

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: Iain WHYTE

Dated:

**THE EDINBURGH TRAM INQUIRY**

**Witness Statement of Iain Whyte**

Statement taken by Raymond Gray

My full name is Iain Whyte. I am aged 49, my date of birth being [REDACTED]

My contact details are known to the Inquiry.

I am currently a Councillor with the City of Edinburgh Council (CEC) and a Board member of the Scottish Police Authority.

Statement:

**Duties and Responsibilities**

- 1) It would be helpful if you could set out the dates you served as a Councillor, the Ward you represented, the political party (if any) you were a member of and any positions in CEC you held (e.g. membership of committees, Group Leader etc.)?

I have been a Councillor from 1995 until now. I am a member of the Scottish Conservative party and was elected from that party. I was Group Leader between April/May 2002 until the start of May 2010. During that period I did have some input on the Trams as a Group Leader. I do not think I was on the Transport Committee at any point during that period. I had been much earlier, between 1996 and 2000, but not at that period. Ward boundaries have changed a bit over time, but primarily I was the Councillor for Craighleith Ward then latterly Inverleith.

- 2) Were you a member of the Tram Project Board, TIE Ltd or TEL Ltd? If so, please provide dates.

No, I was not at any stage a member of any of them.

- 3) Do you consider that you, or other Councillors, had any relevant qualifications or experience that assisted when taking decisions relating to the Edinburgh Trams Project?

I am not sure about others. We are all elected on a broad basis from the public. So, in that sense we are non-executives, but not expert non-executives. Our duty is to look at things in the best interests of the city, taking appropriate advice from our Executive Officer team and outside external experts as and when necessary.

- 4) Did you receive any training or guidance in that regard?

I did not specifically receive training with regard to trams. We received training and guidance when we first became Councillors which is periodically updated post-elections, but that is of a general nature. For instance, I have undertaken Audit Committee training at different stages and other training about Councillors' responsibilities and duties.

- 5) Do you consider that any such training and guidance would have been helpful?

It is a bit of a hindsight question, it is very difficult to say. There is a lot of stuff about the work you do as a Councillor where you are somewhat reliant on officers providing you with appropriate information and explaining technical terms. Some training around evaluating that in general terms is useful, and as I said, we had some of that as new Councillors. Some of us who wanted to be involved found out a lot through going to meetings and briefings.

We also went on a trip to Dublin to see how they went about their Tram project. You also do your own reading and research around things as well, especially since the advent of the Internet.

- 6) If you were given some training was it sufficient to enable you to fully consider the issues relating to the Tram project that were brought before the Council? If not, what was missing?

What you have to remember here is that in terms of the specific decisions brought before the Council, they were all decisions at a strategic high level. There is an expectation that with the fine detail, whether it is contractual stuff the lawyers are doing or detailed engineering, TIE will have hired appropriate expertise, certified engineers etc. Much the same as a building project on your own house. In those aspects you hire a certified expert.

It is entirely a hindsight question. There are documents you have shown me that I had never seen before. There are things that had I known about, I might have asked questions, but I did not and I do not see how I could have been expected to know.

It is not uncommon to be presented with something which we may not have a full understanding of but you build up knowledge over a long period of time. You also question when you have a limited understanding in order to improve your knowledge. You also have to bear in mind that, as a political party, you come with a set of broad strategic policies and you are looking for Officers to assist you in providing the details that allows them to be implemented. It is the same as a Government Minister who relies on the Civil Servant to help them implement the policy.

- 7) Did the fact that not all members/political parties supported the Tram project cause any problems or difficulties (and, if so, in what way)?

I do not know if that question is specifically aimed at my group, but there was a strong debate within our political group as to whether we should support the project. There were various reasons for that and in the end we did support it. One member, Kate McKenzie, did not want to support it but the group voted to support it and once the group takes a decision, in normal circumstances, they all abide by that, however she then abstained on the vote in the Council, which caused particular problems within the group.

In relation to other political parties, from recollection, but it does depend on what time we are talking about; there was only Steve Cardownie, the SNP Councillor, who opposed things. That caused questioning, but there was a great deal of questioning in any case, because we had a heated debate in our group. I think in some ways we, as a group, probably questioned and challenged a bit more than some other groups at various stages, but that is the nature of something like this where there is a lot of commercial and political decision making.

### **Initial Proposals (2000 to 2006)**

- 8) Who did you understand to be responsible for the decision to create TIE in 2002? What did you understand as being the main reasons for the creation of TIE?

I believe the Council decided ultimately to create TIE, but it came to us as a firm recommendation from the Council Chief Executive, Michael Howell, and his team at TIE and specifically the City Development team. As I recall, there were appropriate reasons set out. There was a lot of debate at that time about if we went ahead with the project, how we would structure the different stages. We looked at what Dublin had done, as I have said, and what other places had done. Dublin had taken on the utilities work and then

found they could not start their contract for tram construction until much later. There was a feeling that if we set up a special purpose vehicle to do it, it could manage all the different stages of the process. Another major issue was the lack of sufficient officer expertise within the Council particularly in relation to knowledge of tram construction.

There was a team in the Council who managed the roads and other transport infrastructure but they were of a certain size and were already working full time. There was a need to bring in additional people and it was seen that the best way of doing this was to bring them into this special purpose vehicle. They were not to be permanent Council employees with and you could go outwith local Government terms and conditions. For instance, if you needed an engineer at a set salary that was outwith the Council's salary bands then you could buy that expertise in if you were doing it through an arm's length company.

It was also a bit about project oversight. Part of having a strong TIE team meant there would be Councillor and Officer representation on an independent Board of Directors. So, both shareholder and stakeholder representation, but also allowing them to bring in independent non-executives to oversee any work that the company was doing and question from an expert point of view.

- 9) What were your views on the creation of TIE to deliver the various projects forming part of the Council's New Transport Initiative, including the Edinburgh Trams Project? What was your understanding of how CEC would, and did, exercise control over TIE? Did you have any concerns in relation to these matters?

I have just covered most of that. There were other aspects talked about in the New Transport Initiative, but ultimately the primary work came down to trams. That is where the funding was and that was the big change that was taking place. It was maybe not envisioned to be that way but, ultimately, TIE was curtailed to trams.

CEC exercised control over TIE by putting people on the Board, but there was also a reporting relationship to our Senior Officers, to the Chief Executive, Tom Aitchison, and somebody from City Development. I think later on Donald McGougan was on the TIE or Tram Project Board and there was a direct reporting relationship there. It was my understanding there would be some parameters and instructions given to TIE through that. For instance, Tom Aitchison was given delegated authority to let TIE sign off contracts. There was that kind of relationship, but for major strategic decisions they had to come back to Council for permission and they had to come back to Council for funding as well.

I cannot remember having any concerns in relation to these matters. I know I had conversations with Tom Aitchison about the detail of how it would work in practice. I probably had some political concerns, as Opposition Group Leader, about whether or not having TIE could potentially mean there was a company reporting things that might be communicated to the Council but not to us, as councillors. We may have had discussions around that. I cannot remember if we moved any amendments on any of this though.

If we did do things around this or if we did question TIE very publicly, then it will be on the Council record, because as an Opposition group, when we fundamentally disagreed with

something, we were keen to get an amendment down in the Council meeting or a Committee meeting to show what we had said about it

- 10) Various Draft Business Cases and STAG (Scottish Transport Appraisal Guidance) appraisals were produced between 2002 and 2006. Did you have any views on these documents including, for example, the various estimates for the project and the allowance for risk?

I had views on them. They were primarily about the increasing size of the estimates. Along with colleagues in my group I had concerns about some of the construction cost estimates and whether we were building something that was worthwhile. Over that period members of the public raised various questions over the costs with me. We (councillors) then received helpful and generally reassuring responses. I would not say I fundamentally considered the issue of risk at that stage because the aim was always to get to a position where we knew what we were building, what the cost was going to be and that it would be relatively fixed. I always had the view that we would make a decision about risk and cost, much nearer to signing a contract, and the cost benefit ratio was positive for the main aspects. I saw wider benefits to the development of the city that I think we are now struggling with because the tram line was limited so I am not sure I considered risk in detail specifically at that stage.

I would say I was concerned at the Business Cases and appraisals, and the way they moved. Also the degree to which there was inflation in the project. It seemed very large from one intonation to the other. I was saying to Tom Aitchison, and others, to attempt to do everything they could to keep that under control.

By that I mean there was an early estimate of £375m that became £450m, I think. By the time we got to contract close it was £498m but it then turned out to be £512 million. It was going from the £375m up to the next one, that I suppose it made me challenge Officers to attempt to keep that as under control as possible.

- 11) A member of the public, Alison Bourne, emailed every Councillor on 10 December 2003 noting that the costs contained in the report to council that members were being asked to approve that day, **(CEC02082850)** (£473.4m), differed from the costs, as detailed in STAG 2 (page 71 for line 1; and page 88 for line 2) and Financial Statement (£566.7m). Did the concerns raised by Alison Bourne cause you concern as to the reliability of the estimates you were being asked to approve and if so, what was done in response to these concerns?

I could not quite remember this, but I knew Alison Bourne raised all sorts of questions throughout the various stages so I looked for my own emails around this. I found some emails to and from Alison from 2004, but not 2003 I am afraid, so I cannot find what I actually said to her. She was a constituent of mine in Craigleith and my initial understanding of why she became involved was because of phase 1B and the fact it went along the back of her garden. To some extent I took what she was saying as being one of a group of protesters who did not want line 1B to go ahead. I have a vague recollection that there was some sharing of this and I think I asked Officers about it face to face or over the phone. This was a discussion that Andrew Burns had with Barry Cross and he was looking for an answer. My understanding was that I think we received an answer prior to the meeting. It explained the difference and it seemed a reasonable explanation at the time. My recollection is that Andrew then circulated it back to Alison Bourne, but I do not have my emails to show that.

- 12) How important a component was the income from road charging to the financing of CEC's proposals under the New Transport Initiative including the tram network? Were Councillors concerned about the affordability of the project without this income? Where was the alternative funding to come from?

The road charging proposal went out, and I have probably still got documents up in the office that show this, with the proposal that changed all the names of the lines. The route to the new Royal Infirmary was to be funded from road charging. So, they were talking about a different funding mechanism for all of the rest. Subsequently, of course, the Government came in with £375m and said they would pay 90%. When the costs went up they said they would still pay 90% or 91% of the full cost. So we were not concerned about the affordability of what was being proposed because of the lack of road charging income.

There was a political issue here, because the then Labour administration had structured things in such a way that one of the most profitable and most useful lines, the route to the new Royal Infirmary, the Bio Park and all the rest of it, was only fundable if you had congestion charging. In effect, it was the 'carrot' to make you accept the 'stick' in the political push for congestion charging. We were against congestion charging on the principle of the way it worked.

Effectively, there was not alternative funding, and line 3 to the Royal Infirmary was not taken forward to the Parliamentary Bill.

- 13) The Council decided in January 2006 to build the tram network in phases, with a first phase to be built from Edinburgh Airport to Leith Waterfront. What was your understanding of the reason for that decision and what were your views?

I would have to go back and check all the dates, but assuming the dates are correct, we had a funding envelope and it was about what we could achieve within it at that stage. The Airport to Leith Waterfront was picked for a number of reasons, one being that it was linking development areas of the city with the city centre. Leith Waterfront was further ahead on house building than Granton Waterfront. The Airport is an area of growth; the line goes past the Gyle which is an area of growth. The Royal Bank of Scotland was about to be completed and there were plans that that area might develop as a business hub around the Airport. All of this linked up as appropriate business and development areas, and Granton was taking a bit longer, so waiting to make a decision on Granton 1B line was appropriate at that stage.

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

As I have said before, at this stage, it was probably causing concern about inflationary costs on tram building generally. I asked questions at different stages about cost per km comparisons with other places and was given answers that seemed to show we were still in the same ballpark as some of the schemes in France or Nottingham or Sheffield. So, in that sense we did not seem out of the ordinary, but at the same time there was general cost inflation in the building, construction and civil engineering industry and that was having an effect.

I was keen we get to contract sign off as soon as possible in order to limit cost inflation and fix the price.

In one sense I wanted 1B to go ahead because while I had constituents who were against a tram running up the former railway corridor, I could see that if the developments that were proposed for Granton Waterfront went ahead it would generate a lot of traffic and there was no transport infrastructure to get those people into town. Of course, in hindsight, this was 2006 and by 2008 there had been the financial crash and there was no prospect of these developments going ahead for a while.

- 15) An Office of Government Gateway (OGC) Readiness Review was carried out of the Tram project and a report of the review was delivered to the Chief Executive of TIE on 25 May 2006 (CEC01793454). The overall status of the project was assessed as "Red" (meaning "To achieve success the project should take action immediately"). Were members or group leaders aware of that report? Did the report cause you any concerns and, if so, what did you do in light of any such concerns?

I can categorically tell you that I have not seen that report before. I think if I had I would have had some considerable concerns. I cannot recall a discussion about a Gateway Review. All the discussions we had were on updates to the outline Business Case and the STAG appraisals, which by that stage were going through significant Parliamentary scrutiny. To some extent, all of that detailed scrutiny was done by Parliament rather than the Council, unless there was further work done by the Transport Committee. As a councillor, I would expect the Transport Committee, Tram Project Board or a TIE Board to carry out detailed scrutiny of things and report to Council or through the Chief Executive. The Chief Executive would then raise with us, as Council, any major concerns, but I do not recall anything of this nature coming before us.

16) On 20 September 2006, a member of the public, Richard Bourne, wrote to TIE (TIE00472106) expressing concern that SDS were soon to finalise the detailed design and given the very tight timescales involved, residents would not have the opportunity to comment on mitigation measures such as noise control nor for changes to be made. You asked to be copied into the response sent to Mr Bourne in which TIE appeared to state that there would be scope for change to the detailed design. At that time, when did you understand that detailed design for the final scheme would be completed, and no longer subject to changes?

I cannot remember a date, but my understanding was that they were moving swiftly towards detailed design. We did not sign off until 2008, and this was 2006. 2008 was a bit late and my recollection was that we wanted a detailed design at the point of contract sign off, or as much of a detailed design as could be done.

Having read that draft, I was probably reassured that Richard was getting his chance to talk about noise mitigation measures, which was the primary issue he came to me about. That was as a constituent, that is what I was concerned about, and hearing that the design was coming to completion and would stop further change was, in terms of the overall project, probably reassuring because once the design is fixed it is much easier to price. As it turned out that process took much longer.

17) On 4 December 2006, you were copied in on an email from Mark Clarke (TIE00090099) which noted concern that the full and true cost of the Tram scheme would not be before Councillors when the Business Case was presented. What was your and other elected members' response to this email?

They talk about a draft response in red in that email and I suspect I saw it, but I did not see any of this discussion between Officers in terms of preparing it. At that stage we were receiving a number of

these from different people and there were various allegations going on, kind of rumour and scare mongering, shall we say. Nobody actually said here is the precise issue that you have to address. One of the officers says in one of those emails that there are things we need due diligence on and we would have to explain or Councillors would ask questions.

