial findings suggest that the lack of a fully co-ordinated complete design is the significant factor that has caused many of the contractual difficulties. If the design had been completed on time, and managed better prior to financial close, then many of these issues would not have arisen.*"

I strongly feel that if more time had been utilised at the outset to get a fully designed project submitted to CEC then we would never had the amount of issues that we ended up having, notwithstanding the behaviours of the contractor.

In the quote above, you described the lack of a fully co-ordinated complete design as "*the significant factor that has caused many of the contractual difficulties*".

273) Did you come to any view about the impact of incomplete design on the overall programme, as distinct from MUDFA delays? Please explain your answer.

No.

274) Did you come to any view about the reasons why there was a lack of a fully co-ordinated complete design? Please explain your answer.

No, this was before my time in CEC.

The report states that "*it is recommended that a "lessons learnt" exercise is undertaken to understand why the project is in its current position. This should particularly focus on Procurement, Financial Close and the design stage*" (page 41).

275) Was such an exercise carried out? What were its conclusions? Please provide a copy of any record of its findings.

That was my strong recommendation as a professional, however, I wasn't the senior responsible person in the contract for acting on this.

276) If there are any other matters in your report which in your view had a

significant bearing on the cost and duration of the project, which you have not addressed in previous answers, please explain them here.

I don't have anything else to add to this.

From around May 2010, there were proposals to revise the remit of the IPG and to clarify the specific role of the Tram Monitoring Officer.

A paper to the August meeting of the IPG (**CEC00242752\_33**, at 3.1) noted that, when set up in October 2006,

*"The IPG was intended to deliver a clear corporate understanding and oversight of the critical strands of work required to advance the delivery of the tram project, including progress against the key milestones set out in the project plan and to support the Director of Finance and Director of City Development in their roles as members of the Tram Project Board."*

277) To what extent do you consider that the IPG achieved that objective? To the extent it did not, what were the reasons for that?

I feel the IPG group did, to some extent, deliver on those objectives. Having said that, there were issues with TIE in the early part of the contract, although eased in the latter stages because of change in personnel.

The report to the IPG dated 12 May 2010 (**CEC00236872**) noted:

*"Consideration must be given to how the full time TMO role will be developed going forward. Given the current issues around the project, it will be important, to protect the Council's interest that the role is given greater consideration than has previously been the case. The role should scrutinise all Programme, Project Management, Commercial, Financial and TMO compliance issues in the future."*

The June report (**CEC00271534**) noted (\_7) there had been discussion between the Director of City Development and the TMO.

A revised remit for the IPG was provisionally agreed at the August meeting (**CEC00242752\_9** and **\_33 onwards; CEC00015518**). On the role of the TMO, it was noted (\_35) that:

*"The role of the Tram Monitoring Officer (TMO) will be critical to the effective functioning of the Tram IPG. The TMO will act as a key link between the Council and TIE Ltd ensuring that the project is professionally implemented and that competent arrangements are in place to ensure the Council's*

*interests are fully represented and protected."*

The role of the TMO was described at Appendix 2.

278) What did you understand to be:

- a) the key changes proposed
  - i) to the IPG's remit, and
  - ii) to the TMO's role?

The IPG had to be more robust in following through their decisions/recommendations.

The TMO was being asked to do more work and although I agreed about the sentiments of the recommendation I stated I was not the best person to undertake this role nor had any desire to do it. I applied for the job of Head of Transport in CEC and was successful. At no stage did I ever seek to deliver one major project which I had no prior experience in delivering.

b) the reasons for those changes being proposed?

The reasons for the changes were essentially down to being more effective and efficient in delivering this very difficult project and give Elected Members the peace of mind that Edinburgh's shops, businesses and citizens were going to get a Tram system that was fit-for-purpose.

279) Were those changes made and, if so, what, if any, difference did they make?

I can't recall if the IPG recommendation was invoked, however, the changes made to the TMO role were enacted some months later when Mr Bob McCafferty was appointed to undertake an "enhanced" TMO role.

The Transport Scotland report in the papers for the TPB meeting on 30 June 2010 (**CEC00223543\_26**) sets out a summary of the issues with BSC, and the factors leading to the project being behind the programme.

280) What did you understand the position to be?

I cannot comment on these as I did not attend meetings with Transport Scotland.

The minutes for the TPB on 30 June 2010 (**CEC00244400\_7**, item 2.1) record Richard Jeffrey's update on two workstreams – one concerned with the issue of a remedial termination notice to BSC, and the other concerned with BSC completing part of the project and TIE re-procuring the remainder.

281) What was your understanding of this strategy?

I didn't have any view on this as I left this to my SRO and Finance colleagues to form a view.

282) Was there a genuine intention to terminate the contract, or was the intention merely to cause concern to BSC?

My feeling was that it was to put pressure onto the contractor.

The minutes of the TPB meeting on 28 July 2010 (**CEC00013703\_7**, item 2.2) referred to legal advice having been taken on the remedial termination notice.

283) What was your understanding of the substance of that advice?

As previous Legal advice had been sought at earlier times in the contract and had been shown to be weak, I wasn't placing any confidence in this advice.

284) Had CEC sought, or seen, it?

The best person to answer this would be in CEC's Legal Department.

The Transport Scotland report in the papers for the June TPB (**CEC00244400\_46, \_47**) acknowledges (for what appears to be the first time for such a report) that programme recovery was not possible.

285) Was this a change from previous reporting?

I cannot comment as I did not attend Transport Scotland meetings.

286) If so, what lay behind the change?

Not applicable.

