

TRAM INQUIRY EVIDENCE

REF. NO.: ANON-PA1N-7G37-R

Further to my introductory statement, dated 29 July 2015, submitted online, the following forms the main part of my evidence to the Tram Public Inquiry.

The Creation of TIE

I understand that, in 2001/02, a management reorganisation was to take place within the City Development Department of CEC and that, of the five senior transportation managers employed there, one post was considered to be at risk. It was at this time, that the suggestion arose regarding the creation of a Council arms-length company which could be free from local government pay scales and, therefore, able to attract the highest calibre of technical staff. This was regarded as a ground-breaking means of delivering major projects which found favour with local and national politicians and TIE's subsequent creation attracted interest from the private and public sectors as a possible prototype for the delivery of future projects throughout the country.

One of the first employees of TIE was Mr Alex Macaulay, who was formerly one of the five senior transportation managers within City Development Department. TIE was initially responsible for the delivery of congestion charging in Edinburgh, Ingliston Park and Ride, One Ticket, two rail projects, West Edinburgh Guided Busway and the Edinburgh Tram Project.

There appears to have been no comprehensive operational agreement between CEC and TIE setting out the relationship between those organisations or the governance of TIE and the extent to which TIE required to answer to CEC. It is possibly the case that CEC may have assumed that Mr Macaulay's involvement with TIE (being an ex-CEC manager) would be sufficient to ensure that TIE would recognise CEC as its "client" and follow its instruction. However, it has been suggested that this was not the case and, I understand, there was a souring of relations between individuals of each organisation from almost the beginning. However, there is no written evidence to confirm this situation.

I have been advised that some of CEC's technical staff felt that TIE was unwilling to accept their input to the project (eg, the sifting in relation to the Western General Hospital) and they lacked confidence in some of the information which TIE produced. They found themselves in a Catch 22 situation whereby, under their officer code of conduct, they were obliged to implement CEC's policy regarding the trams, but they held significant professional concerns about technical and financial aspects of the scheme. However, CEC senior officials were directly answerable to elected members who were, for the most part, determined that the tram project should be delivered and were not interested in what they perceived as "jealousy" on the part of CEC officials towards their better paid counterparts in TIE.

Around 2003/04, [REDACTED] Chief Executive of TIE, gave an interview to a transport magazine (unfortunately, I no longer have a copy) in which he commented that although TIE was a Council owned arms-length company engaged to deliver CEC's transport initiatives, it enjoyed a very close relationship with Transport Scotland. If this was the case, then it may be that TIE effectively believed that it did not have to report to CEC officials as it enjoyed the confidence of CEC elected members and the primary funding body, Transport Scotland, and CEC officials struggled to keep TIE under control. The involvement of CEC, TIE, Transport Scotland and, indeed, TEL, meant that there was no one primary individual or

agency responsible for controlling the tram project and this appears to have created a situation where each party could blame the other when difficulties arose.

Virtually from the moment that TIE commenced operating, it has been suggested that it seemed to exert little control over its own spending and embarked on a recruitment drive (empire building) which saw its numbers swell considerably beyond those probably required at that stage, offering salaries well in excess of comparable professional positions in Edinburgh. Initially, very few successful applicants apparently had previous experience of the construction of tramways, coming mostly from the rail industry, but salaries and bonuses were determined by TIE itself. Despite this, TIE engaged so many external consultants on the tram project, adding considerably to its costs, that one has to wonder what TIE employees actually did. It is also notable that all formal reports to the Council were only ever signed by CEC employees – not TIE employees.

Local politicians repeatedly stated that the tram project was “on time and on budget” when it was neither, but who was responsible for leading them to such a conclusion: TIE, its consultants, CEC officials (because they were signing the reports), or Transport Scotland because it continued to fund the project? This blurred accountability should not, however, exonerate any one of these parties and individuals, who were in a position to positively influence the project, from the consequences of their refusal/failure to do so.

Objectors also believed that, although CEC’s main transport priority was the tram project, TIE’s overriding priority was to TIE itself. TIE could only exist as long as the projects in which it was involved existed. It seemed to adopt a policy that the more money spent, the more difficult it would be for the tram project to be halted, the greater the likelihood that TIE would continue to exist. Indeed, as each new tram setback occurred, it was argued by TIE and politicians that so much money had been spent on the project, that it had to proceed and the lack of commensurate progress for the funds expended does not appear to have been an issue.

I also understand that certain senior TIE officials were, in fact, employed by their own companies which then charged TIE for their services and that, following resigning from TIE, some of those senior officials received a “retainer”, although I am uncertain as to how long these arrangements continued, sums paid or what services these individuals offered TIE following their departure from the project.

Objectives of Project/Underlying Assumptions

It is my opinion that the initial proposals for the Edinburgh’s Tram Network were fatally flawed from the start, as a result of the combination of too much weight being given to the stated requirements of Forth Ports and other private interests; unsafe underlying assumptions; a political environment where the risks of the project were either ignored or deliberately downplayed; and a lack of authoritative independent scrutiny.

According to the STAG1 Appraisal of November 2013: *“The Waterfront Masterplan is predicated on the provision of high quality public transport ... In 2001, Waterfront Edinburgh Limited (WEL) commissioned a preliminary technical and economic Feasibility Study of a rapid transit system in north Edinburgh, led by a Steering Group involving the City Council, which would provide a link between the city centre and the proposals for the Waterfront redevelopment planned at Granton. After considering the technology options, alignment and route options and undertaking demand and revenue forecasting, the preferred option was identified as a full loop using LRT technology linking the City Centre with Granton and Leith. A STAG1*

appraisal was produced for this scheme and was accepted by CEC and the Scottish Executive, from whom funding was made available to further develop the scheme."