You will see that Allan Jackson has forwarded that onto Keith Rimmer. There were a whole host of such emails to many Councillors, certainly within my group. Allan has obviously taken the lead and forwarded it. I think he was still Transport spokesman then and it would be about checking with Officers and ensuring we got an appropriate response. I do not think it would have caused undue concern at that stage.

Until 2007 we did not have as much access to some of this information as other groups because we did not have a member on the TIE Board and we had to do it in this way with lots of questions to Officers. Allan did most of that as Transport spokesman. This was a big project and it was of major concern. As things progressed we would often invite Andrew Holmes, Tom Aitchison or sometimes Donald McGougan to our group meeting to explain some of this and bring in other officers. They would sometimes bring TIE Officers, Willie Gallagher or others.

My view was there would still always be a contract sign off point when we would have to make a final decision. I suppose I was thinking that at contract sign off we would know a price and the price would be relatively fixed. We would also know what funding we had and what it was going to build. So it was still on iterative process.

18) What was your understanding of the procurement strategy for the Tram project including, in particular, the aims of the procurement strategy, the extent to which design and utility diversions would be complete before the infrastructure works commenced and the extent to which the infrastructure contract would be a fixed price contract? Did you feel that Councillors had sufficient input into that strategy?

I will start at the end and I will say it depends on what you mean by "Councillors". That strategy was all drawn up before 2006 when we were not on TIE. We the Conservative Group were not directly allowed to be part of the decision making other than when something came to Full Council for formal approval. As councillors of the opposition group, we did not have any direct input into the way that decision making was happening other than to vote against the final decisions and record out disapproval.

What we did have was an ability to ask questions and from time to time, access information. Was that sufficient? Well, it depends on how you view a Council and the Administration because they have got the votes and the ability to go ahead and do something. There were times when we had voted against stuff. We voted against the route for the tramline joining 1A and 1B down at the Waterfront. We voted against other minor things at different stages and that was our way of having input, but ultimately we were outvoted by the majority of the Council.

I think we questioned some of the overall strategy, the way things were set up to run it, but we were generally satisfied with the strategic view that having an arm's length company could buy in the expertise and provide oversight and expertise as well through Board of Directors. We saw that as helpful because we were of the view that the Council did not, on its own, have the wherewithal

to run this. It also brought in Transport Scotland around the funding and their input was seen as really quite helpful.

In terms of the aims of the procurement strategy, I would say I only knew that at high level. I knew that the design had been taken forward early and that was supposedly to get it out the way, so we knew what was to be done. I knew there was a plan to do the utility diversions in a way that allowed more coordination and where, if you had delay, you could have some utilities fixed and out the way before you had the Tram construction coming along. Also to have bits of the route that people could be building and working on while you might have another bit that was clear and open to traffic.

With hindsight, that was not what it turned out to be, it did not seem to be what was in the contract but that is what we were told the strategy was. That was the strategy that came from Senior Officers in TIE.

When we went on the Dublin trip, I cannot remember the date, but Willie Gallagher was in place and design was well underway and on-going. There was someone senior from Transport in the Council there and the issue was to advise us on what that timeline was. We (Conservatives) wanted a fixed price contract.

There was talk about utilities and MUDFA and we asked a lot of questions. I remember there was discussion about risk around that. I could not tell you when it was, in relation to time, but the initial MUDFA contract was something like just over £60m and there was £100m or so available. So, there was a large contingency set aside for risk allowance, and given what we had heard from Dublin and Sheffield, that they spent more than they had hoped, it was right to have an allowance there that was

appropriate. There was a clear strategy to complete MUDFA first so that construction work would not be held up by it. We were appraised of ways that delayed utilities work had held up construction in Dublin adding cost. The Dublin experience was that with hindsight they would do what TIE was proposing.

Your question talks about the aims of the procurement strategy. In general terms, I would say the aims of the procurement strategy were to contain cost to gain as much certainty as possible and fix a price to design and then build a specific tramline. The detail of how the procurement strategy progressed was, as I understood, a matter for TIE. I suppose, Willie Gallagher would have been involved in some of those discussions, but I did not see the detail of it. The Conservative Group did not have any direct involvement or oversight at that time, in 2006, but we understood TIE were managing the procurement strategy.

### **Events between May 2007 and May 2008**

- 19) Following local government elections in May 2007 the administration of the Council changed from a Labour administration to a Liberal Democrat/SNP coalition. Do you consider that that had any effect on the Tram project (and, if so, in what way)?

It did in that the SNP who had increased their number of Councillors substantially became part of the Administration, but did not support the Tram. The Tram was put aside within the Coalition Agreement. However, it became a bit of a running sore within the Administration and there were cross party discussions from the Liberal Democrats with us and with Labour around those to try to gain support for the project. They were mostly friendly, but not always, so there were difficulties. Andrew Burns, the then Labour Leader, and myself were questioning, politically, whether

things were being pushed forward hard enough and whether Officers were being pushed hard enough to deliver on time and cost.

That is a very broad generalisation, but that is how it felt. I would characterise the Labour Administration as *'not caring too much about the cost'* so, I do not think they were pressing in the same way as we were. I do not think they were worried about that as much as we were, and politically, it is not in their way to do that. So, it meant that while there was a majority in the Council who were in favour of delivering the project, there was probably a lack of leadership to say, *"this is how we should deliver it"* and I think that led to a reduction in pressure on the Officers at that stage to deliver it appropriately and to keep TIE under control and accountable to the Council.

- 20) Following national elections in May 2007, and a vote in the Scottish Parliament, the SNP government announced that funding from Transport Scotland for the Tràm project would be capped at £500m. What was your awareness and understanding of the extent to which the capping of the grant from central government represented an increased risk for CEC? What was your understanding of the steps taken by CEC following the capping of the grant to address, quantify and mitigate any increased risk?

That did not immediately increase risk because the amount of money was the same amount of money that would been promised previously. I suppose what we had was more than we thought was required at that stage, certainly to deliver 1A and still contained a large contingency.

I would say it said, *"if you do not control the project then it is the Council that picks up the tab"* but there was quite a bit of headroom within the funding, so long as 1B was not taken on.

However, we were still talking about 1B being dependent on what bid prices came back at that stage. We did not have the prices and there was a hope that having competing Infraco bidders would keep prices low. I cannot say I know the detail of any steps that were specifically taken at that stage. That would be a matter for TIE Directors. The thinking was that the main way of reducing cost, if there was insufficient funding, was not to build 1B, so it was already within the structure.

21) At a Council meeting on 23 August 2007 (CEC01891408, page 65) you asked the Executive member for Transport and Infrastructure how much of the Council's contribution of 45m to the Tram project is expected to come from developer contributions? The answer was £4,863,000 with a further £3,452,000 potentially available if the Council concluded the other agreements. Had it been anticipated that more of the Councils' contributions would come from developer contributions? Did the amount of developer contributions cause you concerns in relation to the affordability of the tram project?

My reading of that answer is there was more available than came in and what had been agreed to come in, but it depended on future development within the route. I cannot remember everything around this, or timings of things, but a colleague, Councillor McInnes, had concerns about this and about other bits of the Council's funding and we put forward what we thought was an amendment at one of the Council meetings. I can go away and find it for you if I really have to. It was questioning how the Council's £45m would be made up and whether it was secure, and asking for an independent appraisal of that. We thought it would be rejected but, as it turned out, it was accepted and the Independent Review said the money was relatively secure depending on various things and developments going ahead.

I asked "*What mechanisms are to be used to secure any remaining contributions?*" because I did not think they had a full process in place at that stage, and I was concerned that the development was not happening on time and that we had to have a mechanism to get the money back later on. More importantly, those developers would be the ones who would benefit from the Tram being in place, because it would increase their land value. It was about showing that they had not actually got the money, showing it publicly and enforcing that we needed a strategy to get that money back.

- 22) At this council meeting on 23 August 2007 you were also nominated as a member of the Board of the City Centre Development Partnership. What did this role entail in respect of the Trams?

I do not recall it having a direct relationship with Trams, I think it was more to do with how the city centre was to be developed in terms of property and commercially. I can only think of maybe one or two meetings of that body that took place. I do not think it ever did very much and it quickly got subsumed into the work that was taken forward by the City Centre Business Improvement District.

- 23) Recruitment to the posts of Director of City Development, Head of Economic Development and Head of Transport in the City Development Department was proposed by yourself and Jenny Dawe. On what basis was this proposed and what impact did this have on the Tram project?

I did not agree with Jenny Dawe on it and actually I proposed an amendment. It was Phil Wheeler who supported Jenny Dawe. We proposed, I think, that we recruit for the Director of City Development, but not the other two posts. We wanted to know who was going to be in charge of the Directorate and what skills they brought before deciding whether we needed a separate Head

of Economic Development and a separate Head of Transport. We got Dave Anderson, who was very much a commercial/economic development man. At that stage we would fully support a Head of Transport being recruited to go along with him. If the Director came with a development background we did not think we also needed a Head of Economic Development. I think that was the issue, and saving money to the public purse. I moved an amendment and it was voted down. It was only my group who voted for it.

I am not sure it had any impact on the Tram Project but the outcome was what Jenny Dawe wanted and it gave her a new Director of City Development and a new Head of Transport, so the impact was whatever input those two people brought. In theory, we were changing the focus of the department from having a Director who had transport expertise to a Director who had economic development expertise, but that was being done for strategic reasons around the development of the city as a whole. You would expect a Director to bring in appropriate expertise from within their Transport team and within TIE to help with any delivery of Transport projects.

24) The Council's approval was sought in October and December 2007 for the Final Business Case for the Trams project. In general, what were your views on the Final Business Case?

I think the Final Business Case was largely in line with what I expected at that stage. What I have found throughout life as a Councillor is that many of these things take longer to come to fruition than you would expect, and all the time the cost is ticking up. You have people doing the work on it and you have inflation going on in the background. So, there was an expectation of some of that.

I was disappointed with some of the figures, and I would have liked to have seen them a bit smaller, but ultimately the cost benefit ratio was still positive. I cannot remember the number, but it was over one. Basically, if it is one to one, what you are going to spend will bring that much benefit back in, in transport and economic development terms, and this was in the region of 1.2 to 1.5. So, it was still a positive benefit.

I think there were times where we maybe doubted some of the detail in the figures; this was around 2006/2007. We had moved a number of amendments at different meetings. We wanted to make sure we had full information, we had a lot of stuff on record and we had interrogated the figures to ensure they were as correct as they could be. We asked for an appraisal of the Developer contributions and the Council's sale of land and things that would bring money in to see if that was realistic. That was all done by an outside agency.

If I can be frank, our group was finely balanced on whether we supported it or not. Some was on cost and some was general political views around what people were hearing, "*Was this a worthwhile project?*" A large chunk of our Councillors represented the south and west of the city and were taking what was probably quite a parochial view, because you are meant to look at the needs of the city as a whole, but they were not seeing any benefit to their constituents.

Representing an area in the north of the city I had a different view, because I could see all this development due to happen at Leith and Granton and I thought we needed an improved transport infrastructure. I was thinking along those lines around the wider development of the city, and the economic development needs

and also to make sure my constituents were not inundated with traffic from these developments.

- 25) The Final Business Case advised that a separate report was being prepared for the Council to set out the result of the tender evaluation and give recommendations as to the preferred bidder for each contract. What was your understanding of why BBS were selected as the preferred bidder for the infrastructure works?

I think the report we got was quite a limited report, and was in line with most procurement reports the Council gets. My understanding was that the assessment was largely done by TIE officers and the TIE Board had reviewed and were proposing to the Council that BBS be the preferred bidder. I understood there to have been a professionally run procurement process which came out with the best quality and price score. I asked specifically at the time if due diligence was done about them (BBS) and was told it had been done and that, as a Consortium, they had the wherewithal to do this and had worked appropriately on other such projects. The due diligence was undertaken by TIE.

- 26) Were Councillors made aware that the Infraco bids were primarily based on preliminary design? If so, did you have any concerns about a possible increase in cost when the bidders were provided with detailed designs?

My understanding was that preliminary design was largely being turned into detailed design and I thought we had detailed design for most of the scheme. We will go into some emails later that you showed me where I said I knew that Picardy Place was not complete, but that was on the basis that I had been told Picardy Place is all preliminary and was a difficult area. I suppose, with hindsight, it might have been better for Councillors to have been given more detailed briefings of what each of the design stages

meant. My understanding, at that stage, was that we were pretty much there and they were bidding on something fairly fixed other than maybe one or two areas of the route.

I did not have any major concerns about increased cost later on, other than being worried about change. One of the things I learned from the trip to Dublin and from discussions with people elsewhere was not to change things once you have got your Contractor on board because it will cost you. I was worried about change (generated by TIE, officers or Councillors in other Groups) as opposed to firming up design if you see what I mean.

27) What was your understanding in late 2007 of the extent to which design and utility works were complete? What was your understanding of any difficulties that could arise from incomplete design and utility diversion works and how any such difficulties would be addressed?

I have just said that my understanding was the design was pretty much there apart from some particular areas. There was also talk at this stage about the novation of the design contract into the main contract. Officials were saying that novation meant we passed that risk around design to the Contractor and that is why we were doing that. Most of the design was there and they just needed to finalise bits. It was not major design it was just 'tinkering' that needed done.

So, there had been some discussions around incomplete design and utilities. I cannot remember what percentage of incomplete utilities work we were at by stage, but my understanding was that design would be novated and it would become the Contractor's responsibility. That would address any difficulties around design and even where design was quite preliminary like Picardy Place they (the consortium) would be responsible for solving that. We

were informed (by TIE and Council Officials) that novation meant this design work would be contained within the overall price.

Utility diversions were behind, shall we say. There was still work going on, you could see it, and it was not just a little bit of tinkering to resurface the road, there was still major openings in various places like Haymarket but it was probably later that I was told how difficult that was. That would have been after Richard Jeffrey came along.

At one stage, Richard Jeffrey came to my office to brief me and Allan Jackson and had a set of slides which showed bits of road dug up and he said that was why it was taking so long and how difficult it was. That was well into 2008. I was probably not that concerned at that stage because my understanding was there was mitigation. They (TIE) could get them (Infracore) to work on the off-street bits when they first started or you could get them to work on bits where the utility diversions had been finished. So, there was mitigation around that. In hindsight, that might not have been quite how others saw it, but that was our understanding and what we were told was agreed.

28) What was your understanding in late 2007 of the extent to which the infrastructure contract was a fixed price contract? What was the basis of your understanding? How important was it to the Council that the infrastructure contract was a fixed price contract? To what extent, if at all, did your understanding in that regard influence your vote on whether the trams project should proceed?