An email from Dave Anderson (4 August 2010, CEC00004301) noted that you were bringing together a group of CEC officials to deal with the prospect of moving to contract termination. Richard Jeffrey raised concerns about keeping control over that exercise, and said to Dave Anderson:

*"This work is progressing but lacks focus, and is becoming very frustrating and time consuming. Can we discuss please as it will not be helpful for me to put all my concerns in writing."*

- 287) Please provide an overview of the work done by CEC in relation to contract termination; your role in it; who else was involved; and the outcomes?

I was not in attendance at these meetings so don't know how much work was done by CEC in this regard. I have no knowledge of who would have been involved.

- 288) What were the issues raised by Mr Jeffrey and how were they addressed?

From memory, Mr Jeffrey was concerned that decisions about contract termination may have been taken in a vacuum and that CEC officials would not be clear on the implications of any termination decision taken.

On 9 August 2010, Richard Jeffrey sent an email (CEC00230923) about the outcome of the adjudication concerning Murrayfield Underpass, which he described as

*"surprising, contrary to all the advice we have had, and needless to say very disappointing".*

- 289) What was your understanding of that adjudication decision?

I wasn't close enough to the detail and am not a Legal expert.

- 290) What were your views on it, and its implications for the project as a whole?

I had no views, I was happy to take the lead from my SRO.

Mr Jeffrey noted that:

*"Despite the fact that we disagree with some of the reasoning and believe the consequences of the ruling simply create more questions, we do not, at this*

*stage propose to challenge it through the courts."*

- 291) What was your understanding of the reasons for that? Did you agree?

Once again, I had no view on this and left this to be discussed in detail between my SRO and Mr Jeffrey.

TIE and BSC were negotiating possible settlement of their disputes under the label "Project Carlisle".

- 292) What was your understanding of, and role (if any) in, that matter?

I didn't have a clear understanding of Project Carlisle.

An email from Alan Coyle dated 18 August 2010 (**CEC00013668**) noted that TIE's counter-proposal for Project Carlisle was being put together by a Jim Molyneux and that Dennis Murray (a quantity surveyor at TIE) was having

*"real trouble trying to reconcile the Carlisle counter proposal to his own view and is having difficulty tying down Tony's team to discuss".*

- 293) What were your views about this?

I had no view as I wasn't involved in the detail or know the individuals named.

- 294) Was it of concern to you that TIE staff did not understand the proposals being developed?

Yes, however, this was no different to the naivety I found with TIE staff throughout the contract.

- 295) What was done to address this?

I cannot comment as I was not involved in any of the detail.

#### **Remediable Termination Notices, etc.**

Between 9 August and 12 October 2010 TIE served ten Remediable Termination

Notices (RTNs) and three Underperformance Warning Notices (UWNs) on BSC.

The RTNs and BSC's responses are found at CEC02084518 to CEC02084529. The UWNs are CEC00378695, CEC00167342 and CEC00164758.

In response, BSC denied that the RTNs constituted valid notices, and, in some cases, also produced Rectification Plans.

296) What were your views on TIE's tactic of serving these notices?

I had no views on this as I was not aware of the conditions of contract. As previously mentioned, the contract documents were never passed to me either on a priced or un-priced copy.

297) To what extent did you understand TIE to have identified a proper evidential foundation for these notices before they were served?

As mentioned above, I had no access to the contract documentation so can't comment.

298) To what extent did you understand TIE to have taken legal advice on the validity and force of their notices?

For the reasons mentioned above, I cannot comment

299) To what extent had CEC scrutinised whether the notices were well-founded?

(See, e.g., Dave Anderson's email on 2 June, CEC00262124; and a draft email from Nick Smith, 12 August 2010, CEC00013658).

I would suggest Dave Anderson and Nick Smith are the best placed to answer this question.

You were copied in to information about the cost estimates under various scenarios for the project (such as terminating the Infraco contract and reprocuring the project to another contractor: e.g., CEC00056092 and its attachment CEC00056093, 9 September 2010).

300) What was your understanding of the work being done in assessing these costs?

I was not involved in these meetings so I cannot comment.

301) Who was involved in calculating these figures? Who was supervising it?

As above, I was not involved so cannot comment on who did the calculations.

302) How robust did you understand the calculations to be?

As previously mentioned, I was not involved in the meetings and cannot comment on the accuracy of the calculations.

Richard Keen QC and Carol Campbell appear to have given advice on clause 80.20 of Infraco which, in Nick Smith's words "*should assist in preventing Infraco from delaying works pending production of an estimate in certain circumstances*" (**CEC00012441**, 22 September 2010). Alan Coyle said "*Surely in this case 80.20 should be tested through DRP*".

303) What did you understand of this argument?

I had no view on this.

304) Was it tested? If not, why not?

I cannot comment on whether it was tested or not, Alan Coyle or Nick Smith would be best placed to answer this.

Detailed criticisms of TIE's organisation and management were brought to your attention in September 2010 (email from Ian Woodcock, 24 September 2010, forwarded to you on 4 October 2010 by Graeme Paget, **CEC00006664**). In response, in November 2010, you sought further information from Lynne Turner, who made further criticisms (**CEC00006664**).

305) What was your understanding of, and what were your views on, these matters?

The criticisms were not without foundation and I tried to resolve the points they made

306) To what extent had you previously been aware of matters of this nature?

There seemed to be a common thread on the criticisms of TIE and their style of

working and their dismissive approach.

307) To what extent prior to receiving these reports had you, or anyone else at CEC, sought to investigate TIE's organisation and management of the project?