Apart from the City of Edinburgh Council, it appears Waterfront Edinburgh Ltd was made up of Forth Ports and National Grid plc and so it is unsurprising that the report it commissioned (partly paid for by private interests), should reach the conclusion that a tram network, financed primarily by the taxpayer, and routed primarily to serve the Waterfront Development was the preferred option.

The Arup Report, Edinburgh LRT Masterplan Feasibility Study, January 2003, concluded at Para 2.2.1: *"the main travel markets are east-west and northwest-southeast; all large travel markets are radial to the central area, there are no significant comparable travel markets cross town or lateral; the strongest markets are Silverknowes and South Leith to the northern central area and Corstorphine, South Leith, Portobello and Moredun/The Inch to the Southern Central area"*.

It is unclear how the route of TL1, therefore, became a circular route.

The tramline was regarded by decision-makers as necessary for the regeneration of the Waterfront area. However, I would contend that this regeneration was heavily reliant upon factors beyond CEC's control, including that the UK and local economy would remain healthy; that the Waterfront development would be built to the scale anticipated; that the general public and private companies would invest in that development; that congestion charging would be introduced in Edinburgh to cover the shortfall in tram construction costs; that there would continue to be a Labour Government in Scotland who would contribute to any shortfall in initial construction cost estimates, etc.

Whilst the consultation leaflets made mention of how the routes would prioritise key passenger generators, such as schools, hospitals, universities, major employers, etc, TIE's stated preference at consultation meetings was that the tram would be a high-speed link from the Waterfront to the city centre and the airport and that the route would have as few stops as possible. There appears to have been some conflict between CEC officials and TIE officials on this point (not least in the case of the Western General Hospital, which I shall discuss later) but the public was led to believe that the routes selected would be the most beneficial to the travelling public citywide and to existing communities, when the routes had, in fact, been designed purely to address anticipated congestion arising from the Waterfront Development.

Evidence given by the National Audit Office (NAO) to the Scottish Parliament's Tram Lines (One) and (Two) Committees on 23 September 2004 was clear in the need to serve existing patronage bases before constructing a tram line:

"I do not think that we have a specific view on whether a closed loop is good, bad or indifferent. The better way of looking at it is to make sure that the right route is chosen. Stewart Lingard mentioned earlier that French and German systems make sure that the right connections are made where there are centres or points of economic activity such as hospitals, schools, universities, colleges, shops and the business district. Those places are the centres of economic activity and that is where the patronage base is. The route itself is the key.

Some English cities that we examined put the systems in place just to improve public transport—to get commuters into the town centres from the outskirts and suburbs as quickly as possible, and then get them back out again at the evening peak hour. In other places, such as Sheffield, the light rail system was used quite heavily for regeneration of parts of the city centre. That is fine, as that was the outcome of a local

democratic decision. However, the problem was that after the system was designed and the routes were chosen, a significant amount of the high-density housing along those routes was knocked down and the people who were living there were moved elsewhere, so the patronage base was lost.

The key thing to do is to look ahead. If you are seeking to introduce a system in six to eight years, you need to look forward to make sure that the existing patronage base will still be there when you open. The question is not whether the system should be radial or circular; the key thing is to ensure that the routes that you choose are the right routes and that the people who live on those routes and who want to get from A to B will still be there when you open the system."

During the public consultation, two route options were presented to the public in the area of the Western General Hospital. The one which would have provided a tram stop at the closest point offered (Telford Road) was supported by majority of the public. However, the STAG1 Appraisal of November 2003 states at Para 10.3:

10.3 Option Generation, Sifting and Development

This option development process was revisited in the current study, which broadly confirmed the Preferred option, subject to potential alignment variants at George Street and Telford Road. Whilst there were strong technical preferences, these options were taken to public consultation to ensure a robust decision ... Following the consultation, which broadly indicated a preference for Princes Street over George Street and for the railway corridor over Telford Road, a STAG2 sifting process was undertaken. This again confirmed the original Preferred Route, which was then carried forward to a full STAG2 appraisal."

So, even where the public attempted to influence the route of TL1, its opinion was not only ignored but deliberately misrepresented by the promoter in order to secure the route which would provide the fastest journey from the redevelopment sites to the city centre.

I will discuss later the extraordinary manipulation of the route sifting procedure adopted in the case of TL1, as approved by the Scottish Government, to ensure that route was the final one.

Benefit Cost Ratio (BCR)

The estimated £375 million combined cost of the first two tramlines were prepared in the absence of any final detailed design or certainty as to the location of underground utilities, ground conditions or technical challenges, but Iain Gray, MSP, in announcing the Scottish Government's £375 million grant, stated that it would pay for a £190m loop from the city centre round north Edinburgh, and a £165m link between the city centre, Edinburgh Park business district, and Edinburgh airport - the remainder having been spent bringing the project to the announcement of grant stage:-

(<http://www.heraldscotland.com/sport/spl/aberdeen/pounds-375m-will-return-trams-to-capital-glasgow-politicians-criticise-cost-1.124812>).

As far as the anticipated "benefits" were concerned, these were overwhelmingly anticipated to derive from journey time savings to freight, cars, buses, etc ("road user benefits/public transport benefits"). The modelling used to calculate these alleged journey time savings was the same as used for the purposes of the Edinburgh congestion charging scheme, which experts admitted had a margin of error of +/- 30% and no traffic management plan was produced to demonstrate how these journey time savings were to be

achieved. Therefore, although much was made of the scheme's "healthy" BCR, neither the costs nor the benefits could be considered robust.