My understanding was that it was a 95% fixed price contract. That was a very specific figure that was given to us. The basis of that was written reports to Council from Tom Aitchison, a lot of detailed briefing that was going on at that time and a lot of questioning by

my group. We were making a kind of critical decision as to whether or not as a group we supported it.

We had about two to three hours of the group questioning Tom Aitchison. Andrew Holmes was there although did not take a huge part in it because most of the Transport stuff was addressed by Willie Gallagher from TIE. Donald McGougan was also there and went through the finances in some detail. I do not think we made a decision at that meeting. I think we then had a further meeting to make the decision as to whether the group supported it, but that was the information on which our decision was based and was entirely about 95% fixed price. Without that assurance the Conservative Group would not have voted to go ahead with the contract.

- 29) What was your understanding of the allowance for risk made by TIE/CEC (including the amount of the risk allowance and the main risks allowed for)? What, if any, allowance was made for scope changes in the contract price and/or the risk allowance?

There were different elements of risk allowance and, until I had reread some of these documents, I had not remembered the detail. I was aware there were risk allowances built into each of the elements of the contract. I think the simple one was the tram vehicles which were very fixed in their price, about £60m, and there was about £2m risk allowance around that. As I explained earlier the MUDFA base price was something like £60m. It was supposedly the riskiest element of the whole project, because while there were some diagrams of what was under the street they were not detailed, so there was a bit of digging up the streets to find out what was there. There was about £40m additional risk allowance. I knew there was a risk allowance but I could not

remember the number. Having seen the papers we were presented, it was about £32m/£35m. So, risk allowance was there.

The second part of your question is, "*What, if any, allowance was made for scope changes in the contract price and/or the risk allowance?*" My understanding was that you will always have some element of scope changes with an Infracore type contract where there might be something they find on site that is not as expected. You might need to keep teams working a little bit longer including your own team, so you need some risk allowance around that. There could be bad weather or all sorts of things and you would need to scope that in, but these things were largely limited. There was a bit around design and that was to scope with some small sections where design, as I understood, had not been completed. But my understanding at this stage was that Infracore risk was very limited because of the fixed price contract.

30) In early 2008, in the lead up to contract closure, there were various increases in the price of the infrastructure contract. What was your understanding of the reasons for these increases?

The reasons, as I understood it, were exactly as was described in the two reports that came to Council or Council Committees. They were about finalising the contract and I was told, off the record by Tom Aitchison, that the Contractors were jumpy. I think some of that was supposedly design, but I was told various things. So, we were mitigating risk further. We were finalising more of the design and novating even more of the work to them. They were going to take on more of the risk, rather than us, in general. They were agreeing to mobilise early around things to get their teams working with the design team early and they were to build in some flexibility about how they did the work and get milestones. The result was some slightly bigger milestone payments but ultimately

the cost of that in overall project terms was fairly minimal, certainly from the way it was described to us. There is actually a report that sets it out. I think it was the May 2008 one, but it may have been earlier. We were paying them, we went up from £498m to £508m and then it went up to £512m but in doing that we were transferring further risk to the Contractor, reducing the risk to the Council and making sure the price was as fixed as we could make it.

There was no alternative view being brought forward at that stage and indeed, I think when we get to the Policy & Strategy Committee one (question 26) it was taken as a B agenda in private, because it was a commercial discussion, but it was very clear that this was about minor amendments. It was about getting to contract close. I took a lot of that as being about the model of procurement that we had chosen. It is probably not what I would have chosen now, but given where we were it was probably appropriate at the time. It allows you to negotiate around the edges of what is a bid for a contract. You sometimes get some benefits out of that, but you sometimes pay a little bit more.

- 31) We understand that on 13 May 2008, shortly before contract signature, you attended a meeting of the Policy & Strategy Committee at which Jenny Dawe was appointed as convenor and Steve Cardownie was appointed as Vice-Convenor (the minutes of the meeting can be found at **(CEC01891564)**). Why were these appointments made on the same day that the Committee sat? Who were the previous Convenor/Vice-Convenor of the Committee?

Those appointments were made as part of an annual process where the Committee reconfirmed each year who its Convenor or Vice-Convenor would be and Jenny Dawe was previously the Convenor and Steve Cardownie was previously the Vice-Convenor. I know this because I checked the minutes of the

previous meeting which showed the two of them were in those posts. I then checked the agenda which said appointment of Convenor and Vice-Convenor 2008/2009. These are matters of public record.

- 32) At that meeting Tom Aitchison submitted a report to the Policy and Strategy Committee (**USB00000357**) advising that the estimated capital cost for phase 1a was now £512m and that, in return for the increase in price, TIE had secured a range of improvements to the contract terms and risk profile (para 2.11; see also paras 2.7 and 2.9). Jenny Dawe ruled that the report needed to be considered as a matter of urgency, to allow an immediate financial close of the contracts for the Edinburgh Tram Network. Why did the report require to be considered as a matter of urgency?

It required to be considered as a matter of urgency because otherwise it could not be considered by the Committee under the Standing Orders of the Council. To be properly considered, it needs to be on the agenda that is published. I think in those days it was a week before and the papers are meant to be circulated. I do not think it had been, and rather than take this to Full Council and wait, I believe Tom Aitchison decided to bring it to that Committee, for approval. Jenny Dawe as Convenor had the final say on whether to accept the item as urgent. That is all that was about, it was urgent because of the rules of the Committee.

- 33) In hindsight do you consider that the Committee should have had more time to consider the report and the risks to the Council arising from the contract?

I think that would have been helpful, but that said, our understanding was that not much was changing apart from these minor fluctuations and that we were getting these benefits of certainty out of it. Tom briefed us in detail, I probably met him once a month prior to the Council meetings, as a group leader. He

would come round and brief each of the group leaders prior to the Council meeting, and Policy and Strategy Committee and pretty much every time we met we talked about trams.

- 34) In hindsight, do you consider that the increased price and authority to enter the contracts ought to have been considered by the Full Council?

Ideally, yes, but my understanding was this was about getting a deal immediately. So, there was no other way of doing that, it would have taken a week to call the Council together, and constitute a formal meeting. I think that is where we were and it was about the urgency of that situation. There is an element you have to take on trust from what Tom was saying about things, and there was an element you have to take on trust on what Jenny Dawe as Council leader had been briefed about, in that she was willing to accept that as an urgent matter. While I might be critical, there is the Elected Member Code of Conduct; we are meant to respect each other's decision making.

- 35) To what extent were members of the committee sufficiently informed in relation to the Tram project (including, in particular, the potential risks and liabilities arising from the contracts to be awarded) to enable them to come to an informed decision at the meeting as to whether approval should be given for the contracts to be awarded?

For this particular stage I do not know. I would not necessarily have expected all of those Councillors to be fully briefed immediately before this meeting, but Jenny Dawe certainly would have been. Phil Wheeler likewise was Transport Convenor and was on TIE. Allan Jackson was my Conservative colleague who was on the Committee and happened to be on TIE. My understanding was the SNP through Steve Cardownie, although they were not supporting it, he was given private briefings and

Ewan Aitken I think was the Labour group leader at that stage, so he would have had the same access to the Chief Executive and briefings as I had.

The others probably were not involved in the detail. My understanding is that that same kind of briefings and question and answer sessions were given to all the political groups on the Council or made available to them prior to the full Council decision in principle and this was a one off issue with officers suggesting no change other than those in the report. They should largely have been in a reasonably well briefed stage, as much as Councillors were briefed. I do not recall there being a great deal of additional briefing about this particular paper.

- 36) What information and briefing had been given (including by whom and when) to members of the Committee to enable them to come to an informed decision at the meeting?

I do not know for others, but I know that Jenny Dawe was fully aware of all of this. I am fairly certain Allan Jackson and Phil Wheeler and others who were members of TIE Boards or TEL Boards or Tram Project Boards were too. My understanding is they were briefed reasonably regularly one to one or by phone or by email throughout that January to May period, and probably knew more than I did about the detail of all of it, but you would have to ask them. I stress that at this stage, it was presented as a break to the December decision and that previous briefings were all still relevant.

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

Basically, if you are asking whether or not I knew more than was in that report to the Committee (**USB00000357**) that you showed me I would say no, not really. Shall we say for the time being, and I can always look at the report, but the benefits or improvements were listed in the report and my understanding was exactly as they are listed. We were transferring some risk, we were getting some further certainty and we were getting them to skill up and start quickly to keep everything to the time scale originally proposed even after the delay of contract close. Some of these payments were contingent on them doing certain things by certain times which meant they would be encouraged and incentivised to work to those timescales.

- 38) What is your recollection of what happened at the meeting (including how long the meeting lasted, how long was spent discussing the other 10 items noted in the minutes? How long did the discussion last in relation to the Tram Project and whether there were any differing views as to whether approval should be given for the contracts to be entered into)?

I do not honestly remember. I do not think it took very long. Having looked at the minutes, even with 11 items, it did not take very long. There would have been opportunities for Councillors to ask questions on all of the items and that would have happened. I think I asked if this was definitely the final version for sign off and were we getting benefit out of it. A broad question along those lines, things like that were asked by others too.

- 39) Was the Infracore Pricing Schedule (Schedule 4) (**USB00000032**) mentioned or discussed at this meeting?

No.

40) Was there any discussion of the concepts of Pricing Assumptions or Notified Departures or that changes to the contract, with resulting increases in the contract price, were likely to arise?

No

41) A certified extract of the minute from the meeting (**CEC01222172**) notes that the committee authorised the Chief Executive to instruct TIE to enter into the contracts. Was this the final "sign off", or approval, from the Council (TPB Meeting 4 June 2008 - **CEC00080738**)?

Yes, where the Tram Project Board says they got final sign off, I think. I had not seen these Tram Project Board minutes before. It is a new document to me. I was not on the Tram Project Board.

It states that "*During meeting news was received that approval had been received from Policy & Strategy Meeting of the Council, allowing the letter from the CEO to be signed and sent to WG giving delegated authority to sign the contract.*" So was that the authority? Well, yes, but in theory Tom Aitchison had already had that authority since the December assuming there was no major changes. However, this will have been the last time the Council considered it and it will be what minute 3.1 is referring to.

42) The infrastructure contract was duly signed on 13 and 14 May 2008. What was your understanding at that time of (i) which party bore the risks arising from any incomplete design and utility diversion works, (ii) the extent to which the infrastructure contract was a fixed price contract and (iii) the extent to which the aims of the procurement strategy had been met?

(i) I will take it in two parts. My understanding was at that stage, we had pretty much transferred everything around design to the Infraco Contractor. By novating the contract Infraco were taking on

the risk around design and were to finalise the design. Officers were clear and consistent on this point even when questioned. Utility diversions were slightly different. TIE still had risk around utility diversions. At that time if you had asked me I would have been thinking about cost, and was there more utility diversion work to do than had been estimated. I would have said that was the risk element within the MUDFA. I would say utility diversion work was with TIE as it was a separate contract and was some months behind. However, the risk was all portrayed to us as MUDFA cost and no mention was made of potential impact on Infraco as we were informed by TIE that Infraco could start work on other areas of the line first and had agreed to do so.

There was a second element of that which came up in the dispute around allowing the Contractor access if you had not finished the utility diversions. My understanding was that was to be done in a flexible way, so if there was a bit that was not finished Infraco would work on another bit.

(ii) The extent to which the infrastructure contract was a fixed price contract. In December it had been a 95% fixed price contract. We had paid a sum of £10m and then a further sum of £4m, so £14m extra through negotiation by May and all of that was reported to us as gaining further benefits and certainty. Nobody put a figure on it at that point, which would suggest it was even more certain to be at or about the price we were signing off on. If there were fluctuations around risk, it would certainly be within the £32m that was available in the budget over and above a 95% plus fixed price and it would only be a small amount here or there.

(iii) The extent to which the aims of the procurement strategy had been met. It was reported to us that they had largely achieved the reduction of risk to the public sector and transferred the risk to the

private sector. As I understand, that was one of the main aims of the procurement strategy, so it would seem that that had been met at that point in time.

- 43) Notwithstanding the comments in a report to Council of 1<sup>st</sup> May 2008 (CEC00906940) work had been carried out to develop the Business Case for Line 1b in October that year and the Council appear still to have been considering a network of lines 1a, 1b at 29 April 2009 (CEC00860021). An action plan of the Internal Planning Group noted you as one of the selected councillors affected by 1b (CEC01565481). What were your views on these matters at the time?

My understanding was that 1b was kind of in the 'long grass' at this stage. The Council was not saying it publicly in case a funding opportunity arose from somewhere, but there was not really the funding available. Privately, Tom Aitchison was saying that to people, but I think for political reasons he did not want to say it publicly. It says, "*carried out to develop the Business Case for line 1b in October that year*". There was some internal Council money that was still being spent on early planning for line 3 which is the Royal Infirmary line at Little France, and I think there was always hope that 1b could go ahead at some stage. So, some further work was being done on it. My understanding was that this was separate from MUDFA, Tram Co and Infraco costs.

There also had to be some work on the Business Case, because essentially I think the previous Business Case showed that 1b on its own did not really make the cost benefit. I think Officers were given authority to continue work on 1b so that long term there would be a tram network, but it was not thought of as coming out of any of the money at that stage.

I do not know what the Tram Internal Planning Group is (CEC01565481). I presume it is the Council but it might have been TIE, I do not know. As I understand it mentions me in relation to Councillor one to one briefings regarding wards affected by the 1b decision. It was about the ministerial announcement on the draft Business Case and the Parliamentary approvals coming through just before the Council elections in 2007. As I understand it, they were going to come and tell us what Parliament and the Minister had decided around the draft final Business Case and the impact that might have on the Parliamentary process. That is all they are trying to say there. We were affected because we were ward Councillors and 1b ran through our wards. That is why they were coming to brief us, so we had information for residents.

### **The Dispute (May 2008 onwards)**

44) In general, what information were you given as to the progress made with the design, utility diversion and infrastructure works after May 2008? Were you given progress reports or revised estimates of risk?

That is very hard to remember. I would say not for some time. We signed this off and the TIE Board and Tram Project Board were off to deliver it on our behalf. They had a contract, a programme, and were determined to deliver it. The Tram Project Board, well, they did not deliver it, TIE delivered it, but the Tram project Board took oversight of the project and delivery process, so it was up to them to receive progress reports, risk assessments and challenge project progress.

As a group leader I was briefed at various stages about where things were but it was not immediately after 1<sup>st</sup> May. It was some time later. I had briefings reasonably regularly, but it might have been once a quarter or something. It was mostly MUDFA risk and

where they were on completion of MUDFA, because it was obvious to me things were still being dug up. I was asking questions as there were big holes in the road past the dates when this work should have been completed.

Later in the year (2008) Allan Jackson started to mention things were not going smoothly with the Contractor, which of course blew up in 2009. I suppose I was starting to ask questions, which I think will be why in the next question you have noted that Stuart McGarrity wanted to come and brief me.