From my knowledge, I was not aware of any other investigation into TIE's organisation or management style, however, there were quite a lot of verbal criticism of TIE from many quarters.

308) What was done to address the points raised by Mr Paget and Ms Turner?

From memory, I raised these matters with the Tram Project Director, Mr Stephen Bell.

309) To what extent did these issues reflect the fact that TIE as an organisation had not run a major infrastructure project previously?

This was the crux of the whole matter, TIE's lack of knowledge and experience in delivering a major infrastructure project was clear for all to see. Their management style was questionable and their naivety was evident. Once again, my thoughts on their performance focussed on the fact they were decent professionals in delivery of rail systems but were very weak on Road Regulations especially when it came to mitigating issues with stakeholders.

310) Were other matters of this nature brought to your attention? If so, what were they, and what was done about them?

As mentioned above, there were numerous adverse comments made against TIE and their management style.

The Project Director's report to the TPB on 21 October 2010 ([CEC00014055\\_13](#) onwards) noted that BSC had begun to cease work on several sites, in an escalation of the contractual dispute. It also noted that TIE had in recent weeks adopted a strategy of not launching further DRPs, but instead focused on the assertive management of the contract.

311) What was your understanding of the reasons for BSC standing down?

My view was fairly consistent in this matter, BSC were deploying tactics to frustrate the Client and make it very difficult for CEC to terminate the contract without facing a

huge financial bill and cause disruption to the travelling public in Edinburgh as well as having an adverse affect on shops and businesses.

312) What was your understanding of TIE's strategy and the reasons for it?

TIE's strategy on the face of it seemed to be a good one, however, they were up against a very commercially robust contractor who was very well aware of the tools to deploy to extract additional monies from the Client.

### **Adjudication Decisions**

A number of matters under the Infraco contract were referred to adjudication. Decisions were made in the following:

- 13 October 2009, Mr Howie QC, Hilton Hotel car park works (**WED00000026**)
- 16 November 2009, Mr Hunter, Gogarburn Bridge (**CEC00479432**) and Carrick Knowe Bridge (**CEC00479431**).
- 4 January 2010, Mr Wilson, Russell Road Retaining Wall Two (**CEC00034842**).
- 18 May 2010, Mr Hunter, Tower Bridge (**CEC00373726**) and (**CEC00325885**),
- 24 May 2010, Mr Coutts QC, Section 7A-Track Drainage (**TIE00231893**)
- 4 June and 16 July 2010 Mr Howie QC, Delays Resulting from Incomplete MUDFA Works (**CEC00375600**) and (**CEC00310163**)
- 7 August 2010, Lord Dervaird, Murrayfield Underpass Structure (**BFB00053462**)
- 22 September 2010, Mr Porter, Depot Access Bridge (**BFB00053391**)
- 26 November 2010, Lord Dervaird, Landfill Tax (**BFB00053475**)
- 15 December 2010, Mr Howie QC, Sub-contract terms (**BFB00053482**)
- 3 March 2011, Lord Dervaird, payment of preliminaries (**BFB00053489**)

56) To what extent, if at all, were these adjudications intended to establish principles of wider application, or provide guidance, in relation to the other matters in dispute?

Because of the numbering, I assume that these questions are meant for some-one else.

57) What was your understanding of the adjudication decisions?

Because of the numbering, I assume that these questions are meant for some-one

else.

58) To what extent did you understand these decisions to favour TIE or BSC (both on issues of principle, and on value)?

Because of the numbering, I assume that these questions are meant for some-one else.

59) What effect, if any, did you understand them to have on the strength of TIE's position when it came to negotiating with BSC to resolve the problems affecting the Infraco contract as a whole?

Because of the numbering, I assume that these questions are meant for some-one else.

60) How, if at all, did they affect TIE/CEC's strategy?

Because of the numbering, I assume that these questions are meant for some-one else.

Nick Smith of CEC instructed Shepherd & Wedderburn to review the adjudication decisions "*to confirm that TIE's summary is accurate from a legal perspective*" (9 November 2010, **CEC00005336**, **CEC00005337**).

The Action Note from the IPG on 24 November 2010 (**TIE00896575**) noted that

*"DRP adjudication review - noted Shepherd and Wedderburn to provide view on adjudication outcomes. Sense that TIE's presentation of decisions has been factually accurate but optimistic. View that on balance BB have likely had more success from legal perspective, with TIE more success on points of financial/engineering principle"*

313) What was your understanding of the reasons why CEC were taking their own

advice on the adjudications?

I had no view on this and left it to my SRO as I felt it was outwith my skills set.

314) What concerns, if any, did you have about the accuracy of TIE's reporting on the adjudications?

I felt there was enough information from TIE in the reporting, however, I didn't feel there was enough scrutiny on the various adjudications.

315) What, if anything, had been reported to CEC elected members about the outcome of the adjudications?

I'm sure the SRO, Mr Dave Anderson would have informed CEC's Elected Members of the outcomes.

316) To what extent, if any, had an incorrect understanding of the adjudications affected CEC's decision-making?

I don't feel suitably informed to form an accurate view on this.

The action note from the 27 October 2010 IPG (**CEC00012934**) noted that it had been agreed to prepare a first draft of a report to Council for 16 December 2010

*"with content to be drafted on the working assumption of a move towards termination (noting though that a full legal analysis to support a recommendation will not be available at this time)".*

The Action Note from the IPG on 24 November 2010 (**TIE00896575**) noted that

*"December Council report- direction of report to be revisited in the absence of clear legal position on termination in the time available and suggestion of mediation."*

The report to the IPG on 1 December 2010 (**CEC00013539**) noted:

*(\_2:) "Informal CEC legal opinion at the moment suggests that imminent termination will not be an option."*

*"Given the current impasse and significant consequences of the lack of progress, in tandem with the contractual approach, a mediation process has also been initiated by the Council in order to explore options for a settlement of the dispute with the consortium."*

- 317) What was your understanding of the reasons why:
- a) the working assumption had been for termination; but
  - b) that imminent termination was not an option?