Given my previous comments regarding the political will to deliver the tram project, it would be interesting to determine (a) whether any pressure was put on Andersons or Arups to recommend the tram as the preferred option, ie, were they instructed to prepare reports which concluded that tram was the best option; and (b) what discussions took place, immediately prior to the announcement of the £375 million Scottish Government grant, between Arups, the Scottish Government, CEC and TIE as to the value of grant to be announced.

On 10 December 2003, I e-mailed every City of Edinburgh Councillor regarding the imminent meeting at which they were to approve the lodging of the Tram Bills. In that e-mail, I stated *"Costs - We note from the main report to Council (Trams) that, on 11 December, you are to be asked to approve the costs, as detailed in STAG 2 (page 71 for line 1; and page 88 for line 2) and Financial Statement. Are you aware that these documents show a different total cost (£566.7m) than the total being shown in the report to Council (£473.4m)?"*

On 11 December 2003, I gave a deputation to the City of Edinburgh Council on the subject of the route of TL1 and the costs which elected members were being asked to approve that day. I stated:-

"Today's report (Paragraph 3.56) shows a total cost for Lines 1 and 2 of £473.4m. However, STAG 2, page 71 shows a total for Line 1 of £287.3m, whilst page 88 for Line 2 shows a total of £279.4m. These figures include the full optimism bias of 31%, as required by HM Treasury. When we add these figures together, we come to a total of £566.7m! This figure is confirmed in the financial case documents which Councillors are being asked to approve today. If City Development and Councillor [REDACTED] know the figure to be £566.7m, why is this not the figure included in today's report? This is a huge amount of public money, especially when compared to the current level of developer contributions - a very paltry £2m.*

Furthermore, it is unclear who is to bear the additional life maintenance costs of £43.4m – the public or the operators? Where is the figure for the much-publicised improvements to cityscape which are to be provided in association with the tram? Then there is the question of inflation and rising construction costs." (*Later investigations into OB indicated that 31% was, in fact, too low for that stage of the project).

Councillor [REDACTED], Convenor for Transport, asked whether I was aware that, at the time the tram project was conceived, there was no requirement for optimism bias (OB), to which I replied that I believed that to be irrelevant as, by December 2003, there certainly was.

Councillor [REDACTED] through whose Ward TL1 was to run, suggested to the Council a delay in lodging the Tram Bills to enable further work to be carried out on routing issues. Councillor [REDACTED] replied in the strongest terms that the Tram Bills had to be lodged immediately so that "they would not miss their place in the queue".

Throughout this section of the Council meeting, many councillors were writing Christmas cards or wandering in and out of the chamber, sitting on each other's desks and sharing a festive joke.

I believe that CEC were anxious to lodge the Tram Bills as soon as possible in the hope that, by the time of the next Council elections in 2007, they would have completed the Parliamentary process, and construction work would have been well underway, enhancing Labour's chances of re-election to the City Chambers.

There was also a political concern that if Edinburgh did not spend the £375 million grant on trams, then the money would be spent on other projects elsewhere in Scotland.

However, in my view, the funding requirement now having been identified at over £556 million, the Tram Bills should not have been lodged until sources were identified which would make up the financial shortfall.

Scottish Transport Appraisal Guidance

The STAG document in force in September 2003, states at Para 1.1.4: *"It is also intended that the application of STAG will result in the development and implementation of proposals to the satisfaction of all stakeholders, most importantly the public."*

Five appraisal objectives (Environment, Safety, Economy, Integration and Social Inclusion & Accessibility) were to be used to assess the potential value of proposals to improve transport at a local or national level.

Section 4 of that document describes the procedures for "Option Generation, Sifting and Development" and states *"Simply retro-fitting existing proposals or those with a planning history, to objectives may be tempting but is clearly not the way to proceed"*. However, I would submit that, not only did the promoter retro fit the tram route to support the development in North Edinburgh, but it required to introduce a different sifting procedure to do it. Indeed, whilst TL1 used this different procedure, the route sifting procedure utilised for TLs 2 and 3 were entirely in accordance with STAG guidance.

The Scottish Parliament's TL1 Committee sought evidence on the issue of how the tram would/would not serve the Western General Hospital directly. I am assuming that the Inquiry Team will have seen and considered all written and oral evidence presented to the Scottish Parliament's Tram Committees, including my own lengthy submission in relation to the Western General. In the course of preparing that evidence, I wrote to the Scottish Executive and that e-mail serves as a much briefer explanation of what I believed was a highly questionable method of route sifting in relation to TL1:

---Original Message---

From: rasmbourne [mailto:rasmbourne@redacted]

Sent: 30 May 2005 23:16

To: [redacted]

Cc: [redacted]

Subject: Tram Line 1 - Western General Hospital

*This email has been received from an external party and
has been swept for the presence of computer viruses.*

Dear [redacted]

For nearly two years now, I have been endeavouring to find out why Tram Line 1 provides no direct stop for many key generators along its route and, especially, the Western General Hospital.