- 45) In the minutes of the Executive team meeting on 27 January 2009 (TIE00089135) Stuart McGarrity noted that he would be meeting with you to provide the cost out turn briefing given to the Tram Project Board. The Deloitte internal audit review is still underway and Stuart McGarrity expected that the report would be delivered the first week in February. What was the outcome of this meeting and was the dispute discussed?

I was beginning to hear rumours that things may not be on time and on budget so I asked about that. I was probably badgering Allan Jackson about it. A lot of this is commercially sensitive and he had been told by that TIE Board not to discuss it outside. I was told someone from TIE could come and brief me and I suspect that is what happened. I cannot be absolutely certain, but it is perfectly feasible and it was the kind of thing that did happen over a period of a number of months.

What Stuart McGarrity has said on 27<sup>th</sup> January 2009 at that meeting, which I did not know about and was not part of, seems to fit with him coming to meet me on 3<sup>rd</sup> February. It was within a week so those two things will be the same meeting. I could go back and see if I have still got diaries for then, but I think that sounds about right. You have various other pieces of information

in here that I do not know about. The cost outturn briefing to the Tram Project Board, I do not know if I was shown that or if I had a copy.

At different meetings at different stages with TIE I was taken through things. Occasionally I was allowed to keep slides and other slide decks that they had printed. Sometimes they took them away because they were commercially sensitive and you were just briefed, so it was difficult to recall. Nobody mentioned the Deloitte internal audit review to me. I do not recall it and I certainly do not recall seeing the output of it.

Stuart came to tell me about the Tram Project Board briefing. I am not sure there was an outcome as such, it was a briefing to bring up me to date on where they were. I do not recall raising any major issues with the Chief Executive or anyone else at that stage. I probably accepted the information I was being given, but I cannot remember what the information was. I remained under the impression that the Tram Project Board was tasked to resolve difficulties on the Council's behalf and would make next efforts to do so.

- 46) Minutes of the TIE executive meeting dated 3 February 2009 noted that you were scheduled to receive briefing (CEC01147057). Did you as a Group leader receive more information on the dispute than other members?

I believe that meeting on 3 February 2009 is the same as in the previous question. I did receive more information overall because from time to time leaders would be briefed by the Chief Executive, or others, about the on-going nature of the Council. Much of the information was held by the Tram Project Board, but occasionally things would leak out to people like group leaders, and both TIE and the Chief Executive would brief group leaders a bit more. Was

that about the dispute? Well, yes, but it was about other things as well, it was a more general briefing to keep you up to date because this was a really big project for the Council.

- 47) A dispute arose in respect of track laying works due to commence at Princes Street in February 2009. When, and how, did you first become aware of the dispute between TIE and the infrastructure consortium, BSC? What was your understanding of the nature of the dispute and the reason(s) for the dispute?

I was aware they closed Princes Street on the Sunday to allow for traffic diversions to take place at the weekend. I cannot remember the date, but it will be on record. On the Monday it was absolutely clear nothing was happening. I think I had been away for the weekend and it had either hit the Evening News at that stage or there was a Council Press release. It was one or the other and that is how I became aware, from the media.

The reason given was very simple. The Council were saying the Consortium were refusing to start work unless they were paid more money on a cost plus basis.

- 48) What were your views on the dispute, including which party or parties were primarily responsible for the dispute arising?

At that time, given the information that was being presented to me, I believed Bilfinger Berger (BB) were responsible. I did not have a lot of detail until a meeting of group leaders in Jenny Dawe's office. Without a diary in front of me it is quite hard to remember but it was something like on the Sunday Princes Street closed and the diversions were put in place. On the Monday or Tuesday nothing was happening so by the Wednesday or Thursday there was an extraordinary meeting of Group Leaders. This was between 8 and 9 o'clock in Jenny Dawe's office to bring us up to

date. TIE Chief Executive, Tom Aitchison, Donald McGougan and one or two others were there. All the groups were represented. I do not think it was all the leaders, but most were there and Phil Wheeler in addition presumably.

We were told that BB were refusing to start and, effectively, they were holding us to ransom. They were claiming they did not have access and they were asking for more money. Officers suggested that and that this had been BB strategy all along. To negotiate contracts then ask for more money. There had been talk that BB were a very litigious company. I did not know the truth of that, but it became apparent and it was portrayed in a way that we had done a very tight deal that was in our favour and they were looking to squeeze some extra money out of us. Princes Street was the obvious way of doing it because it was very public. That is how it was presented and I had no information otherwise. We were told that the meeting was entirely confidential and commercially sensitive, that we could not discuss anything outwith although I did in general terms brief some of my group colleagues around it.

The meeting was quite fractious because I think some of us were looking for a solution and we were concerned about embarrassment to the Council and the City. Labour Leader, Andrew Burns was leading a slightly bigger group so get to speak before me. He started a line of questioning about who was going to go and see Bilfinger and sort this out. I followed in on that and we both suggested that Tom Aitchison and/or Jenny Dawe should seek an urgent meeting with senior people in BB. It was portrayed as them and not the whole Consortium. If necessary, go to Germany to seek that meeting and sort this out, because it was embarrassing to the city.

We were told quite firmly by Tom Aitchison that would be entirely inappropriate, to leave it to TIE and not get involved. This was supposedly because the contact was with TIE. I think that is over stretching it because we were paying the money, but he was saying legally we had to leave it to TIE. Jenny indicated that she was entirely unwilling to get directly involved and thought it would be inappropriate for Tom to get involved.

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

Over time my views have changed. We went through the adjudication process and it became clear the contract was not what we had been informed it should have been or was intended to be. There was a more general assertion from TIE, and this was after some months during Richard Jeffreys time, that they were being pushed on the fact that they had to clear entire areas to get the consortium started. Clearing part of Princes Street was not enough to get the Consortium to start; you had to clear the whole thing. I think it also then came to light that TIE were probably on the wrong side of the legal argument. Later Alastair MacLean became involved in the Mar Hall discussions around making BB stick to a fixed contract. That was pursued fairly rigidly by both the Council team and TIE for some months and at that stage I had no other way of back checking, indeed, I was being told that I should not discuss any of the things I was being told and, under code of conduct, was bound to comply.

50) On 27 February 2009 Councillor Phil Wheeler sent an email to Council Leader Jenny Dawe (**CEC00868427**) informing her about his meeting with Richard Walker of BSC. By email dated 11 March 2009 (**TIE00446933**) Mike Connelly of TIE advised David Mackay of his meeting with Margaret Smith MSP and Alison McInnes MSP. What was your knowledge of these meetings?

I had no specific knowledge of Phil Wheeler's meeting at that stage. I think Phil told me that he had a meeting with Richard Walker, but that was after he left the council and just on a personal basis. I was not aware of this because it is two Lib Dem Councillors sharing information, they are the Administration, and similarly, I did not know the detail of the meetings with Margaret Smith and Alison McInnes, who again are two Lib Dems. I was not aware of any of that at the time.

I did know that Richard Walker was trying to contact MSPs and I know that he met David McLetchie and possibly Gavin Brown, Conservative colleagues of mine, but one is now retired from Parliament and the other is deceased. I heard some feedback from those meetings just as I now see was given to Lib Dem Councillors around the Margaret Smith and Alison McInnes meetings, but I did not have detailed knowledge.

I think I met Margaret Smith at a reception at one stage and she expressed concern to me about the contract and urged me to ask some questions about it, but she did not tell me enough detail to allow that to be meaningful. My relationship with Jenny Dawe was entirely professional we would not stop and chat on a personal basis as I might with Phil Wheeler. I did not really know Alison McInnes. I was instructed both by TIE and by the Council Chief Executive not to meet Richard Walker. We were told that we would jeopardise TIE's position as it says in your question. Do I think that it jeopardises TIE's position? I have no idea, but the legal advice I was getting from the Chief Executive and TIE's legal people and the Council Solicitor, was that we should not talk to them as it would jeopardise any dispute resolution process that went forward. Given that advice I had no choice but to comply.

51) Do you think it was appropriate for elected members to meet with BBS directly at this stage?

I am surprised that it happened given all the advice we were being given, but as I said earlier I joined Andrew Burns at the meeting in early February when Princes Street was closed and suggested that Jenny Dawe should do it, and above the head of Richard Walker. It was only then we were told we could not do that because of all sorts of legal implications. As I saw it, some of this was about the TIE team and Richard Walker and his team not getting on, so the way to sort that was to get Jenny or Tom Aitchison to meet their Chair. So the answer is yes. But I was not aware it was happening and expected the Lib Dems to avoid such a meeting.

I was asked by Richard Walker to come to a meeting. I was not invited to join any meetings that Phil Wheeler or anyone on the Tram project Board or TIE had with anybody from the Consortium. The only feedback I had was from David McLetchie who told me a bit about his meeting with Richard Walker, along the lines of what he was saying about the contract and that somebody in the Council needed to sort it out. To me that was a matter for the Administration as I was frozen out of the decision making process as an opposition Councillor unless I raised a motion at Council - which in all likelihood would only be voted down.

52) On 10 December 2008, you sent an email to Jenny Dawe, Phil Wheeler, Allan Jackson, Tom Aitchison and Donald McGougan noting concerns about a comment made by David Mackay to the effect that TIE never started with a fixed budget, because "*the design changes as you go along*" (CEC01054035). You further noted that you knew there would be disputes with contractors and you knew that Picardy Place design was not absolutely final when the contract was signed, but that the Council did sell this project to colleagues (and those

members of the public they could persuade) as a "fixed price contract". You noted a need for design decisions and finalised costs that could not be disputed. What were your views at that time on where there was a fixed price, a fixed budget and a fixed price to the infrastructure contract?

I cannot remember at what point I became aware that costs were beginning to overrun but it must have been by this stage because there was obviously something in the Evening News saying costs had gone up. By December it must have been in there and then there is this comment from David MacKay.

What I would say to you is that I sent that email to Tom Aitchison and Donald McGougan. I copied Phil Wheeler, Jenny Dawe and Allan Jackson because Phil and Allan specifically were on the Tram Project Board. I did not include the Labour party or the SNP, but I saw the LibDems as being the leadership around this and allowed them to comment, but in all honesty I did not expect them to comment. I was trying to get Tom to sort things out, as it were, and keep things at a fixed price, shall we say. As in my last answer I felt relatively powerless but was trying to press for action to protect public funds.

I said that contractors always raise something, so there would be disputes with them but more importantly I said I knew the Picardy Place design was not absolutely final when the contract was signed. However, there was a risk allowance around that and we were novating it at the time and I supposed that is where the 95% fixed price came from (as there were still up to 5% of uncertainty). What had shocked me was that we were seven months on from the end of contract sign off and we still did not have a design for Picardy Place. I was trying to say, "*When will it happen?*" That kind of explains my email. I cannot remember what response I got

to it. I knew that this inaction and delay was unhelpful - especially if it was caused by TIE or the Council officers.

53) What was your and other Councillors response to David MacKay's comments?

Within my group there was surprise and potentially some anger about David MacKay's comments and although things were beginning to unravel on price, my view was if you just give up and say, "*there is no fixed budget*" then he was giving the Consortium a free reign. That was my worry about it and, as you can see, I was looking to have costs fixed down so we got to a better stage on this. As far as response, you will see that there is a draft response here from Alan Coyle. I do not know if that was what finally came to me, I suspect the final response I got would come from Donald McGougan. I do not know if it got altered by the time it came to me. The bit about the contract being fixed price provided no changes are made to the scope and programme, I think I recall having heard that. They are admitting here they (that is Council officials/TIE) have made changes to programme which impacts on cost. I was surprised and somewhat angry that we had been making changes. I did not want changes; I wanted the thing built on price and to the specification agreed in advance.

54) What did the Council do to obtain design decisions and finalise costs that could not be disputed?

I do not know. I was told that TIE were working that through, that Picardy Place was nearly designed, that it would be soon, all these kind of things, but there was still work to be done on it.

55) Were you satisfied with the response you received from Alan Coyle on this issue (TIE00887286)?

No, and I am fairly sure on this one. Where it was admitted changes were being made I went back and asked why changes had been made and why was it necessary. I could not stop them having made the change and they never came to us to seek permission to, albeit they might have gone to the Tram Project Board, but I certainly did not know about it at that stage.

Then there were things around design. I saw some drawings that looked different to drawings I had been shown at earlier stages and I started asking questions about that. I was usually told I had seen an ancient version and not to worry it had been resolved. The steps at the Murrayfield tram stop were not what the original design showed as far as I could remember. Some of the things about whether it was a central stop or two side stop had changed, and I challenged such changes on a number of occasions. I did so because I was worried that TIE or the Council were changing the design which would add cost to the project. This was always denied but it became clear that these were changes the Council was responsible for and was being charged.

56) At this point were you concerned that the contracts were not in fact “fixed price” (TIE00887286) on the basis that the contractor was entitled to seek further monies under the contract where the works deviated from the Base Date Design (CEC00356397)? As ultimate funder, did you think that the Council should seek independent legal advice on the interpretation of the contract?

David MacKay was saying they did not have a fixed budget which means not a fixed price, which might be the case. My concerns were still that it was not, in fact, a fixed price. I think there was still an implication at this point that it was fixed so long as the Council/TIE did not change the design or change the scope. I am not sure that really came out to me in what was put forward. I

made comments and applied pressure to Officers at that point. I was saying if you are making further changes, come to the Council and tell us about it, and explain why so we can consider whether or not it is appropriate.

Did I think we should seek independent legal advice? Probably not at that stage because, despite what David MacKay was saying to the Evening News, TIE officers were still saying they had a fixed contract and wanted to hold them to the contract. There was a lot of talk of "*holding the Consortium to the contract*". David Mackay seemed to be talking about changes which I was sure were not authorised by the Council and that I considered should not have been made. The Council also, in a sense, had its own legal advice from the Council Solicitor and their team, so I expected them to undertake due diligence around that. If that was not appropriate or expert enough then the Chief Executive would probably come to Councillors or, if the cost was not very high, he would go out and seek external legal advice. I would expect that to come from the Chief Executive.

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

As I understood it, TIE were trying to make BSC stick to the contract, and were doing that after Richard Jeffrey came in. Their strategy seemed to be to prosecute the contract and I asked them about the costs of that and talked about claiming back the costs of that through the adjudication process. I got the impression that it had been approved by the Tram Project Board and, therefore, by leadership within the Council whether it be Council Officers or Administration people. Was it ever brought to the Council for a decision? No. Did I think it would be successful? I probably hoped

it would be but could not be certain. I was also concerned that we were talking about changes and I did not think changes would work well, so I was still questioning whether they were making changes, trying to ensure, where I could, that any changes were brought to our attention.

58) What were you told about the use of the contract dispute resolution procedures including, in particular, the referral of certain of the disputes to adjudication?

Proper discussion of dispute resolution probably did not come into play until sometime after Richard Jeffrey was in place. There was lots of discussion about David MacKay going off to see BSC, holding summit meetings to get things back on track, trying to work things out, but at the same time, there did not seem to be much progress on the ground. They talked about improving relations to try and solve things, but it did not seem to work.