I wasn't close enough to the decision-making process so don't feel competent to form a view on these two points.

- 318) What had prompted the move towards mediation?

Once again, I wouldn't want to mis-inform the inquiry so I don't feel competent enough to answer this question.

The report to the IPG on 21 January 2011 (**CEC01715625**) noted, \_7, that, CEC having taken independent legal advice (from Shepherd & Wedderburn, and Nicholas Dennys QC)

*"It became apparent that TIE Ltd and their advisers had not carried out a comprehensive assessment of the full factual matrix and supporting evidence and the grounds for termination prior to issue of the RTNs."*

*"The outcome of CEC's independent legal analysis was that termination on the basis of the RTNs issued by TIE Ltd was not advisable, on the grounds that:*

- *the RTNs were too vague and unspecific to enable termination (even if supported by the facts); and*
- *the full factual matrix supporting the allegations of default had not yet been properly investigated.*

*This advice was also supported by the subsequent opinion of McGrigors and TIE Ltd's QC, Richard Keen Q.C. following their own review."*

*"TIE Ltd have advised that McGrigors are continuing their investigation of the factual matrix with a view to establishing whether any valid grounds of termination exist. It is not anticipated that this work will be complete until late February 2011."*

*"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 which do not set out valid and specific grounds of termination. It was also clear from the documentation produced at the meeting*

*by Bilfinger Berger that the Infraco was extremely well prepared. That may well place them at a tactical advantage. However, there was a desire commercially and politically to move towards mediation notwithstanding TIE Ltd's (apparently) relatively weak tactical and legal position."*

- 319) What was your understanding of, and what were your views on, these matters?

At this point in time, I was transitioning out of any involvement in the Tram Project to fully concentrate on day to day job so don't have a view on this.

- 320) Why was there a desire to move towards mediation notwithstanding TIE's weak tactical and legal position?

It would be better for the SRO or some-one else in CEC to answer this question.

- 321) Why had there been a change of heart from the various other approaches that had been pursued over the preceding period?

From my point of view, it was down to frustration in TIE and CEC that there was no other approach to adopt and, in fact, this was the last chance to get some form of Tram system in Edinburgh.

In an email dated 30 November 2010 (not copied to you at the time), Nick Smith set out his own subjective thoughts on the project for Alastair Maclean (**CEC00013550**).

- 322) To what extent do you agree with them? Please explain your answer.

I feel that these are a fair summary of the position at the time as far as I can remember.

- 323) Please identify, and expand upon, those which you consider to have been particularly important for the cost and time overruns of the project.

All the points that Nick Smith raises are all equally important.

The email (**CEC00013550**) refers to "*Marshall's investigation into TIE*".

- 324) Is that **CEC02086414**, or is there any other investigation that comment might refer to?

The investigation that it refers to is **CEC02086414**

325)

The action note from the 27 October 2010 IPG (**CEC00012934**)

*"agreed that this was not the time for a lessons learned exercise however recognised that the Council report may provide opportunity to acknowledge some issues/general lessons learned (such as design, approvals, need for review of governance [relationship with TIE], review of delivery [build-in gateway reviews etc])".*

Andy Conway had noted key issues (reported in the report to the IPG on 27 October 2010, **CEC00012896\_4**):

- *"Complete the design prior to further procurement to fix project scope"*
- *Recognised Form of Contract (tested by multiple large scale projects rather than bespoke)"*
- *Completion of the utility works to avoid delays in construction (where possible)"*
- *Incremental delivery to have maximum control over expenditure"*
- *Contract Superintendence to ensure a quality product"*
- *Robust Operating Agreement between TIE Ltd/CEC"*

The Action Note from the IPG on 1 December 2010 (**TIE00896611**) noted that you and Dave Anderson were to pursue terms of reference for a "lessons learned" exercise between then and Christmas.

326) What work was done in that regard, and what were its results? Please supply any report that was produced.

I can't recall what work was done at that time and I have no report that was produced.

327) What are your views on Mr Conway's key issues noted above?

They are all very valid points that Andy Conway raises.

In an email dated 17 December 2010 (**TIE00891350**), Richard Jeffrey raised the issue of CEC approvals and their impact on delay and said

*"we need to be 100% certain of the position in regard to all approvals, and if we are acting unreasonably on any of them".*

328) What was your understanding of this issue (that is, the extent to which CEC

approvals were a cause of delay in the project)?

I strongly feel that CEC was not at fault in the Approvals process, CEC worked as efficiently as possible to return approvals at the earliest possible time and also resourced the Approvals process as best they could.

From memory, a lot of the information from the designed was not submitted timeously and/or information was not complete.

The Action Note from the IPG on 21 January 2011 (**CEC01715621**) noted:

*"View remains that the Council is still not receiving full information from TIE Ltd despite pursuing 'one family' approach. Agreed that going forward the project governance arrangements need simplified and the authoriTIEs given to TIE Ltd require review. TIE Ltd's project management capability will also be revisited"*

329) What was your understanding of, and what were your views on, these matters?

As the note suggests, I felt there was still a lack of information being received from TIE despite the "One family" approach.