I have recently had sight of Transport Initiatives Edinburgh's Work Package 1 Report, which sets out the sifting method adopted when in considering the final route option to be put through the STAG2 appraisal. The report makes reference to the five national criteria but what is surprising is that the sifting tables at the back of the report show that in arriving at these four options, TIE's consultants chose to use the criteria of "technical implementability"; "economy"; "transport"; and "environment", ie, they did not use the five national criteria. Furthermore, weightings were applied, with "technical implementability" being given the highest weighting. This would suggest that "ease of construction" was considered the most important factor in determining the eventual route of Tram Line 1. It would appear, from Work Package 1, that all identified possible links for the route options were put through the four chosen criteria (with weightings) and this produced the preferred route (with a couple of options) to put through the STAG2 appraisal.

The omission of the criteria of "accessibility" I feel is an important one as it seems to have resulted in the omission of a stop to directly serve the Western General Hospital and many other key generators along the route. You are, doubtless, aware of the findings of the National Audit Office Report on the subject of why British tram schemes have, in general, failed to deliver the same level of success as European schemes in which they identify that European schemes are most often designed to connect key generators and avoid the use of disused railway corridors (through areas of low-density high car-ownership), whereas UK schemes have tended to do the opposite.

The City of Edinburgh Council produced comments on Work Package 1 and they, too, seem surprised by the lack of a tram stop anywhere on Crewe Road South, given that the sifting tables identify the many key generators along that route. They express the view that "A link to the Western General Hospital is considered very important by CEC and a rigorous examination of the options at this locus should be undertaken. The comments made on Link 7-15 (Crewe Road/Orchard Brae) that there were no significant business sites on this route is strange in the respect that the previous paragraph mentions the Police Headquarters, Fettes College, Telford College campuses North and South and the Western General Hospital to which could be added BAE Systems office and research complex, the Deutsche Bank and two supermarkets". Despite requesting information from both TIE and The City of Edinburgh Council under the Freedom of Information (Scotland) Act, I have been unable to find any evidence of a "rigorous examination of the options" being undertaken.

I also feel that the omission of "integration" may go a long way to explaining the use of the Roseburn Corridor (a route virtually cut off from the road network) and the use of the seafront corridor which is clearly difficult to integrate, given the sea on one side.

Tram Line 3 provided direct stops at many key generators and the sifting report for this line details a somewhat different procedure from Tram Line 1.

In the case of Tram Line 3, it would appear that all links which were considered technically very difficult on which to construct a tramline (due to very steep gradients, very tight curves, etc) were discounted at the start. The remaining links were all put through the scoring procedure against the five national criteria, with no weightings being applied, and each sift resulted in links which scored less well being discarded until they arrived at the preferred route corridor. In the case of Tram Line 3, the links were scored against the national criteria no less than four times in order to arrive at the preferred route corridor and the provision of

a tram stop at the New Royal Infirmary of Edinburgh seems to have been given very high priority. I can find no trace of the four other criteria being employed in this sifting procedure.

It is also interesting to note that, for Tram Line 1, fastest journey time appears to have been the most important objective, whereas, for Tram Line 3, maximising patronage was considered the most important.

I am, therefore, puzzled by the discrepancy in the sifting methods employed on each of Tram Line 1 and Tram Line 3 and would be grateful if you could:

- 1. Confirm if the Scottish Executive was provided with a copy of Work Package 1 and approved the use of the four criteria: "technical implementability"; "economy"; "transport"; and "environment" and the use of the weightings, instead of using the five national criteria, detailed in STAG.*
- 2. If Scottish Executive approval was given to using the four criteria, why it was felt appropriate to do so, given the terms of STAG and the reasons why it is felt that the use of the five national criteria is so important.*
- 3. If Scottish Executive approval was given to using these criteria, why it was felt that Tram Line 3 should adopt a different method of route sifting and use the five national criteria in order to arrive at the preferred route corridor.*

I am in the process of preparing a written statement for the Tram Line 1 Committee on the subject of an alternative alignment for the Western General Hospital and would, therefore, appreciate your early response ..."

The Parliamentary TL1 Committee, which had identified the lack of a direct tram stop to serve one of Edinburgh's two main hospitals accepted the Promoter's belated offer of a shuttle bus service from the Ferry Road tram stop to the Western General Hospital, although its provision could not be included within the eventual TL1 Act and they must have been aware that this service could in no way be guaranteed.

Having expended considerable time and effort in preparing such a comprehensive submission to the TL1 Committee on this matter, I would be grateful if the Tram Inquiry Team could ascertain why the TL1 Committee did not recommend that TL1 be reassessed, in accordance with STAG. This would, in my view, also have provided an opportunity to review the project and identify sources of additional funding.

Optimism Bias

Following the lodging of the Tram Bills with the Scottish Parliament, objectors gave evidence to the appropriate Parliamentary Committee that they believed the level of Optimism Bias which the promoter had applied was too low, having regard to the UK Government's official guidance on the matter. I am sure the Inquiry Team will also have had sight of Arup's peer reviews of the Preliminary Financial Cases (October 2004) which supported the objectors' position:

(TL1) http://archive.scottish.parliament.uk/business/committees/tram-one-bill/genPrin/Arup_Analysis_Final.pdf

"The Preliminary Financial Case recognises The Department for Transport, DfT's recent OB guidelines [Ref.4], but then doesn't make comparison with the Green Book guidelines or explain the potential effect on the scheme's predicted capital cost. DfT's guidelines provide uplifts at the time of presenting a project's business case. For each project category, there are recommended uplifts for percentile confidence limits. The latter are based on empirical probability distributions of capital cost overruns for comparable projects in the reference project category. The guidelines have additional project categories to those in HM Treasury's Green Book. As well as 'standard civil engineering' it has dedicated 'rail' and 'road' categories. The 80th percentile OB uplift for rail projects is 57 percent. This scheme's P80 value, using DfT guidance, is therefore £345.4 million (i.e. £220 million x 1.57). Even the 50th percentile is 40 percent uplift of the spot cost (i.e. £220 million x 1.4 = £308 million). The DfT recommends its OB uplifts be applied at the time of decision to build, which typically equates to business case submission. Given Tram Line 1 is yet to reach Outline Business Case stage, it is therefore considered that current OB uplifts may have been underestimated."