They talked about trying to solve disputes quickly through negotiation and there seemed to be a strategy of trying to hold up starting on sections of work because they would end up costing additional money. So TIE were trying to hold things up by saying they would get through to the final end of the dispute process, get the adjudication that will show in their favour and that will allow them to then fold the other ones and it will all work out. That seemed to be the strategy.

I was not really told much about particular disputes going to adjudication. I think that was all Tram Project Board stuff, I was only told generally about the strategy around it.

59) What were you told about the outcome of these procedures, including, in particular, whether the outcomes were more favourable to TIE or BSC? What was the basis of your understanding of these matters?

I remember at one point Richard came to brief me. There were various stories hitting the press that one side or another had won. I was told that TIE would not discuss anything openly about the outcomes because they were not allowed to and that BSC were breaking the contract by talking about the outcomes. This was in contrast to what BB were saying particularly that TIE were requiring them to maintain confidentiality. It was another thing to stack against them (BB) to show they were claiming they had won just because they had been given some extra money.

The TIE view was they may have paid extra costs because of dispute resolution but this was a very small amount compared with the claims made for additions. Therefore they were winning because they hadn't been made to pay for the full cost of the claim. I believed that, while this was helpful in limiting contract cost inflation, it was damaging to the concept of a fixed price contract and was indicative that some changes had been made to design or to the project.

I was concerned at this point as it became clear that it probably was not a fixed price contract. This was 2009 into 2010 and TIE kept talking about one or two big disputes that when they were resolved would show who the contract lay in favour of. They had clear legal advice through DLA Piper, and possibly McGrigors by this point, and were absolutely certain of where they were going. All of my understanding surrounding this came from TIE.

60) On 30 April 2009, the Council were given an update on the Tram Project by way of a report by the Directors of City Development and Finance (CEC02083772). The report indicated that there had been negotiations which had led to a Supplementary Agreement for the construction of the Princes Street infrastructure works. What involvement, if any, did you or other members

have in the negotiation, conclusion or approval of the Princes Street Agreement (TRS00016944)? Were Councillors given a sufficient opportunity to consider and comment on the agreement before it was entered into? What were your views on the agreement?

So, that was done on 30<sup>th</sup> April and the Supplementary Agreement came out of the dispute in February 2009 and was specifically about Princes Street. I did not have any involvement in its negotiation. I do not know that any other members had any involvement in its negotiation and I was not told. They probably did not ask to be involved as that would be taken forward by officers. I was not told whether it was only TIE or whether the City of Edinburgh Council had any involvement in that negotiation.

I had a discussion with Tom Aitchison about that Agreement because I was concerned that it could potentially open us up to large cost escalations on Princes Street. We were told that it was absolutely ring fenced to that one area and that it did not cover any other areas of the line. I was content that it had not changed the nature of the contract, but I was not sure what it would open up in terms of cost on Princes Street. As I look back on it, when I asked questions some months later about what additional cost it had brought, it did not actually bring a huge amount of additional cost and in that respect, given when the contract ended up; it was probably quite a good deal. Maybe a similar deal should have been done at an earlier stage over other parts of the on-street work. It was good that it went ahead because it got the work done in a set timescale and it meant they stopped arguing and having consultants and solicitors involved. While the cost went up for Princes Street it seemed a proportionately small increase compared to the eventual increase for the whole project.

61) What were your views on the Princes Street Agreement (**CEC00934643**)? What did you understand to be the rationale behind the Agreement?

I do not think I actually saw the Agreement. The rationale was to get them back working on Princes Street and to end the embarrassment for everyone of the street being closed and no work happening.

62) Do you have any views on the suggestion that the Princes Street Agreement paved the way for BBS to claim further additional costs in respect of other on-street works (such as Shandwick Place) by changing the basis of payment under the contract so it was no longer fixed price?

Well, my understanding was that that Supplementary Agreement did not change the basic nature of the contract. It was described to me as a kind of legal box to put Princes Street in, so therefore, even now I would not say it changed the contract unless there is a Lawyer prepared to tell me otherwise. The legal advice we were given was very firm on this point.

63) An opinion from Richard Keen QC on the interpretation of the Infraco contract (**CEC00356397**) was given to TIE during the course of dispute resolution on 14 January 2010. Did elected members ever receive briefing on this opinion?

We received a briefing that legal advice had been taken by TIE and that included Counsel's opinion. We were only given a very general overview that it supported the position TIE were taking in the negotiations and I did not see the document itself at the time. I believe I asked and was told it was confidential but that TIE Board had seen it

64) What were your views on the letters sent by BSC directly to Council members in 2010 (**CEC00548823**) (**TIE00301406**) (**CEC00013012**)?

These letters that Richard Walker sent to us as Councillors kind of sum up what he had been gradually leaking out to the media and MSPs over a period of months. The interesting thing about these letters is that Richard's initial email is 19<sup>th</sup> April 2010 and that last letter was 5<sup>th</sup> November 2010 (CEC00013012) so some seven months later. We had been receiving these letters by email and most of us had worked out that we had a tricky legal situation. TIE were pursuing it, the appropriate external legal advice was being procured and to some extent we were 'gagged' around this.

As TIE were relying on adjudication and ultimately legal action the matter was one on which we were advised not to engage as it may harm the case.

I think, some in the Administration also probably felt 'gagged' around the "*being held to ransom*" bit. I felt in a difficult position because on the one hand TIE were prosecuting all this, but there did not seem to be anyone one in the Council, whether that was the Chief Executive or the administration's political leadership, taking responsibility, ownership and leadership around it. I could not do very much because all the advice I was getting was that if I was to go public on some of this stuff I would be causing a problem for the contract and could cost the taxpayer money. As an opposition Councillor I did not have the votes and political backing to move the attitude of the Council Chief Executive and officers.

65) On 11 October 2010 you were provided with additional information on the project budget which you had requested (CEC00013978). What made you request this information and were you satisfied with the information you received (CEC00013979)(CEC00013989)(CEC00013998)(CEC00044688)?

I vaguely remember these. There is a report to Council on 14<sup>th</sup> October. Something in the report did not add up, I think, with what I expected. I also wanted a breakdown of what had been done and where. I was concerned about things like project costs. I think I was basically trying to find out where the money spent so far and had gone and what was still to come. I was also rather angry and fed up with things at that stage. I was trying to expose what we had actually bought for the money we had spent, which aside from the contract was a matter of public interest.

I was not really satisfied with the information I received, I think I asked further questions by phone/in question. I do not know if that is what the other documents are. There is stuff in there about percentage complete, so one of the things I was saying was *“how much money have we spent for the percentage complete what percentage of budget was that, and how will we ensure we actually get the rest done?”*

*“I have read the tram report for next weeks’ Council and am confused and concerned about the way the project progress had been presented and the cost” (CEC00013989).* I was trying to show that those figures did not entirely relate to the figures Alan Coyle gave me. They were different again, so I was not satisfied. I was asking where we were in relation to project completion and my biggest concern was around some infrastructure and things. I had to make an assumption that the budget was £512m as signed off by the Council, but he (Alan Coyle) came back and said the budget was £545m. So they were taking the available funding envelope as the budget, and I do not think, at any point up to then, the Council agreed to that. I was trying to determine stuff around the project costs. I looked at the figures I got from the report and worked up some percentages. On that basis, I calculated, £308m had been spent to date and not the £381m in

the report. That was based on the percentages spent and percentages complete.

I was trying to get it to an overall project percentage complete and I had got to this thing of 50% of infrastructure budget spent for 24% of progress. That is why I asked for the table and the table came back as very different. Then I was asking why design was listed as substantially complete and not complete? Why have utilities been stuck at over 95% complete for months? Basically, I was doubting a lot of the information in the report. It related to things we had been told, briefings I had and things that had come out through colleagues on the Tram Project Board. I have to say it was not entirely clear what I got either from Alan Coyle and I did not come to a shared view with him of how the figures could be presented. I felt Council officers/TIE were letting us down and the Administration/TIE Board had failed to hold them to account or demand action.

66) On 16 December 2010 the Council were provided with a refreshed Business Case, which recommended building a line from the Airport to St Andrew's Square. What were your views on that proposal?

I have found it hard to recollect what my views of the proposal and refreshed business case were at that time.

Having re-read it the main report concentrates on the governance of integrated tram and bus operation and an extension to land acquisition powers. It only asks the Council to note the refreshed business case which recommends building to St Andrews Square as part of incremental completion.

My general feeling was that I was unhappy with the possible curtailment of the line but throughout that period and beyond I was

concerned about escalating cost. My overriding wish was to keep spend within budget. The proposal suggests the curtailed line can still be built within the £545m budget. I believe I saw this as a possible positive in that it could be a negotiated outcome that would end the dispute, conclude the contract and allow the Council to reconsider any increased spend above budget in a proper manner rather than through a dispute process it had no control of. But we were not asked to make a decision at that time. Later, this information added to my concern about the post mediation costs (see question 106). At this stage in December 2010 the curtailed line was with £545m. Additional cost to take the project to £600m was supposedly enough to complete to the Foot of Leith Walk or Ocean Terminal. We had already supposedly spent £162m on infrastructure (which was the bulk of that original budget of about £240m for Infracore) and utilities were supposedly 95% complete over the whole route. By February after Mar Hall the St Andrews Square option was £700m and it became £776m by sign off including contingency which was seen by officers as a target to spend. There were new inclusions for utilities after Mar Hall.

With hindsight, the revised business case was either glaringly inaccurate or costs continued to escalate very quickly thereafter both through mediation and following it. It leads me to conclude that information on project progress was wrong in December 2010 and the deal done at Mar Hall was very expensive with no further attempts made to value engineer it.

No one in TIE had been held to account for the continued reporting of 95% then 97% completion of utilities work across the whole line when all on street sections were reportedly re done after mediation.

## **The Mar Hall Mediation in March 2011**

67) What were your views on the proposals for mediation that took place at Mar Hall in March 2011? To what extent, if at all, were Councillors consulted on CEC/TIE's strategy for the mediation?

By that stage I was no longer a Group Leader so had less knowledge and involvement.

Some changes happened at the top of the Council by that stage. Sue Bruce came in and put a different team in place around her. I cannot remember if Richard Jeffrey was still at TIE but if he was he did not last much longer when things all changed. I think the Chair, Vic Emery, was there by that stage. The concept of going to mediation seemed reasonable, but I do not think all the Councillors were consulted. I do not know what Jeremy Balfour, our group leader at that stage, was told. I certainly was not told things as I would have been in the past, and the impression I got was that it was entirely Officer / TIE led, probably Council Officer led with Sue taking forward whatever strategy they had.

On the one hand it was fair that someone new was taking leadership and trying to resolve this with some new people in place. It was a good time to try and do that. We will get to the big questions at the end and I have some things around Richard Jeffrey that I would want to say. At the same time I think it would have been helpful had they at least sounded out Senior Councillors from the different groups. They may have done, I do not know.

My biggest concern was that it was not clear what the parameters of mediation were and what authority officers had to do a deal.

68) What were you told about the outcome of the mediation? What were your views?

I was told that the mediation had led to further discussion of re-profiling the project and a new proposal would be presented to us. That happened by August 2011 which seemed a very long time. I did not know any of the detail, so I actually did not know whether it was acceptable or not. The first I knew any detail was when things came forward in August.

69) What did you understand to be the main changes brought about as a result of the mediation?

The changes to the Project Specification were as outlined in Council reports.

I was given the impression that, on a relationship basis they had moved to a stage where it was possible for the two sides to talk to each other about things. That is about as much as I know because I was no longer a Group Leader so did not get as detailed briefings.

70) Do you consider that you were provided with adequate briefing in relation to the mediation, both before and after the mediation? Was relevant legal advice made available to you?

No, and no legal advice was made available to me, but that may be because at that stage I was not a Councillor directly involved in the work. I was relying on my Group Leader taking an active role and the Council reports.

71) What was your understanding of, and views on, the Council's decision on 25 August 2011 to build a line from the Airport to Haymarket before, shortly

afterwards, voting to build a line from the Airport to St Andrew's Square/York Place?

We received a report on 25<sup>th</sup> August that gave us four options. One was to carry on as we were doing, potentially increasing costs the Council could not afford. The second was to cancel the contract which came with a big cost and would have got us nothing. It was £200m or something like that. I would have to go and look at the report for the exact figures. The third and recommended option was to build to St. Andrew's Square/York Place and the fourth, which was cheaper, was to build to Haymarket. It also took less time, potentially. It would have left some lines on Princes Street that were out of kilter with the rest, but regardless that is where it was.

There was a lengthy and perhaps heated debate at that Council meeting where in the end enough councillors got together and voted through the proposal for Haymarket. That caused a lot of anger from those in the Administration who said the Haymarket option was not possible. To my mind, if the Haymarket option was not possible it should never have been in the report that came before us as an option. My group voted for it because it was the quickest and cheapest way of getting out of the contract whilst still having something and it would certainly have left the possibility of extending to St. Andrew's Square/York Place in the not too distant future. It would have got us out of the contract and we considered that important, what with the dispute that had gone on for so long and the costs that had built up. We considered the best thing to do for the people of Edinburgh was to get out of the contract as quickly and as cheaply as possible.

The officers had written a report in which Haymarket was put forward as a legitimate and costed option.

Within a day and a day and a half, meetings were being called, and the Chief Executive was calling people together. A panic ensued because the Scottish Government Ministers through Transport Scotland were saying they would not fund us if we only went to Haymarket.

Had that been clear people may have made a different decision. It led to a further heated debate two weeks later from the first meeting where the Council ultimately agreed to go to St. Andrew's Square/York Place. That was obviously a decision taken at various places; Chief Executive, Jenny Dawe's office, and St. Andrew's House, but it was not presented to us in that way. So, this made the Council look rather stupid, frankly. Had Council Officers presented the options in an appropriate way the original decision may have been different.

So the Government had taken the decision in 2007 to pull back and it also pulled Transport Scotland out, which made no sense to me because they were still providing the money. It is a regret that they did that. They ultimately put Transport Scotland back into the equation at this stage in 2011, although it was hard for me to determine what their role was. It seemed they wanted to be hands on at some points, and not at others, which caused difficulty. There were also fundamental problems in what was being reported to Council, as we were told there was no way you could build to Haymarket as you could not create a turn back point for the trams. Amusingly Jenny Dawe kept called it a "turning circle". My view, if it was not technically and physically possible was the Chief Executive should never have had Haymarket presented as an option.

72) At a meeting of the Council on 2 September 2011 (CEC01891529, page 89/131 Amendment 3 Items 4 & 5), Jeremy Balfour moved an amendment to instruct

the Chief Executive to amongst other things a) negotiate a binding cost for termination of the existing contractual arrangements; b) conclude negotiations with the Scottish Government over application of the concessionary travel scheme and other government related funding mechanisms referenced in the report; c) develop an alternative funding package for any future tramline construction following termination of the current contractual arrangements and d) agree neither the new structure nor the appointment of Turner & Townsend until that detail had been reported and agreed. You are noted as voting for the amendment at the time. What was your reasoning for this?