The TPB minutes for 15 December 2010 (**TIE00897052**), item 3.2, noted that "*Extension of the project budget beyond £545m will require full Council approval.*"

A letter from Brian Cox (the interim chairman of TEL) to you dated 17 January 2011 (**CEC01715625\_13** (an appendix to the January 2011 IPG report)) advised that:

*"we are now nearing a point where the Council may breach the terms of its funding agreement".*

The letter proposed certain arrangements to ensure TEL remained within the £545m funding cap.

The January 2011 IPG report noted (**CEC01715625\_4**) that the approach suggested in TEL's letter had been described by the Council's legal advisors as "*unlikely to be acceptable*".

A letter from Mr Cox to you the following day (**TIE00081663**) noted that the "*short term actions*" outlined in the letter of 17 January were "*not sustainable beyond March 2011*" and requested an increase in TEL's delegated authority to make financial commitments exceeding £545m.

The TPB minutes for 12 January 2010 (**TIE00897058**) noted (item 8) that Mr Cox would write to the new council chief executive expressing concerns about the

12 January  
2010 should be  
12 January  
2011

existing governance arrangements and the authority of the TPB.

The TPB minutes for April 2011 (**TIE00897056**, item 3.9) noted pressure on the budget, that "*funding matters were debated in detail by the Board*".

330) What was your understanding of all of these matters?

As my input to the Tram project was effectively at an end I have no view on these matters.

331) What governance steps would have had to be taken for the approved funding of £545m to be increased? Would the matter have been put to the CEC full Council?

My Finance colleagues or Legal colleagues would be best placed to answer this question.

332) Was that considered? If not, why not?

I cannot comment on this.

333) To what extent was it a factor in the timing of the mediation that funding was about to run out?

I have no knowledge of the mediation as I wasn't involved.

334) What was the nature of the detailed debate on funding matters at the April TPB?

I wasn't involved at this meeting so cannot comment.

335) What were the governance concerns about which Mr Cox was to write to the chief executive?

I have no knowledge of this.

## **Carillion Claims**

You were involved in approving settlement of claims by Carillion under the MUDFA contract.

336) Why were you involved in approving these claims? Was it to meet the requirements of clause 2.24 of the TIE operating agreement (CEC01315172)?

That is my understanding.

337) Were you involved in approving any other claims under other tram project contracts? If so, what ones?

Not to my knowledge.

338) Please explain in overview how you satisfied yourself that any such claims should be approved?

I would have spoken to all those concerned, mostly Andy Conway, Alan Coyle and Nick Smith to ensure that the claims were justified.

339) Did you have any concerns? If so, what were they, and how were they addressed?

No.

The MUDFA settlement agreements included:

- **Settlement agreement dated 19 and 23 March 2009, (CAR00000243).** TIE agreed to pay Carillion £1,050,000 in respect of delay and disruption between October 2007 and 30 September 2008 and £150,000 for measurement items. The factors causing delay and disruption were listed as: "*Number and extent of unidentified services encountered, Design delivery, Resolution of technical queries, Carillion production inefficiencies [and] Traffic Management arrangements*".
- **Exit agreement dated 11 December 2009 and 13 January 2010, (CAR00000145).** Carillion were treated as having completed the MUDFA works on 4 December 2009; TIE granted Carillion an extension of time to that

date and waived any claim for damages for alleged delay leading up to it

- **Settlement Agreement dated 10 November 2010, (TIE00094413).** This fully and finally settled certain claims between the parties under the MUDFA contract. TIE agreed to pay Carillion an additional £5,824,000.

## **Mediation, Settlement and Operation of the Project thereafter**

Following mediation in March 2011, the parties ultimately resolved their dispute with a settlement agreement signed in September 2011.

340) To what extent was the resolution of the dispute attributable to Sue Bruce, who had become the new chief executive of CEC in early 2011?

I cannot comment on this as I had no involvement in the Tram Project at this time.

341) Why had the steps taken to resolve the dispute at and following the mediation not been taken earlier?

The best person to answer this would be Dave Anderson and/or Tom Aitchison.

342) To what extent was resolution of the project disputes your responsibility as Tram Monitoring Officer?

None, this was not in the remit for the TMO.

343) What role, if any, did you have in the preparation for, and conduct of, the mediation which took place at Mar Hall in March 2011?

No role and no attendance at Mar Hall.

344) What is your understanding of the basis on which agreement was reached at the mediation on a price of £362.5m for the off street works?

The SRO would be best placed to answer this question.

345) What role, if any, did you have in the negotiations following the Mar Hall mediation, leading up to the conclusion of the settlement agreement in September 2011?

None, my involvement with the Tram project had finished.

346) What is your understanding of the basis on which agreement was reached in the settlement agreement on a target sum of £47.3m for the on-street works (CEC02085627, CEC02085628, CEC02085642)?

I have no view on this.

347) Did you form any view on whether or not the settlement reached between CEC and BSC at and after the Mar Hall mediation represented a good deal for CEC?

As previously mentioned, my involvement with the Tram project had finished by this time.

348) If so, what was your view? Please explain why you came to that view.

Not applicable

349) What was your role in the project after the Mar Hall mediation?

I had no role in the project after Mar Hall.

350) In broad overview, how did the project progress after the Mar Hall mediation, with particular regard to:

a) Design – its completion, and the obtaining of all relevant approvals and consents;

Not applicable.....I had no responsibility or involvement in the Tram project.

b) Change: the extent of it, the reasons for it, the contractual change procedure, and its impact on time and cost;

Not applicable.....I had no responsibility or involvement in the Tram project.