TL2 <http://archive.scottish.parliament.uk/business/committees/tram-two-bill/docs/e204-PFC%20Report.pdf>

"This scheme's P80 value, using DfT guidance, is therefore £400.4 million (i.e. £255 million x 1.57). Even the 50th percentile is 40 percent uplift of the spot cost (i.e. £255 million x 1.4 = £357 million). The DfT recommends its OB uplifts be applied at the time of decision to build, which typically equates to business case submission. Given Tram Line 2 is yet to reach outline business case stage, it is considered that current OB uplifts may have been underestimated."

Therefore, at October 2004, when the Promoter had stated that the cost of the two tram lines would be £475 million, the funding which should have been identified and in place before proceeding further was actually £745.8 million. Given that CEC's assurances at that time that the cost of the project would be "fixed" and that its risk would consequently be minimal, the OB should have been even higher.

In September 2005, during the course of oral evidence, the Parliamentary TL1 Committee was, at last, advised by the promoter that the anticipated cost of the project, including OB, had increased. The local press produced articles referring to a cost of £714m, "an estimated funding "black hole of at least £260m" and that "it is thought unlikely that the city will be able to afford to build two complete lines in one go".

However, at the meeting of the Parliamentary TL1 Committee on 27 September 2005, the following exchange took place:

□ **The Convener:**

"On another matter, members will be aware of the recent publicity surrounding the cost of the tram projects and whether line 1 will be a loop. I am sure that members will agree that the committee will want to comment on any uncertainty about costs and on whether there will be a loop later on during this stage."

On costs, members received a copy of a letter from Transport Initiatives Edinburgh Ltd last week, which confirmed that the capital cost for the Edinburgh Tram (Line One) Bill remains at £274.15 million. That figure is the same figure that appears in the September 2004 updated preliminary financial case and in our preliminary stage report. Members will be aware that we have requested further information and updates on

the funding and patronage case for the Edinburgh Tram (Line One) Bill. In addition, through the clerk I have requested monthly updates on the costs of the tram project and will circulate those updates to members to keep them informed. The committee will, of course, continue to monitor the costs of the tram project and I expect that we will return to the issue in more detail later in the year.

■ **(South of Scotland) (Con):**

I would like to pick up on an issue. As a result of inflation, prices have increased to the extent that people have questioned whether, in the light of its contribution, the Scottish Executive is committed to raising the amount of money that must be raised for the schemes. It seems to me that, as a result of inflation, the Scottish Executive has provided sufficient money for only one line.

A report that TIE passed to us says that if the Parliament agrees to tramline 1 and tramline 2, TIE will determine which sections of each line will be provided. If the committee makes a judgment on tramline 1 and the circular route and people start to cut bits out of that route somewhere along the line, we may have made a false judgment. There could be a major impact on individuals who live along the route as a result of land being sterilised, and whether people want to sell their homes could be affected by effective planning consent being given on the route. I simply make the point that TIE must further justify the costs as we proceed. Perhaps the Scottish Executive should comment on the level of its contribution, and TIE must be open about the possibility of taking sections of the tramline 1 route or the tramline 2 route out of the equation prior to Parliament giving its consent.

■ **(Dunfermline East) (Lab):**

We must proceed with the process on the basis of the information and the facts that are before us. The situation is not ideal, but that is the reality. We have information from TIE and the objectors and we must take a balanced view that is based on that information. I am afraid that we cannot hypothesise in the meantime on what might or might not be.

■ **(South of Scotland) (Con):**

May I respond?

■ **The Convener:**

Just a second.

■ **(Highlands and Islands) (SNP):**

It is important for the public to understand that any development leads to disruption of homes, businesses, routes and so on. We take seriously the question of how development will affect people, but we are aware that issues such as compensation are dealt with after the decisions are made. The people who arbitrate on compensation deal with the actual effect on people, rather than the potential effect.

■ **The Convener:**

I will draw this matter to a conclusion. I am conscious that we have received confirmation that the capital costs remain the same as indicated in the preliminary financial case, which we considered at preliminary stage. I am also confident that with the in-built Treasury optimism bias of 24 per cent—which gives a margin of £60 million for additional costs—the costs can be absorbed. I take the point that it would be nice

if the Executive chose to index link the funding that it will commit. I say to Phil Gallie and other members that TIE and the Executive will be back at a future meeting to discuss finance, so we will return to the issue.

Finally, on planning blight, section 38 allows for the powers that the promoter will acquire to last for only five years, so while there will be blight during that time, it will not be never-ending. Equally, the bill deals with compensation for planning blight. On that basis, I hope that members will agree that, having aired the issue and recognised that there will be considerable work to do in future, we will return to the matter when we consider all the financial information at the end of the process. Is that agreed?