I voted with my Group. The Administration was split and everybody had their own amendments. So, we had had the meeting with the Haymarket option. The Council agreed the Haymarket option and we had been called back urgently to say, effectively, that if we did not agree the Scottish Government were going to pull the funding or pull some of the funding. That made things very fractious, even within the Administration the SNP and LibDems had voted together at the previous Council meeting on the St. Andrew's Square option. They had separate amendments.

Labour went for a kind of Haymarket option. We had indicative costs of cancelling, but not fixed costs, so, we took the view that we had to have our own position. We did not have a final fixed cost for termination without further work; and fundamentally, out of the Mar Hall stuff whilst some indication was useful, not having that made it difficult to make a full assessment on what to do at that stage. Our preferred option had been discounted as impractical so we wanted to know the full detail of the remaining options before we decided. We also needed to know some external things, like the concessionary travel scheme, where no one in the Scottish Government would make a decision. This was important for running costs.

We also we wanted to look at the future. We felt that we were being given some termination options, but if we terminated earlier we could look at whether or not there was another way, perhaps a cheaper way of further construction. I think you will find at d) that there was, yet another change in governance, it had not been fully explained to us why this was needed or what was going to happen. So we did not really want to be going down the costs of doing that until we had a full explanation. Essentially, although they had mediated at Mar Hall and although Sue Bruce had come in and was supposedly resolving it, some of the problems of lack of governance, lack of insight into what was actually happening still remained. So we created an amendment that dealt with that, probably not building to St. Andrew's Square (as we saw it as too expensive) or cancelling.

73) A settlement agreement was subsequently reached on 15 September 2011?  
What were your views on the Settlement Agreement?

In one sense, it was helpful to have a Settlement Agreement because we appeared to have something that could be delivered – and within a set cost and timescale with the contractors actually undertaking work. We had no way of resolving the dispute without this agreement, so in that sense it was a relief.

At the same time, it was very expensive and did not seem to take account of saving the public purse or of what had already been spent, sharing out the pain of that with the Contractor. It seemed to just add the cost of building so did not seem to be good value in that sense. It brought additional pain with costs of borrowing going forward £200m or so, so I was not sure it was a good Settlement. Essentially it was adding the original overall Infracost cost on top of what already had been spent even although some was already built.

74) What realistic alternatives to the Settlement Agreement did you understand there to be?"

From what we were being told by Council Officers there were no realistic alternatives. As you saw in our amendment and from the discussions we had, we tried to argue for alternatives so we had a choice but nothing of that nature was forthcoming. We were out-voted in calling for options.

75) Did members have regard to the views of constituents on this matter?

I would say we Conservatives did because we wanted a formal cost for termination and the largest chunk of my postbag was about trams at that time was asking why we were not just getting out of the contract. So, that was what constituents wanted. I did not think it was necessarily best for the city, but I wanted to be absolutely clear on the cost of termination and the cost of the alternatives, so that if we went for something else we could show people why it was a sensible decision. This was not possible because we were out-voted. This was not possible because we were out-voted.

76) What was your understanding of the roles of Turner and Townsend and the role of Transport Scotland following the Settlement Agreement reached in September 2011?

My understanding on the face of it, was that Turner & Townsend were there to independently verify that the bills that were coming in were reasonable. Transport Scotland were, I think, assisting with strategic oversight and planning of things and, from the Government's point of view, I am sure they were there to ensure money was being spent on something worthwhile. I felt that was a little too late and that they should have been doing that for the

previous four years. The Scottish Government made a poor decision removing them from the project when they were providing the funding and they let taxpayers down by doing so.

## **Project Management and Governance**

77) Do you consider that the roles and responsibilities of each of the bodies etc. involved in the delivery and governance of the project was sufficiently clear?

I think it went through a kind of evolving process as time went on. There were clear terms of reference for them all. What was possibly not clear or not adhered to would be the requirements for bodies to report appropriately through the governance structure. There were also failures to hold the project to account within the structures. The reports within the structures was also not always open or accurate.

78) Do you have any views on the suggestion that may be made that there were too many bodies and organisations involved in the governance of the project?

At times there may have been too many sub-groups. There were times when I wondered what the point of TEL, TIE, Tram Project Board was, effectively, they were Chaired as one meeting a lot of the time. It was overcome in practical ways, but there should have been a delivery arm, as in a Project Board and then a sponsor Board or something like that at the top, within the Council. That would have been a simpler way of doing it but I do know more about project management now than I knew then so that advice is in hindsight.

79) What did you understand to be the respective roles and responsibilities of CEC, TIE, TEL, the Tram Project Board and Transport Scotland in relation to the Tram project?

I have touched on a lot of that. The Council were the owners and were responsible for gaining value for money and for governance and monitoring delivery. TIE were the delivery arm. You have not asked about Contractors in here, but I would say the Contractors as well were there to deliver what was set up in their contract. So TIE were there to manage all the procurement and to bring the separate sections together; MUDFA, the design, Infracore, all of that. TEL had a more minor role through all of this stage because TEL was about integrating into the wider transport infrastructure of Edinburgh. They had oversight of how bus and Tram would integrate in the longer term. It was not all that heavily involved at this stage. The Tram Project Board was, I suppose, the project governance Board overseeing what TIE were doing and acting as the project's internal governance mechanism because of commercial sensitivities. Transport Scotland should have been there to ensure the project remained on track, but Transport Scotland left at the behest of Ministers. They were involved, but they should have brought more additional expertise to that non-executive oversight Board and the Project Board, yet they were not there.

80) In what way did TS's role and involvement in the Tram project change following the formation of an SNP Administration in the May 2007 election? Why was that change made?

Transport Scotland withdrew, essentially, from any active role in oversight of the Tram Project. They paid out money, at certain points, but I do not know how they went about ensuring that was appropriate. Normally, in these governance situations you have a handover situation around funding another body but I cannot remember what the process around that was. I do not know if it was milestone based or whatever, but they continued to do that without direct involvement to check such things and you would

have expected that. I would have expected money based on milestone completion if they were properly looking after taxpayers' money. I would also expect review of risk and timetable and the ability to alert the Council that funding would not be forthcoming if the project was off track.

The change was made because Ministers made that decision. You would have to ask Ministers why they made that decision. If I was a Minister, coming in and the previous Minister had done that, I would think it was a flawed decision. I think it would have been helpful for TS to have had continued involvement from the point of contract sign off, because they brought wider transport experience around contracts. They should also have protected the funding they were providing.

81) Do you consider that TS's changed role had an adverse effect on the management, oversight and/or delivery of the Tram Project (and, if so, in what way)?

I was not involved in any direct meetings with people from Transport Scotland. I do not know how they interacted within the management and oversight directly but it cannot have helped when we came to the point of contract checking and sign off as they could have brought additional oversight to that. Otherwise see my answer to question 76.

82) Do you have any views on whether members and Officers of CEC should have been more actively involved in the project? Did you hold these views at the time or later?

At different times, right up until contract sign off or thereabouts there was quite heavy involvement from CEC Officers, particularly the Chief Executive, Director of Finance and Director of City

Development. After contract sign off that was less obvious. One of them, the Director of Finance, Donald McGougan, was on the Tram Project Board. The Director of City Development may also have been, or his nominee, and eventually a Transport Officer, Marshall Poulton, who was Head of Transport.

It seemed that having been involved as an Interlocutor between Councillors and TIE, and being our supposed advisors on what TIE were saying, they took a step back and left TIE to get on with it. I think that was a failure of leadership at that stage. I do not know if that was because of things they knew, that we did not, but in hindsight, it looks a bit like that. Some Councillors were directly involved in governance throughout TIE Board membership. Others should have been more involved in public scrutiny.

83) Do you consider that members and officers of CEC exercised effective oversight and control over the trams project (if not, why not)?

In some ways that is a very difficult question to answer because I was not at Tram Project or TIE Boards and do not know how much questioning went on. Those Councillors and officers who were have told me there was consistently some questioning and challenging of TIE, and that included people on the TIE Board or non-execs who came with industry or Civil Service experience. These outsiders may have provided the most robust challenge. So, I was told there was challenge there, but that is why I would be keen to see the Richard Keen paper, to see if it says anything different from TIE's version of the legal position they presented to us in briefings. The firm view from outside was that they (TIE) hid behind their legal advice and once McGrigors supported them, they proceeded on that basis.

I think that up until project sign off there was quite a lot of challenge within the Council, but not necessarily in public meetings. There was a lot of challenging at mix group meetings, to officers and to TIE Officers who came along to support what the officers were telling us. We have been through all of this about fixed price which turned out not to be accurate etc. Some of that information and position was robustly challenged and it was robustly defended by these officers.

At points of crisis I had an expectation of the Council Leader and other senior members to be standing up and taking responsibility in attempting to resolve things, but instead there was almost a stepping back. Take the Princes Street closure where the Chief Executive, Tom Aitchison and leader Jenny Dawe seemed to step back from the situation and said nothing, rather than take responsibility. So, effectively, there was sometimes control but it varied, at certain points things were allowed to drift and TIE were allowed to just get on with it with their strategy being accepted. After briefings with TIE I would encourage officers and staff to give TIE a hard time to ensure delivery but could find no allies. All accepted TIE's reason of legal confidentiality within the dispute.

84) Did you have any concerns at any time in relation to the performance of any of the bodies involved in the project management or governance of the Tram project, or the senior personnel in any of these bodies?

It is difficult for me to say around governance. There were times in the run up to contract close when I thought that TIE were spending quite a lot of money and there was not much being delivered for it at that stage, so I had concerns about that. I did not think that the original Chief Executive, Michael Howell, brought very much to the game, he did not seem to progress things very well or very quickly. Later on, Willie Gallagher disappeared very

quickly and that was never fully explained, certainly not publicly. Others have told me of concerns they had about David MacKay which came out in some of the newspaper reporting and the BBS letter about it. I do not know how true they were because I was not there to witness it.

I also have concerns now that the senior team in the Council misled us around the nature of the contract, or were misled themselves by TIE presumably. If that was the case, TIE stuck to that line through a series of Chief Executives which made life very difficult. There was a break point which seemed to be after the Princes Street resolution. Richard Jeffrey arrived around the same time and I have talked on other things about new people coming and moving things on. I thought Richard might change things dramatically and I expected him to come back in a month or two, as lot of new Chief Executives do, saying TIE were going to change their senior team, their approach or the way of doing things, but he did not seem to do any of that. Indeed, he continued with the position that we had held and probably made it more entrenched. I can only presume that was down to the legal advice he was getting.

I repeatedly asked colleagues on TIE Board why the Board was not seeking more advice and assurance from its Executive Team. I was always told that all that was possible was being done.

85) Did you report or discuss any such concerns with anyone (and, if so, with whom and what was their response)?

If I had concerns, where people seemed to be a bit gung-ho or where they seemed to be telling us things that were inappropriate or where they did not seem to be up to the job, as Michael Howell appeared to be, then I had private discussions with the Council

Chief Executive about those things. The thing is, as councillors, we are there for policy and the strategy of the Council, if there are personnel issues, the Chief Executive has to sort that, so the option was to go to the Chief Executive.

The Chief Executive would sometimes refute what was said if they thought the person was doing a good job, other times he would say he would attempt to improve the situation. I had some concerns at some points about how Tom Aitchison was behaving, particularly on the Princes Street closure and that meeting I told you about in Jenny Dawe's office. I was direct with Tom and Jenny about that in the meeting.

- 86) You attended a meeting of the Council on 23 August 2007 at which Councillors were asked to note that a revised governance structure was required for the project. What was your understanding of why it was thought to be necessary to revise governance arrangements? What changes to the governance structure were made in the second half of 2007 and the first half of 2008? When were these changes introduced? Were they effective (and, if so, why)?

I cannot remember the details of these changes. I have re-read the report and it is a result of the capping of funding from Transport Scotland and the transfer of risk to the Council. It also, seeks to define the various governance relationships within the project structure. The report also sets out the clear need to define the role of the Tram Project Board as it was originally a requirement of Transport Scotland who were no longer part of the project. This led to the change in governance. I cannot recall the implementation dates. I was not part of these structures so do not know how effective they were.

- 87) A review of Council Owned Arm's Length Companies was discussed at a meeting of the city of Edinburgh Council dated 28 May 2009 (CEC01891438,

page 22). What is your recollection of the outcome of this review and to what extent were lessons learned applicable to the Tram Project?

I could not say that it had any direct relevance to Trams without seeing the report. Effectively, it was about wrapping up a number of Council property companies into the one company package because they were going to be insolvent. What had floated them previously was land ownerships and because of the financial crash the value of those land ownerships had dropped dramatically and they were all development companies. The governance review was wider, but all of the actions that came out of it were to do with land owning development companies. I suppose it streamlined a number of things and if there is a lesson it might be that we streamlined governance structures.

88) A meeting of the Audit Committee on 26 January 2012 noted that a further revised governance structure was to be implemented as part of the decision to continue the tram to York Place. A key feature of the revised governance arrangements was that there was to be political oversight by means of a monthly All Party Oversight Group/quarterly Audit Committee. In addition to this, there was to be representation by Transport Scotland at all levels of the project. Did you understand this to be effective (and, if so, why)?

It was put in place because we no longer had TIE. TIE was a shell and were being run almost directly from the Council. There was a Project Governance which Sue Bruce Chaired. I think I attended the All Party Group a substitute once maybe twice. I do not think the Audit Committee discussed trams as much as quarterly. I was unsure what the relationship between Audit and the Oversight Group was intended to be. The Oversight Group worked well as a reporting mechanism, but I suppose my frustration with it was that it was simply a place for them to come along and say, "*We have*

*this new deal that is costing you a lot of money but we are sticking to these increased costs". It was not decision making.*

It was effective as a sounding board, as a reporting mechanism but I do not think it brought much additional governance or pressure to reduce costs within the envelope that had been agreed. I did seek this when I attended. Maybe that was not possible, but it was a very large sum of money by that stage. There were still risk allowances and they kept talking about how we will use the risk allowance. There did not seem to be any driving down of costs from that body in order to limit the use of risk allowance. That was what I wanted to achieve. By this stage even Council officers seemed to see risk allowances as budgets to be spent as opposed to contingency.

89) Audit Scotland produced reports on the Tram project in June 2007 and February 2011. What did you as a Councillor and Group leader understand Audit Scotland's role to be? What reliance, if any, was placed by you (and other Council members) on this report?

Well, the two reports were slightly different. The 2007 report was a kind of gateway to say a proper project plan was in place, you know what you are trying to build, the process and resource is in place to do it and, as such, it gave some reassurance that somebody external had checked on project process and that nothing had been missed. Transport Scotland were saying the same things.