- c) Utility conflicts: their existence, the parTIEs' reaction to them, and their impact on time and cost;

Not applicable.....I had no responsibility or involvement in the Tram project.

- d) Differences and disagreements between the parTIEs: the extent to which these arose, how they were addressed and how they were resolved; and their impact on time and cost.

Not applicable.....I had no responsibility or involvement in the Tram project.

351) What, in your view, explained any improvement?

Not applicable.....I had no responsibility or involvement in the Tram project.

In June 2012 you were copied in to emails about remedial works on Scottish Water assets on and around Leith Walk (e.g., CEC01934415).

352) What is your understanding of the nature of the remedial work that was needed, and why it was needed?

I haven't got a view on this.

353) To what extent is remedial work to utility diversions still required (e.g., in and

around Leith Walk)?

I left the employment of CEC in 2013 so don't have an understanding of this

354) To what extent was utility diversion work carried out between York Place and Newhaven sufficient for that route to be ready for installation of tram infrastructure?

I don't have enough detailed knowledge of this form an accurate answer.

#### TIE

In relation to TIE:

355) To what extent do you consider TIE to have been responsible for managing and co-ordinating the different contracts and works (including, in particular, the design, utilities and Infraco works) and the interfaces between these contracts and works?

TIE were fully responsible for these activities.

356) Which body or organisation do you consider was ultimately responsible for ensuring that the contracts and works were properly managed, including the interface between the different contracts and works?

TIE.

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

Yes.

#### CEC

In relation to CEC:

358) How were important matters relating to the tram project reported by TIE to CEC (including by whom and to whom)?

They were reported formally by TIE through the Tram Project Board. If there were

any day to day important matters it tended to be done verbally between the SRO, Mr Dave Anderson and TIE CEO, Mr Richard Jeffrey.

359) How were the views and requirements of CEC fed back to TIE?

Through the Tram Project Board.

360) How did CEC exercise control over TIE?

With a very light touch initially however, this changed through time.

361) Did they have sufficient control over TIE? Please explain your answer.

It appeared not, TIE seemed to think they were a law unto themselves and thought they had complete autonomy and powers to deliver the Tram Project in Edinburgh.

362) Did you have any concerns at any stage in relation to the performance of senior CEC officials or councillors?

No.

363) To what extent was full and accurate reporting to councillors inhibited, e.g. by

a) the need to avoid undermining TIE's commercial position

This is hard to determine, although there was definitely an impact to say how much information could be relayed to Councillors,

b) the uncertainties affecting the project

i) whilst the contracts were being negotiated and

ii) whilst the disputes were live?

This proved to be very difficult as this was quite a common and frequent issue.

364) Were there any other factors which inhibited full and accurate reporting?

Not that I can think of.

### **Tram Project Board**

In relation to the Tram Project Board (TPB):

- 365) How were important matters relating to the tram project reported by TIE to the TPB (including by whom and to whom)?

These were done through the TPB, however, I am sure there would have been some dialogue before meetings between the SRO, CEC's CEO and TIE's CEO. The names I have mentioned before ie Dave Anderson, Tom Aitchison and Richard Jeffrey respectively.

- 366) How were the views and requirements of the TPB fed back to TIE?

Through minutes of the TPB.

- 367) How was information supplied at the TPB relayed back to CEC?

Through minutes of the TPB, however, if anything needed to be raised urgently this would generally be done verbally by Dave Anderson to Tom Aitchison.

- 368) Did you have any concerns at any stage in relation to the performance of the TPB or any members of the TPB?

No.

### **TEL**

In relation to TEL:

- 369) How were important matters relating to the tram project reported by TIE to TEL (including by whom and to whom)?

I had no involvement in TEL so cannot answer this question.

370) How were the views and requirements of TEL fed back to TIE?

As above, I had no involvement in TEL so cannot answer this question.

371) Did you have any concerns at any stage in relation to the performance of TEL or any senior management of TEL?

As above, I had no involvement in TEL so cannot answer this question.

### **Transport Scotland**

In relation to Transport Scotland (TS):

372) How were important matters relating to the tram project reported by TIE/CEC to TS (including by whom and to whom)?

I did not get involved in any dialogue or meetings with TS, this tended to be done by Dave Anderson to TS staff.

373) How were the views and requirements of TS fed back to TIE/CEC?

The relationship tended to through the SRO, Mr Dave Anderson.

374) Did you have any concerns at any stage in relation to the performance of TS or any senior officials of TS?

No.

At the TPB on 9 August 2007, it was noted that Transport Scotland had advised of their intention to resign from the TPB in anticipation of new governance arrangements (**CEC01561047\_5**, at 2.1; see also 3.9.1).

375) What was your view of TS's decision to withdraw from participation in the TPB?

It appeared to me that this was a political decision and that TS officers did not want to get close to a project which showed the signs of failing, badly.

376) What was your understanding of why that occurred?

I think they wanted to protect their professional reputation.

377) What impact, if any, did it have on the governance of the project?

Little impact as I could see.

### **Scottish Government and Ministers**

In relation to the Scottish Government (SG) (including, in particular, the ministers involved in the project):

378) How were important matters relating to the tram project reported by TIE/CEC to the SG (including by whom and to whom)?

I wasn't involved in any communication with SG, this tended to be done through Dave Anderson or Tom Aitchison.

379) How were the views and requirements of the SG fed back to TIE/CEC?

I think verbally and through copies of minutes.

380) Did you have any concerns at any stage in relation to the performance of the SG or individual ministers of the SG?

I had no direct involvement so can't comment.