□ [REDACTED]:

In response to [REDACTED] I make the point that we are not working with hypotheses, because we are working with a TIE document that states clearly at paragraph 3.1.3 that insufficient funds may be available to provide both tramlines as they stand. That raises the question of the contributions of City of Edinburgh Council and the Scottish Executive. During the course of our deliberations, TIE should come back to state clearly which sections it would prefer to remove in the event that the SE and CEC cannot clarify the situation. Those are not my words, [REDACTED] they are the words of TIE in its report.

□ **The Convener:**

Let us not have a big debate about this. Equally, I could say that I can find other passages in TIE's progress report that say something different. For example, paragraph 7.3.2 states that the objective between now and the delivery of the final business case in November 2006 is

"to construct over time the totality of Line 1 and Line 2 as and when the sources of funding become available."

That remains the promoter's objective. We will return to scrutinising whether it is able to achieve it at a later stage. I thought that it would be helpful to put that on the record.

□ [REDACTED]:

That is helpful, convener.

□ **The Convener:**

Dearie me; managing this lot is impossible.

On the press coverage on whether the loop will indeed be a loop, the bill as proposed would give the promoter the power to construct and operate a loop, either in whole or in part. As it stands, the bill does not propose any timescales over which parts of the loop are to be constructed, although there will be limits within the bill. As I mentioned before, section 38 limits exercise of the powers of acquisition to five years from when the bill becomes an act. That said, it is extremely unhelpful to all concerned to have officials or senior sources at TIE commenting on the costs and the tram route. I am sure that members agree that any announcements about the costing of the line 1 project or its route should properly be made to the committee, rather than in the press. I hope that those who are present today pass on our comments to the promoter and its officials. We expect the promoter to control its officials, and we will take an extremely dim view of matters if the practice continues."

On 3 October 2005, following further reports regarding the escalating cost of the project and how this might impact its delivery, the TL1 Committee began its meeting, as follows:-

■ **The Convener (██████████):**

"Good morning. I welcome everyone to the 16th meeting in 2005 of the Edinburgh Tram (Line One) Bill Committee. Before we commence, I note that I have become increasingly concerned about further articles that have appeared in the local press from official and unofficial sources. I am sure that people will appreciate that it is extraordinarily difficult not just for the committee to operate in that context, but for objectors to come to committee meetings when they do not know quite what route is under discussion. Therefore, it is my view that we should write in the strongest possible terms to the City of Edinburgh Council about the leaks.

■ **██████████ (South of Scotland) (Con):**

I agree.

■ **██████████ (Highlands and Islands) (SNP):**

I back up totally what the convener has said. If there are any more such articles in the press, the whole process will be undermined. The strongest possible action should be taken to stop that now.

■ **██████████ (Dunfermline East) (Lab):**

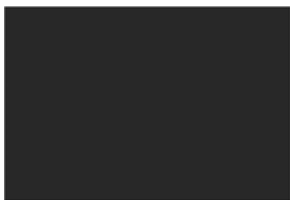
I agree with those remarks.

Despite it having become obvious that the promoter had, indeed, been deliberately understating the likely outturn cost of the project for several months, objectors were absolutely horrified that the Committee chose merely to reprimand the promoter for repeated "leaks" to the press, rather than demand from the promoter an explanation as to how it proposed to pay for the scheme, or if unable to do so, what part(s) of the tram lines it realistically expected to deliver. In my view, this was another opportunity missed at which the project should have been reviewed. However, given the decision of the TL1 Committee, objectors realised that the Bills would be passed, that taxpayers could either require to pay upwards of £745.8 million for the two lines, or that only parts of those lines would be built. A fellow objector commented off-camera during the meeting, *"Well, it looks like this is heading for a Public Inquiry"*, however, I doubt that any of us thought that the project would allowed to deteriorate to the level it did or that it would be another 10 years for the Public Inquiry to commence.

In February 2006, I attended a public meeting regarding the trams at which several local politicians were present (<http://www.scotsman.com/news/politicians-told-don-t-make-trams-another-holyrood-fiasco-1-980280>). I confirm that Councillor ██████████ did, indeed, remark that *"People promote Bills all the time without the finance to afford them."*

On 21 December 2006, CEC approved the construction of Phase 1A only (Edinburgh Airport to Leith) at a capital cost of £457m, plus 12% OB uplift, totalling £512m (BCR 1.1)

In late 2006, a fellow-objector sent a letter to CEC's Director of Finance regarding the OB uplift being applied at that stage – 12%. Although the initial communication is missing, I have her permission to include the response received in my evidence to the Inquiry Team, as follows:-



Our Ref:

Your Ref:

Date:

Dear 

Thank you for your letter dated 11 December 2006.

Your first point relates to the Preliminary Financial Case. As you are no doubt aware, this was prepared by **tie Ltd** and their advisors on the Council's behalf. I was not involved in putting the case together, so am unable to comment as to whether the 31% optimism bias used was appropriate. However, the Preliminary Financial Case was assessed by the Scottish Parliament, as part of the two tram bills, and both bills received royal assent earlier this year.

As the draft financial business case has significant financial implications for the Council, I have carefully reviewed the document, and its optimism bias assumptions. Following this review, the Director of City Development and I have jointly recommended that the City of Edinburgh of Council approve the business case.

In assessing the appropriate level of optimism bias we have considered all project costs and the risks associated with them. The procurement strategy being employed for the tram project involves advanced design and procurement, so that costs are known **before** the final decision to build is taken. As a result of this strategy, a lot of the costs are known to a high degree of certainty. For example, the utilities diversion contract has already been let, and we have received tenders for tram vehicles. It is therefore misleading to equate, the approval of the final business case with the "decision to build" in Professor Flyvbjerg's terms.