The 2011 report was rather different because by that stage, we had the dispute which had been going on for two years at least and the budget was spiralling. As I recall, it was useful for setting out what some of the difficulties were, but it did not necessarily set out solutions, they had to be achieved elsewhere. I suggested the

Council go off and look for those. I suppose it was an external Auditors report that flagged up difficulties for us to address. As a group leader I saw them as our external Auditor, but I saw them as a useful check and balance to ensure that internal processes were working properly.

## Reporting

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

Well, ultimately the Chief Executive was responsible for all of those things, but they had a number of other officials who would assist him. Some of those officials even had juniors who helped out and took particular actions. They could also call on TIE to support them . But responsibility lay with the Chief Executive.

The Council structure is that everything that is formally reported to Councillors comes through a Director or the Chief Executive. So, the Directors involved primarily were the Director of City Development and the Director of Finance with others involved occasionally. Issues also came through the Council Solicitor who at some stages acted directly to the Chief Executive, but sometimes to the Corporate Director.

There were restructures, occasionally someone would retire and someone new was in or whatever, but essentially the person in those posts and those who reported to them were responsible.

There was also a specific post within Transport of the Tram Officer set up to be the lead contact point between TIE and the Council. Marshall Poulton, once he became Head of Transport, took that

role on but they were reporting to Councillors through either the Chief Executive or the Director City Development who were their seniors.

91) Were issues relating to the project discussed separately or in the course of other Council business? Do you consider that there was sufficient time at Council meetings to discuss and consider the project?

Occasionally, where there was a critical point, maybe twice, there was a separate meeting of the Council held only to discuss trams. Largely, however, they were part of the business that came to a Council meeting. The Council meetings are very much a formal place where decisions are taken and where political groups put forward their view and then there is a debate. If you are going to discuss something in detail or scrutinise it is not very easy to do that at a Council meeting. That is much better done at a Committee where you can question officers in public before proposing a view.

Occasionally opportunities arose where questions could be asked of the Chief Executive and his team, but largely that would have to be done beforehand either in private or in Committees. One of my concerns about some of the ways the Council did this was that it all kept coming to Full Council without prior discussion, and a lot was delegated to the Councillors who were on TIE or the Tram Project Board, which was supposedly around commercial confidentiality. There was a Tram Oversight Group, but it did not meet very often and or discuss very much. Even after Mar Hall it did not meet very often. There were reports to the all-party group but it was all kept confidential so that anything commercial did not get out.

That meant there was no opportunity for all Councillors to discuss it, if you see what I mean. Was there sufficient time at Council meetings? Within the context of a Council meeting, I would say yes, in that the debate could take as long as it needed to take, but what there was not, was an opportunity within Council meetings to question detail, go over information or challenge what Officers were presenting.

Some reports also came in quite late, so that would cause a problem if the report had to then go straight to Full Council as you needed time beforehand to, at least, have group discussions with the officials and come to a considered position on it.

92) Did you have a free vote in relation to matters relating to the Tram Project or were you required or encouraged to vote along party lines?

As Conservatives, we had our party view on it and we took that view. I cannot think of any occasions when there was a free vote. It would be open to members of the group to ask for a free vote on any matter and our constitution allows that but I do not recall that being raised. There was an opportunity to debate within the group before you went to the meeting, so you would have a private meeting to discuss the group's stance.

I can think of times when the discussion was strained but usually we would find a compromise. The only time it would be critical was when deciding whether or not to go ahead with something. At the point of contract close I would say it was critical point. In the run up to that we were scrutinising the detail of the proposal. Some were concerned that maybe this was not the way to go, not the best deal or the best route, those kinds of things. A small minority were against the project on gut feeling or instinct but found that hard to voice or formalise into an improved position We also

proposed a number of reports were produced for us in order to seek assurance and these were largely accepted by the whole Council. After contract close it was about trying to ensure we got value for money and the group was entirely united in that respect

93) How were you, as a Councillor, kept informed of developments relating to the Tram project?

At the very early stages I was informed largely as a ward Councillor, because line 1b was to go through my ward. So, I was being given information about very early plans or ideas to use that former railway corridor to get some kind of transport link to Granton and the Waterfront. That would be 2000 or 2001.

Later on, after May 2002 I became group leader. I had more access and contact with what was going on. Some things were coming to Full Council, but there were discussions at the Transport Committee and I was not on Transport Committee at that stage. So, it was not really until the point we received briefings from the Chief Executive when we came to critical points and things that were going to come to Full Council that being informed was a normal part of business.

Later on, as TIE became more fully formed and we were into design, I had one or two meetings with Michael Howell. Again, they were largely about how it would affect my ward rather than what the overall plan was. That was about design and what was coming. As we moved towards procurement and utilities work there were more general briefings and updates from TIE from Willie Gallagher about the project plan for these. I would have to go away and search diaries to find anything but it is fair to say that as a group leader I was given access. Largely, it was about how

they would deal with disruption to the city and address those kinds of things.

Later on once we were getting to project close at the end of procurement and into the project itself there were progress briefings on a reasonably regular basis. My recollection, around the time of project close, was that Tom Aitchison would update me at least once a month. That was really about the negotiation from the December into the May and how it was taking longer and that kind of thing. Later on, TIE would report every so often on where they were on some of the utilities progress and things like that

These briefings were supposed to be regular, but they became more irregular. They became more about reporting when they had something to tell us rather than a briefing every month which might not have anything new to report. There was also the concept that each political group had someone on TIE and the Tram Project Board so from 2007 onwards that was where formal governance and project review was meant to take place. I was left outside of this process although briefings from Tom Aitchison continued as part of the wider role of updating Group Leaders on what was going on with the Council as a whole.

- 94) Did other Council members (including the Council Leader, the Finance and Transport Convenors and Group Leaders) receive separate briefings on the project? If so, did they, in turn, keep you informed?

I was the group leader until 2010. So, although as an opposition group leader I do not believe I got as much direct input or briefing as, for instance, the Council leader or the Transport Convenor, I was informed. But I do not know what they were told and you would have to ask them. Although, Allan Jackson, my colleague, who was on the Board of TIE from 2007, was far

more involved in things than I was. The Councillors who were on the Board of TIE were most directly involved. I am not sure about the Finance Convenor and how much they were involved. I know that I attempted to keep my group informed, but as time went on and as the dispute started there was a point where group members were challenging me. I was telling them what I felt I could within what I had been told in confidence and what I had been told that I should not mention.

I was worried about leaks to the media and elsewhere and it caused colleagues to have a lack of confidence in me around some of this. It also meant they were challenging some of the figures and, of course, I could not answer for the figures which were not mine and the presentation of them which I disagreed with. So, that became a very difficult situation for me to be left in, or Allan for that matter. We therefore attempted to have Officers come and explain a bit more to the group.

Did they keep me informed? I would say a mixture of things went on. Perhaps because of personalities or otherwise, but it was the successive Transport Convenors, Phil Wheeler and Gordon McKenzie, who were our link into things. It appeared to us as opposition that Jenny Dawe almost took a step back from things and was not getting involved. She would speak on the issue at Council, but she certainly did not make any direct approaches to us. It might have been because there was a view in the Administration that Phil Wheeler and Allan Jackson, aside of politics, got on quite well and I got on quite well with Gordon Mackenzie, so, perhaps they just thought it easier for them to come and talk to us. I do not know. However, I was mainly kept informed, as far as I was, through officers.

95) Did you as a Group leader personally receive more information about the project than other members?

Yes more detail on some of the things I would say certainly from other Conservative members. I cannot speak for other political Groups When it came to the finances and progress, if people wanted to ask it would eventually become available to them. There was also an expectation that I would brief people in private and let them know about things. However, some of the things I was being told were difficult messages for Officers to give because they were not good news, they did not always relate back to what had originally been proposed in the project or because they would only give you part of a story. That meant other group members would then ask for more, but ultimately, they probably did not get any more than I did if they asked more questions.

Despite having a bit more information there was no easy way to use this in a governance context and the political context seemed blocked by commercial and legal issues if I wanted to keep the best interests of the City and taxpayers in mind. While there is a requirement for Officers to be entirely open with information, there are always some things they will hold to the Administration to allow them to take things forward. So, there are bits about developing policy, future thoughts, options, things like that that might not always surface until the point where it is coming to a Council meeting. Unless you ask you might not hear, but basic facts you will be told.

96) What did you do to ensure that the Group (or indeed other members) were kept informed of things that came to your attention as Group leader?

I would let people know at group meetings. There would occasionally be times when I might send an email round, but I was

probably a bit wary of that because of the commercial sensitivities of what I was being told and because I was being told that I should not release stuff. It was easier to mention and discuss it in a meeting when people were together. Prior to the financial close and the contract closure, I had individual meetings with some group members about what they thought and what we knew and what was important in order to allow them to take a view within the Group discussions.

97) What was your understanding about the level of information that you required before taking a decision in respect of the Tram project? Do you feel that you had sufficient input into decisions and understanding of the key issues?

That is a very subjective question. Up until the time of deciding to support the decision to go ahead we as the Conservative Group took strategic decisions but often based on very high level briefings as it was all we had. There was a previous light rail proposal, there were bus priority schemes, there were possibilities of some kind of underground and there were a whole host of things we had opposed. We were opposing the congestion charging as well. So, we wanted to look at the trams on its merits and see whether they could come up with something that would be an improvement for the city at a reasonable cost.

We were also attempting to appeal to a more modern public who were more pro-public transport than our natural community, which was older and pro-car. We wanted to broaden our appeal around Transport policy. So, we kept involved in discussions and briefings were not against it in principle, but we wanted to see whether it actually stacked up. I would therefore say, at that stage, that we did have sufficient information to allow us to make decisions to continue further detailed investigations.

At the point of contract close it appeared we had all the information we needed as Councillors in order to take a view. We had not determined how this information was drawn up (that was done by the Labour Administration until 2007) but we were well briefed and challenged assumptions, business case, etc. We did not know minute project detail but our role was to determine strategic policy direction and provide overall governance - it is for officers to manage detailed implementation within appropriate budgets and oversight. However, some of the information and legal advice on the contract and the approach TIE would take was wrong. So I blame the Chief Executive and officers for misleading us. Later on, when I had stopped being group leader it was harder to be involved. I do not feel we had full and proper information around the options coming out of Mar Hall and that renegotiation and although we were told "there has been mediation, they are all back at work and there are new costs which were limited" we were not presented with the information around the escalation of costs that would follow. This was post Mar Hall, but we were largely, not being asked to make decisions. We were just presented with "*this is your only way forward*".

In general, do you consider that Council members were provided with sufficient information in relation to the Tram project?

As a general point to make initial decisions, although sometimes you would have to ask for more detail and at times the information seemed to contradict itself or it took some digging to understand it. It was not all easily digestible. I suppose the issue is how well did officials distil what was a great deal of very complex information into strategic reporting that enabled us to make decisions. They did not always achieve this and (on the Haymarket decision for instance) presented an option they later said was not feasible. On project progress and monitoring we were never presented

information in a meaningful way to allow proper scrutiny. I do not know if this was different to the TIE Board.

98) Do you consider that members were advised in sufficient detail of developments in relation to the project in sufficient time?

Generally for an overview, yes, but not always on the detail. One of the problems was that you might only be told stuff at a strategic level so you had to do some checking. You may only have been given the main report at the strategic level and perhaps only a week before a meeting. So, if you then ask quite a lot of questions it was difficult to get that information back in time. You might then have to meet with the officials to interrogate what they were telling you, prior to the meeting. It could be difficult to get that in a way that you could then use to persuade colleagues either in your own group or elsewhere in the Council of a need for change, further questioning etc.

99) Were members provided with any guidance (e.g. on financial and or technical matters) to assist them in coming to decisions? Was information and advice provided in a clear and intelligible form?

All guidance came in the form of reports from officers. There were also various background reports and you could see where things were commercially confidential. You would often then have the ability to ask for a briefing or further information. Often that was provided as presentations or sets of slides rather than formal reports and I can think of lots of meetings where sets of slides were produced. If I were conducting this Inquiry I would want to see how all those slides related to what the Officers knew and whether they were accurate. That was often how technical and financial information was presented. I would have preferred formal written reports in addition but our but our Group

received presentations because I believe that is what the majority of Groups were getting at their meetings and is what they had requested.

There is a protocol which requires members and Officers to treat each other with respect around these things and there is an expectation that you will be told the truth as part of that protocol. There should be openness and honesty in everything that is presented and one presumes that continues to TIE. This meant that we had to trust that the information we were provided with was accurate. If it was not, and we supported a flawed decision as a result, the fault lies with the officers.

I would also say that it depends what you mean by financial information as some of that was quite technical. The general finances of funding it were not that much different to normal local Government finance and for those of us who had been in local Government for a while, it was not that different from a budget process or anything like that.

One thing I would say about the presentation by PowerPoint is that they would often take away the slides at the end of the meeting claiming commercial confidentiality. That did give you a problem in relation to further interrogation later on. Sometimes you were allowed to keep the information, sometimes not, and where I have looked for that information or requested it from Council officers I cannot now find any of it or I am told it is unavailable. This makes monitoring project progress very difficult and it is impossible to validate success against the original proposals.

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

Where there were specific briefings, they could be quite long and it meant that not all Councillors in the group could participate. It also meant you were sometimes curtailed by time and those briefings could come to an end before you got full clarification on everything. I tended to be there throughout as a Group Leader but still regularly requested follow up information but that was not always helpful when it arrived.

At some meetings you could have information on what they intended to do and how they intended to do it but when you started asking about other ways of doing things, there was generally far less information or opportunity around that. We were usually only brought a single proposal and not options for decision on merits.

At one stage, I asked a question on behalf of a constituent who identified that we were building a very heavy design of tram track, with a great deal of concrete under the tracks on the road sections, which appeared very expensive. I was simply told that is the way it has to be, regardless of what I was hearing from elsewhere. The discussion was just closed down. I would say the thought of options were not discussed to the full. Had I been part of an Administration that might have been slightly different.

101) Did you ever make such a request and, if so, what was the response?

Yes, on lots of occasions and usually it was on the back of a report to Council or Committee. The usual response was that someone would come and brief you. At one stage I was not personally briefed but I went to monthly meetings with the other leaders (I think after the Princes Street dispute). They were not always easy meetings shall we say, so sometimes I would ask for a separate briefing. Usually it worked in accessing information, but

there were times when it did not work or it only partly worked. I think as leader I exhausted all the questions my Group could think of and we got answers to them all. Whether they turned out to be accurate or helpful is a different matter and unlike in a Board situation it did not allow me to easily promote a different course of action as decisions had already been made at political level and we could not change those.

Later on, after Mar Hall, that was not the case because at times you were asking things and everything you asked usually led to further questions. It then became difficult to interrogate stuff.

102) Do you consider that the information and advice provided to members was accurate?