### **Project Management, Governance and Contractors**

#### **Governance Arrangements**

381) What were your views on the governance arrangements for the tram project including, in particular, their effectiveness and fitness for purpose?

As previously mentioned, I thought that they were cumbersome although they did improve through the duration of the contract in my opinion.

382) Did you have any concerns at any stage in relation to the governance arrangements?

Not formally although I fed back my thoughts to the SRO.

383) Do you consider the respective roles, responsibilities and reporting requirements of the different bodies involved in the management and governance of the project were sufficiently clear?

Not really.

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

TIE.

A draft paper circulated by Alasdair Sim on 10 March 2011 ([TIE00787343](#), [TIE00787344](#)) set out (in section 9) certain criticisms of the governance arrangements.

385) To what extent do you agree with those? Which, if any, had a significant impact on the project?

I would agree with Alasdair Sim's points.

### **Contractors**

In relation to the main contractors involved in the tram project:

386) Did you have any concerns at any stage in relation to the performance of any of the main contractors, or the senior personnel employed by these contractors?

Yes.

387) If so, what were your concerns?

My main concerns lay around the dis-regard they had for the shops, businesses and

citizens of Edinburgh. Also, their poor attention to constructing to specification in the contract and their very aggressive commercial position.

I wasn't close enough to individuals to have any comment, adverse or otherwise.

### **Governance Changes following Settlement Agreement**

Following the mediation at Mar Hall, the governance structure of the project was changed. The proposals are discussed in the reports to Council in June and August 2011, and the proposals in the August report were approved.

See:

- June 2011 report to Council, 3.81 to 3.99, **CEC01914650\_41**, and appendix 2 (**CEC01914650\_51**);
  - Decision: to instruct the Director of City Development to report in the autumn on revised governance arrangements (minutes, **CEC02083232\_24**);
- August 2011 report to Council, 3.45 to 3.65, **CEC01914650\_74**, and appendices 1 and 2 (\_85 to \_87);
  - Decision: to agree to the revised governance arrangements (minutes, **CEC02083194\_4**)
- A paper to CEC Audit Committee dated 26 January 2012 (**TRS00019622**), which set out the new project governance arrangements in detail (see in particular paragraphs 3.2.3 to 3.2.9, and the governance structures set out at Appendix 1).

388) What was your understanding of the changes and the reasons they were being made?

My involvement in the Tram Project had terminated by that time so I cannot comment on the above papers and decisions made.

389) What view, if any, did you have about those changes?

Once again I had no involvement in the Tram Project at this time so my comments would be irrelevant in my opinion.

390) Which of the changes did you consider to be particularly important for improving project governance? Please explain your answer.

Once again having no involvement in the Tram Project I had no view on governance changes.

The proposals included a change in the role of the Tram Monitoring Officer. Paragraph 3.96 of the June report stated:

*"In light of the new approach, the role of the Tram Monitoring Officer will also change. The role will be more closely aligned to that of the Independent Certifier, and have a more active organisational role on the Joint Project Delivery Group. This role will now be undertaken by the Council's Traffic and Engineering Manager."*

In the August report, it was stated (3.53) that:

*"It is proposed that the Council's Traffic and Engineering Manager will fulfil the role of Project Manager, on a full time basis."*

391) What was your understanding of the change made to the TMO role?

The understanding I had of the new TMO role was to meet my previous concerns about the role ie at the initial outset of the project the TMO role was underestimated. I am not sure who made this decision or recommendation as it was before my time of employment in the City of Edinburgh Council.

392) Who performed that role after the August meeting?

This role was performed by Mr Bob McCafferty.

393) Do you have any comments about the change made in that role?

I felt that this change to the role and the appointment of Mr McCafferty was for the benefit of the Tram Project and the consequential flow of information to the CEO and Elected Members alike.

The reports noted concerns about conflicts of interest faced by elected members who served on the boards of TIE and TEL.

394) What was your understanding of that problem?

It was certainly a difficult position that some Elected Members found themselves in however, I cannot comment accurately on this as I feel that it would be better answered by the relevant Elected Members on both board.

395) To what extent, if any, had it affected project governance previously (including the work of the Tram Project Board, which was a committee of the TEL board)?

I cannot comment on this as I was not close enough nor knew the roles and responsibilities of the TEL board.

396) What lessons do you consider could be taken from the governance of the Edinburgh project, which could usefully applied in the governance of local authority tram projects in the future?

My views on this are as follows:-

- At the outset of any such complex project I would suggest that additional forward planning be made at the start. This should not be under-estimated, in any complicated project planning and programming at the earliest possible time is essential.
- Clear roles and responsibilities and terms of reference should be made clear to all participants.

## Bonuses

The minutes of the TIE board meeting on 3 July 2008 (CEC01282131) noted (para. 11) that the remuneration committee had approved the Executive Chairman's bonus for the first half of 2008 and the bonus arrangements for the second half of 2008. It was also noted that "*a report on bonus recommendations is to be produced for the Tram Monitoring Officer later in the year*".

397) What did you understand the TIE bonus arrangements to have been in 2008?

I had absolutely no knowledge of any bonus or remuneration to TIE's employees as this was kept strictly confidential by the remuneration committee in CEC.

398) To what extent, if any, were they linked to financial close in 2008?

Once again I was kept completely in the dark about any bonuses or remuneration to TIE employees so cannot comment on this issue.

399) Did you have any concerns about them and, if so, what was done about those concerns?

As before, I cannot comment on this as I had no knowledge of the monies involved.

400) What report, if any, was made to you about bonuses? Please supply a copy of any such report. What did you do with it?

No report was made to me on this subject matter and as such I have no copy to supply.