Furthermore, the level of contingency is not a simple calculation. Every estimate has been assessed separately. Where costs are known, a low risk (or optimism bias) percentage is applied; where there is less certainty of the costs, a higher risk percentage is applied. The 12% figure quoted in the Draft Final Business Case represents an average figure and for certain costs the risk uplift is significantly higher.

The tram project has been and will continue to be subject to independent review. Transport Scotland, the project's main funder, has a rigorous gateway review process for all its major projects – the tram is no exception. In addition, independent consultants, Cyril Sweet, were employed by Transport Scotland to verify cost assumptions. Their findings were reported to **tie Ltd** and have been used to inform the draft final business case.

Your final question relates to passenger forecasts. I can confirm that the firm employed to forecast passenger numbers will not be penalised, should actual forecasts be different to those predicted. However, predicted growth is in line with that experienced by Lothian Buses over the past decade. If passenger numbers are lower than expected, there is every prospect that the reduction in revenue can be offset by cost efficiencies within the combined bus and tram business.

I hope this letter answers your questions.

Yours sincerely,



Director of Finance"

Throughout the Parliamentary process, objectors had raised concern over the role of CEC as both promoter and the body scrutinising the scheme, not least in relation to its financial implications. In receiving Royal Assent, the Scottish Parliament had approved the construction of the two tram lines within a specified corridor but there was very little detail on the accompanying plans on which to base cost estimates or assess technical aspects. [REDACTED]'s response, therefore, raised concern and the same objector entered into correspondence with Transport Scotland on the matter, given that Transport Scotland had committed to funding the project by way of a grant. Again, the initial communication is missing but the remainder was as follows:-

Major Rail Projects
Rail Delivery

Buchanan House, 58 Port Dundas Road, Glasgow G4 0HF
Direct Line: [REDACTED] Fax: 0141 [REDACTED]
[REDACTED]@transportscotland.gsi.gov.uk



20 December 2006

Dear [REDACTED]

Thank you for your letter of 29 November 2006 to the Minister for Transport, [REDACTED], MSP, about the proposed Edinburgh Tram Network. As this is a matter delegated to Transport Scotland your letter has been passed to me for reply.

Answering your questions in sequence, the query regarding acceptability of the current stage of design of the Tram project is a fair one. It is understandably difficult for people outwith (but actually affected by) the project to appreciate especially when labelling of various stages of design and scope are used in a confusing manner. The design of the scheme has been subject to considerable effort since the parliamentary powers were granted earlier this year and is sufficiently advanced for consideration in the draft Final Business Case. It is however important to note that the detailed design process will continue to mature as further detailed decisions are made particularly regarding road junctions and signalling systems. Flexibility within the process must also be made to allow input from the chosen contractors and in terms of design engineering to improve efficiency and costs.

Turning to your other concerns, your appreciation of the application of "Optimism Bias" and its application in terms of the Transport Appraisal Guidance of both the Department of Transport and ourselves, is essentially correct. Both are based on the academic work of those such as Bent Flyvbjerg which have clearly indicated that large transport projects are inherently prone to over optimistic assessment of time and costs. While this is the theory supporting the application of "Optimism Bias" it is important to appreciate that the high levels of bias, such as those you have cited, are only relevant at the start of the project and as planning design and engineering certainty increase, the appropriate levels of bias are reduced. Additionally the guidance makes clear that application of Optimism Bias must reflect the actual circumstances affecting each project so the appropriate level should only be assessed once an analysis of the project has been completed. In the case of the Edinburgh Tram project this resulted in an initial application of around 45% OB which has now been reduced to 12%.

You may wish to note that the guidance both north and south of the Border is currently under review, particularly in respect of Optimism Bias, experience in the UK appears to indicate that application of Optimism Bias at the levels prescribed has been unnecessarily pessimistic.

I am copying this reply to [REDACTED] MSP who has requested sight of this response. Additionally [REDACTED] MSP has also requested advice on the concerns you have raised and a response will be sent in due course.

I hope this is helpful.

Yours sincerely

[REDACTED]

[REDACTED]

Project Manager – Edinburgh Tram Network

-----Original Message-----

From: [REDACTED] [mailto:\[REDACTED\]](mailto:[REDACTED])
Sent: 30 December 2006 11:38
To: [REDACTED]
Subject: Optimism Bias

Dear [REDACTED]

Thank you for your letter of 20 December 2006.

I refer to the third paragraph of your letter, where you state that "high levels of bias ... are only relevant at the start of the project" and would draw your attention again to page 27 of the Department for Transport Guidance Document: "Procedures for Dealing with Optimism Bias in Transport Planning", wherein it states, "For the Flyvbjerg database, cost overrun and uplifts are calculated on the basis of the full business case stage (time of decision to build)." The guidance, therefore, appears to be very clear that the uplifts suggested in the report should be applied to the Edinburgh Tram Scheme, either at this stage or in July 2007, at final business case stage. My understanding is that, only at final business case stage, will firm prices have been received for all elements of the tram scheme and, therefore, it is at this stage, that such levels of optimism bias should be applied.

I note what you say regarding a level of 45% optimism bias being applied at the initial stages of the tram scheme. However, at that time, those levels, I presume, would have been derived from Mott McDonald's "Green Book Guidance", which has, of course, been superseded by Professor Flyvbjerg's report.