The advice and information on 95% fixed price contract turned out to be inaccurate. At the point of questioning it seemed accurate, although through the dispute process later on, figures seemed to change. That suggests that somewhere things were inaccurate and I think I can probably pull together a few documents that show that. You asked specifically why I asked questions about percentage completion rates at different times and the way figures were presented made it very difficult to read from one set of figures to another. That was an example of changing presentation of figures. Sometimes you got figures that included utilities and Infraco or tram vehicles and Infraco and other times they were all separated out and the totals did not seem to add up to the overall figure. I know colleagues thought some of the stuff presented was inaccurate and they were hearing rumours around the city that TIE were deliberately hiding the truth from Councillors.

103) Did you have any concerns in relation to these matters? If so, did you express these concerns to others (and what was their response)?

I have said it was hard to get everything out that you wanted in the time that was available. Sometimes the figures were opaque and difficult to address. I did express concerns to both Chief Executives, certainly to Donald McGougan on financial matters at times. Also to TIE directly, I would tell Richard Jeffrey what I was hearing and would ask him to explain things. The response was usually to try and explain. However, there are at least two things we have been through where a response came back to me from Alan Coyle on questions I was asking, and ultimately, I had to leave it that we disagreed or we would not come to a full understanding. Sometimes the explanation ended up being, *"Well, that is just the nature of what has happened"* and I remained dissatisfied.

So, some of the costs escalated in such a way that it looked like we were spending as much post mediation to build from the Airport to St. Andrew's Square as on the original Bill to build it to Newhaven. I was told there was extra utilities work and other things and my question was that I thought 95% of utilities were complete so why was that happening? That then led to more questions and ultimately the answer was, *"That is just how it is"*. That was not satisfactory. I have never been given a believable explanation of the huge increase and costs post Mar Hall.

Some of the other concerns I had were about time or availability for group members to understand all these questions, because they would come and question me. Interestingly enough, they were probably more aggressive in questioning me and my colleague, Allan Jackson, than they were officials. The response from officials, where possible, was further briefings for wider

group members, but it was not always possible to do that. I also expressed concern to fellow Councillors including those in positions of power.

104) To what extent did concerns over commercial confidentiality affect the information provided to and from Council members? What steps were taken to address any such concerns?

It made me concerned about what I could say publicly and who I could talk to. There seemed to be some very blanket pressure on this, more than usual, and it certainly affected the information we got about the dispute and the legal advice. It was pretty unprecedented not to be able to see legal advice. I asked to see what was in the adjudications and I was told "no", so, I was not sure where I could go with that.

I was largely relying on Allan Jackson to verify some of this stuff given that he was on TIE Board and it was only through private discussions between the two of us. He was of the view that everything that was being presented to me was exactly what was being presented to the TIE Board or Tram Project Board and that it was as accurate as he knew it to be about the dispute and the adjudications.

I do not know if it was the full details or not, but they were all firmly behind it. I did still ask to see it myself, but the only steps that were taken to address concerns about commercial confidentiality were, as I say, verbal briefings, and occasionally the slides, that were taken away at the end.

105) Do you consider that concerns in relation to commercial confidentiality adversely affected Councillors' understanding of the project (including the problems that arose) and their ability to take informed decisions?

Yes they did. It prevented open discussions and holding so much information in private meant the information Councillors received was filtered. It also meant only a small number of Councillors were aware of the details of the dispute issues. Having said that, we were not lawyers, so would we necessarily have known something different? I think Mar Hall and what followed was significant because the mediation took place, seemed to have a result and the immediate costs of restarting work did not seem out of kilter with what we had previously been told. That was all kind of reasonable, but then they moved onto the £700m and up to £776m and the cost of that escalated dramatically.

About three or four months before Mar Hall there was a point where TIE said they could not do it at £545m and they were talking about £600m to complete to Newhaven. Within a year that was over £700m only to get to St. Andrew's Square, and that included risk allowance, but as I kept asking about risk allowance, risk allowance kept being spent, so it became a new target figure for our officers and the Consortium.

It was hard to understand what was in that Mar Hall Agreement, I think the overriding aim under the new Chief Executive was to get a deal, but the deal seemed to come with a very big bill and we were not given any options around reading the bill. We were not taking any informed decisions, we were just making a 'take or leave it' decision.

106) What was your understanding in relation to the extent to which information provided to Council members derived from TIE and the extent to which it was produced or checked by Council Officers?

As the process moved on, less and less information came from Council Officers and immediately prior to mediation, it got to a stage where it almost all came from TIE. My understanding was

that it was all supposed to be checked by Council Officers and the Chief Executive and Director of City Development would say they were checking on that. Donald McGougan as Director of Finance sat on the Tram Project Board and TIE Board, so there was meant to be assurance that TIE were not acting independently and in their own interests. That was my understanding of how it was checked and brought back to us. You would have to ask these officers what checking they did. The usual stance once difficulties arose was to step back and let Councillors challenge TIE direct in private briefings.

107) To what extent were you informed of concerns about the contract, raised by CEC officials, in the lead up to contract closure?

At that time I was not informed of any concerns about the dispute arose. The contract posed by CEC officials. I have heard rumours since the dispute arose that the Council Solicitor, a female I forget her name, raised a whole host of concerns about the contract and there may have been others. I cannot verify those rumours.

108) How did you report matters relating to the Tram project to your constituents? Did your constituents report concerns relating to the Tram project to you? If so, how and what steps did you take to address your constituents' concerns?

I have told you about the early stages and about route finding and putting things in newsletters. I did not really do anything like that later on because 1b, at that point, looked like it was not going ahead. I was not generally reporting stuff in that sense and also it was slightly unpopular in the ward or a certain part of the ward.

So, I did not report to constituents in the broad sense but people did raise concerns with me quite regularly. Sometimes in the run up to a Council meeting, there would be large numbers of emails. They were not all constituents, some of them were members of the public from across Edinburgh, but because I was a group leader I got targeted with emails.

Generally, I would ask for responses from officials to questions they raised or points they made. Often they were things that I felt I could answer but I would rather that those who were providing me with information provided it to my constituents and I would add any commentary alongside. However, I did answer general questions myself. One of the big issues was around why we were having the trams when we had a brilliant bus service. It was not largely known that if you do build everything at Leith and Granton, as the roads are now at full capacity, you cannot get any more buses through, so something different would need to be done. I was explaining things like that to people. It was not always well received, but I was explaining it nonetheless.

In general terms I was occasionally quoted in media articles and this helped inform constituents.

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

I was concerned with what was being reported in the media, and from time to time things would come up in the media that would cause me to ask questions. There were people who would get themselves in the media, making comments about the rate of progress of work, the costs, how things differed from how they were supposed to be and things like that, so that would generate questions. I viewed media reports with due scepticism, whichever side of any argument they were on.

## Cost Overrun and Consequences

110) When, and how, did you first become aware that there was likely to be a significant cost overrun, including that the total cost of the project was likely to exceed £545m? What did you understand to be the main reason(s) for that overrun?

I think it was towards the end of 2010 there was a formal report to Council there was a formal report, and TIE were saying the reasons for that overrun had been down to an overspend on utilities. It was largely covered by contingency and there was only a small percentage over and above contingency, but there was an element for utilities in there, a small element; and the rest of it seemed to be entirely down to project and dispute costs. The Contractor was not starting work, but had people employed regardless, and we were paying for them. TIE have a lot of people employed and were paying for them, but we were not getting any progress. Effectively, it was time overrun because nothing was happening, but we were still paying all these consultants for work. We were also paying additional lawyers and experts as per the adjudication process. That would be my understanding at that stage, of the main reasons for the overrun.

111) Do you think that enough was done by the Council to safeguard Businesses Effected by the tram works? (CEC01393706)

It is very difficult for me to say whether what is put across in that letter from the FSB (Federation of Small Businesses) was accurate. My impression was that the packages of things done to assist business got better the longer the project went on, so the packages were probably better around the West End and Shandwick Place than they had been on Leith Walk where work started first.

I do not know if it could have been done better but it is interesting that Leith Walk has now been dug up twice in the last year and a half. There have been far fewer general complaints to the Council from traders, and the work looks just as disruptive. So, I think the key thing this time is that the traders were consulted before it all went ahead. I would therefore say the consultation and involvement was probably not good enough with the trams. In terms of practical financial steps I do not believe there could have been much more done except at huge public cost.

112) What was your understanding following the Mar Hall mediation as to how the additional contribution by the Council would be financed, including the different financing options? What was your understanding about the effect that was likely to have on the Council's finances and expenditure, including on services and capital projects etc?

While there were different options at the end and there were talks of trying to bring in different contributions and so on, largely, the financing would come from debt that would be financed from Prudential borrowing which would, in the longer term, be paid for by profit from Tram and Bus, dividends and joint operation, but otherwise, would largely have to be financed by the Council itself from its revenue budget.

In the first few years it would be small and it would ramp up. Ultimately if it had to, that could all fall to the Council. That would be revenue funding and that would affect day to day spending on services. There was always going to be some capital spending that would be paid for through borrowing finance from revenue anyway. It did mean that you would not do some capital projects, perhaps building a new school somewhere or something like that or these would be delayed into later years.

Ultimately, I think it is probably safe to say that the biggest actual effect would be that services would not be affected that much, but it would affect the future capital funding of the Council. It did affect services anyway with different changes to Government finance so it was largely about capital which meant that other projects did not happen or were delayed.

113) Do you consider that Councillors were kept properly informed of the risk of a cost overrun throughout the project, including the likely amount of the overrun?

This is what I said about information appearing rather suddenly. What would happen is that despite lack of progress and things being in dispute, you could question things and they would trundle along. You would then be told the project was still within budget and it was just delaying things, but we can claim some of the delay back because it is not our fault.

You would then get to a point where suddenly you would be told of an overrun or that for a number of months, while we were aware utilities was overrunning, it was all within the contingency that was available and it was only really at the end when reckoning up with Carillion that they decided it had actually gone over. This would be reported at a point where the money was already spent and where you did not have any choice or ability to propose an alternative course of action or a cost reduction. I do not know what was being presented elsewhere, whether some of this was in risk registers presented to the TIE Board or the Tram Project Board but certainly, risks around it did not seem to surface as risks, they surfaced as events that had already taken place. So, in that respect we were not properly informed, certainly not early enough and certainly not within a proper project governance strategy.

114) What do you consider to be the main consequences of the failure to deliver the Tram project in the time, within the budget and to the extent projected, both on your constituents and more generally?

For constituents of my ward there was little effect, but it may be that some other things the Council would have done in terms of capital projects that are for the good of everyone may have been delayed. They may have seen some detriment in the short term, slightly more aggressive changes to Council capital budgets, but only very slightly as savings were required in any case due to Government grant reductions.

There were a whole host of consequences though. First of all, the disruption of construction went on for far longer than we would have expected and that in itself had an effect on people, businesses and the economy of the city as a whole. It reduced confidence and tourism value.

The Council's reputation has been severely damaged through all of this. I would argue that damage could and should fall on a wider group of organisations as others were also involved and brought some external oversight. As we discussed Transport Scotland were happy and involved, Audit Scotland gave it a clean bill of health in terms of governance, at early stages, yet it all went wrong.

I do not believe we have appropriately sought any kind of recompense from those who might be responsible or from those who advised the Council that all was well, particularly around the contract. If the contract was the issue at fault then we have not really done anything around the very highly paid legal advice we/TIE received and its failure to protect the Council.

We have raised an action, but I fear that by the time Lord Hardie finishes there will be no corporate memory to take that forward, it will be too late. That is potentially financial but is also reputational as the Council seems unable/unwilling to fight for its constituents.

We, clearly, only have part of the tramline and that has made a big difference. In practical terms it has made a big difference to how well the tramline operates, because even getting it to the foot of Leith Walk would have made a huge difference in patronage. It has also made a major difference to the development of the city. The fact that it does not hit Leith Docks Waterfront has meant that area has been far slower to develop, albeit there was a recession. That, in turn, has put more pressure on greenbelt around the city.

Trust in the Council to deliver any future extension is very low, regardless of how that is managed and that probably goes wider for public sector projects, because it came on the back of the Parliament project. I also think there is a general feeling amongst the public that the public sector cannot manage major projects. So, there is a whole host of things there and financially it has cost us a lot more than it should have done.

115) To what extent did the shortened line result in the project failing to meet the objectives and benefits set out in the Final Business Case?

It is not meeting its objectives in terms of development of the city. Benefits that were asked of it or in provision of a wider integrated public transport network are also greatly reduced. It is meeting the curtailed business case benefits and is actually doing quite well with what is available but the full line would have

been of far greater public benefit and would have for better running costs.

116) What was the effect of the additional borrowing by CEC for the Tram project on the Council's finances and expenditure, including on services and capital projects etc?

It is very difficult to quantify because some of that effect is on spending years down the line. The Council is in a difficult financial position on services and revenue anyway but it would only be a small part of that. We had been attempting to save £90m over three years, so, in broad terms it is only a small effect on revenue services. On capital, I would think it has almost certainly delayed where we might have been on some other projects, but again it is hard to quantify because we have been intending to plan these things on a rolling basis. You just roll the thing forward and it gets delayed into a future year when the funding is available

117) A final question, are there any other comments that you would like to make which fall within the Inquiry's terms of reference which we have not covered within the questions asked in the interview?

I think with hindsight some of the public governance of the project, within the Council, was very limited. Where there was a Sub-Committee, a Tram Sub-Committee or a Transport Committee, it did not meet very often and it did not go into the detail. All of that was compressed into TIE or the Tram Project Board. With hindsight I would want it to be absolutely clear that the two things were different. One was delivery and one was governance and oversight.

We have seen reports you showed me about changes to Council companies and governance. We have had further reports since that have reiterated the need for good governance and I would say it would be good to have different Councillors scrutinising the work that was reported out of those companies to Committees. Far too often the same councillors who are involved in decisions on Committees were also on the Board of arm's length company that was undertaking actions on the Council's behalf. There were good reasons presented for setting up a company, as an agent to deal with trams, but in hindsight, that might not have been a good idea. Something that probably was not envisaged was the conflict of interest for people working in those companies. Hiring lots of people for a short term contract is difficult but at the same time it might be a long term cost or impossible to find the right skills were you to hire them into the Council.

I was asked, at one point, why I joined my group in voting against a change in governance arrangements post Mar Hall. I have read the report now, and they were bringing in Turner & Townsend, they seemed to be a moving a lot of people act from TIE and bringing in Turner & Townsend. I think our concern was we were simply replacing one company with another company, so what was the difference in governance or control?

A lot of these Contractors whichever format they are in have a vested interest in keeping the project going and so it is difficult to get them to work in a way that is directly responsible for the public purse for the client. That said, that could be the same in-house and I have seen it happen in-house on much smaller things where people's livelihoods are reliant on keeping the project running. So, it is a difficult issue to cover, but in hindsight, it was probably magnified by having TIE set up to run things for

us. The internal project governance should be from within the organisation holding the purse strings.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 95 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature...



Date of signing... 21 August 2017