## **Impact on Public**

401) What role (if any) did you have in dealing with the effects on the public and other stakeholders of the delays in the project?

None.

402) Can you describe in overview what those effects were?

TIE officials would be better placed to answer this question as I had no interface with the public or external stakeholders.

403) How might they have been avoided?

I have no comment to make on this as it would purely speculative,

See, e.g., TIE00886913, CEC00665496, CEC00905274, CEC00668049, CEC00588849, CEC00588850, CEC00276503, CEC00223555, CEC00005673

## **General**

404) To what extent do you consider CEC to have had the necessary resources and experience for the role it played in the tram project?

I felt that CEC totally under-estimated design, interface and reporting resources for this project. In hindsight this is a very easy conclusion to come to. If there had been a more "intelligent" client in the form of TIE and a contractor who wasn't totally driven for commercial purposes the result could have been much different.

405) To what extent do you consider it now to have the necessary resources and experience to perform a similar role in future projects?

I cannot comment on the above as I have been away from the City of Edinburgh Council for over four years.

406) To what extent has CEC had experience (whether before or since the tram project) of engagement in projects comparable to the tram project?

None that I am aware of.

407) Can you identify up to five of the most closely comparable projects in which CEC has been involved (giving an indication in overview of their similarity to the tram project, in terms of value, complexity and subject matter)?

Unfortunately I don't have any knowledge on any comparable project that CEC has been involved in since the Tram Project.

408) To what extent do you consider that Councils (with their need to report to, and have decisions taken by, a body of elected members with potentially differing political interests) are equipped to run, manage or otherwise play a significant role in the governance of major infrastructure projects such as the tram project?

I feel that Councils do have the necessary skills set to manage such projects.

However, it is also essential that the Elected Members are supported by Chief Officials who have gained significant contract management experience and have delivered major infrastructure projects in the past.

409) By way of final thoughts:

a) How did the Edinburgh Tram Project compare with other comparable projects you have worked on (both previously and subsequently)?

It is very hard to compare as I have not worked on any other project to this size, complexity and magnitude.

b) Do you have any views, beyond those expressed above, on what were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?

Apart from the views already expressed my main reasons are

- Poorly drafted contract
- The client (TIE) under-estimated the business tactics of a very robust commercial contractor who used whatever tools he could to extract money from the Client.
- The necessity to have a clearly costed design before going out to contract ie design development was one of the reasons for costs and programme overruns.

c) Do you have any comments, with the benefit of hindsight, on how these failures might have been avoided?

Better planning and programming in the early stages of tender preparation. I would also suggest early contractor involvement to get an idea of risks associated with the contract.

d) What lessons have you learned for future projects of this type?

Have good support staff around about you. In addition, ensure that site supervision is as comprehensive as possible and to ensure records are kept up to date.

I suppose the main lesson I learned was the need to undertake full due diligence on any contractor appointment especially if they have a track record on delivery on similar projects in the past.

410) Are there any final 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?

No.

**Terms of Certificate**

I confirm that the facts to which I attest in the answers contained within this document, consisting of this and the proceeding 91 pages are within  
(insert number)

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 31/7/17

## **Adjudication Decisions**

A number of matters under the Infraco contract were referred to adjudication. Decisions were made in the following:

- 13 October 2009, Mr Howie QC, Hilton Hotel car park works (**WED00000026**)
- 16 November 2009, Mr Hunter, Gogarburn Bridge (**CEC00479432**) and Carrick Knowe Bridge (**CEC00479431**).
- 4 January 2010, Mr Wilson, Russell Road Retaining Wall Two (**CEC00034842**).
- 18 May 2010, Mr Hunter, Tower Bridge (**CEC00373726**) and (**CEC00325885**),
- 24 May 2010, Mr Coutts QC, Section 7A-Track Drainage (**TIE00231893**)
- 4 June and 16 July 2010 Mr Howie QC, Delays Resulting from Incomplete MUDFA Works (**CEC00375600**) and (**CEC00310163**)
- 7 August 2010, Lord Dervaird, Murrayfield Underpass Structure (**BFB00053462**)
- 22 September 2010, Mr Porter, Depot Access Bridge (**BFB00053391**)
- 26 November 2010, Lord Dervaird, Landfill Tax (**BFB00053475**)
- 15 December 2010, Mr Howie QC, Sub-contract terms (**BFB00053482**)
- 3 March 2011, Lord Dervaird, payment of preliminaries (**BFB00053489**)

56) To what extent, if at all, were these adjudications intended to establish principles of wider application, or provide guidance, in relation to the other matters in dispute?

I had no view on these adjudications as they were out-with my sphere of influence and was not asked by my SRO or Chief Executive for my opinion.

57) What was your understanding of the adjudication decisions?

As mentioned previously, I formed no view on the adjudications as I was not involved in the decision-making process or asked for my personal opinion.

58) To what extent did you understand these decisions to favour TIE or BSC (both on issues of principle, and on value)?

I was not asked for my opinion on these decisions and, given that my previous experience was not in this field, any opinion I could have offered would have been totally subjective and without any professional knowledge.

59) What effect, if any, did you understand them to have on the strength of TIE's position when it came to negotiating with BSC to resolve the problems affecting the Infraco contract as a whole?

I was not involved in any negotiation with BSC and was not asked for my opinion to assist TIE in formal negotiation so unfortunately do not have any further comment to make.

60) How, if at all, did they affect TIE/CEC's strategy?

As mentioned before, I was not involved at this level of decision-making so unfortunately feel unable to offer any professional view on this.



16/8/17.