Since my initial correspondence, I have now read the Tram Business Case and would make the following comments:-

1. There is no detailed breakdown of capital costs contained within this 169-page document, so it is not possible to see which costs have been included and which omitted.
2. I note from Section 1.57 (p 13) that costs have been based on the preliminary design. However, Section 1.84 (p 17) states: "However, significant unforeseen changes to scope and specification could have a very significant impact on the deliverability of the project" and the table on page 166 shows that completion of the detailed design is not expected until 4 September 2007. My understanding is that tenders for infrastructure were invited some months ago and, therefore, it does not seem unreasonable to assume that a significant number of changes to the design may be identified as necessary between then and September 2007.
3. I had understood that TIE intended to commence construction works towards the end of 2007. However, it appears from pages 106 and 107 that on-street construction works cannot commence until the Permanent TRO process is completed and the table on page 166 states that the anticipation date for completion of the TRO process is 27 August 2008. It seems inevitable, therefore, that there could very well be a delay of around 7 months, which has not been allowed for and the cost of that delay will rest with the public sector. I would appreciate clarification of the term "public sector", ie, is that national or local government?

4. There has been much publicity and assurance from politicians that the cost of diverting utilities is "fixed" and that there will be no risk to the public sector as a result of cost overruns. However, I note from Table 10.5 (p155) that an element of risk for "major utility diversion quantity", "major utility diversion cost" and "major utility diversion delay" rests with the public sector. This is of concern, given the tendency for unforeseen problems to arise with utilities diversions on other UK tram schemes and in general. I would appreciate clarification of the term "public sector", ie, is that national or local government?

5. There is no indication of the margin of error of the new computer model that has been used but I am aware that the previous model, used for the Preliminary Financial Case, had a margin of error of +/-30%. I would be grateful for confirmation of the margin of error of the model used.

6. Page 154 suggests that optimism bias has been applied in line with Mott MacDonald's Green Book Guidance, which I believe has been superseded by the DfT report by Professor Flyvbjerg.

7. Table 10.5 (p155) also shows that other risks to the public sector include:

Land acquisition

Planning approvals

TROs

Design risks

Delays to utilities agreement

Network rail related delays

Required approvals from HMRI

Incorrect cost estimate

Incorrect timetable assumptions

Many of these items, I would assume, could represent very realistic risk, given the uncertainty about when an approved detailed design/traffic management scheme will be ready. Again, I would appreciate clarification of the term "public sector", ie, is that national or local government?

8. It is unclear (given the lack of detailed cost breakdown) whether costs associated with the scheme, eg, public realm improvements, compensation to businesses for downturn in trade during construction period, traffic management scheme (design and implementation) are included in the cost estimate. The cost of each of these items could prove to be significant and without a final design/traffic management scheme, it is difficult to quantify such costs. Clarification of the level of these associated costs and how they are to be met would be appreciated.

I note from your third paragraph that you state, "... the guidance makes clear that optimism bias must reflect the actual circumstances affecting each project so the appropriate level should only be assessed once an analysis of the project has been completed. In the case of the Edinburgh Tram project, this resulted in an initial application of 45% OB which has now been reduced to 12%". I am a little confused by this statement as I would have thought that a 169-page business case should represent a complete

analysis of the project. However, as the points above indicate, there still appears to be areas of potentially significant risk which have not been quantified and an uplift of 12% at this stage appears worryingly low.

As regards your penultimate paragraph, as far as I am aware, Professor Flyvbjerg's DfT Guidance Document is the most up-to-date DfT guidance available and, whilst you suggest that "... experience in the UK appears to indicate that application of Optimism Bias at the levels prescribed has been unnecessarily pessimistic", I would refer you to the DfT report by Professor Flyvbjerg, Section 4.4, where it states: "It may be argued that uplifts should be adjusted downward as risk assessment and management improves over time and risks are thus mitigated. It is however our view that planners and forecasters should carry out such downward adjustment of uplifts only when warranted by firm empirical evidence." I can think of only two major construction projects in Scotland over the last few years, one of which cost over 1000% of the original estimate and the other, albeit partly PFI-funded, being anticipated to cost substantially more than original estimates. I would suggest that, in Scotland, experience does not suggest that OB at the proscribed levels would be unnecessarily pessimistic and, of course, outturn costs of many of existing UK tram systems were substantially higher than predicted.

I have several other concerns arising from the latest draft Final Tram Business Case, relating to the level of consultants' fees, the reliability of both the Road User Benefits and Public Transport Benefits (given the lack of an approved traffic management scheme) and the BCR, which are possibly best dealt with in other correspondence.

If you are also in a position to provide a detailed breakdown of the construction costs of the tram scheme and quantification of the areas of risk identified above, then I would be most grateful to hear from you.

Yours sincerely



From: [REDACTED]@transportscotland.gsi.gov.uk <[REDACTED]@transportscotland.gsi.gov.uk>

Date: 08-Jan-2007 15:11

Subject: RE: Optimism Bias and the Edinburgh Tram project

To: [REDACTED]

Cc: [REDACTED]@transportscotland.gsi.gov.uk



Thank you for the subsequent response to our earlier exchange of emails. While I am happy to respond to your queries regarding the application of Optimism Bias in the context of DfT or Transport Scotland guidance, your remaining issues bear directly on the responsibilities of the City of Edinburgh Council as promoter of the Tram project.

It might be useful to begin by re-setting the context and application of the Flyvbjerg work, so that we do not sustain any further confusion regarding its application or relevance. Although some aspects of the findings of the Flyvbjerg research paper have gone into DfT Guidance it is not formally DfT Guidance; it is simply a

research paper. Nor has it ever been adopted by Transport Scotland. Also both Transport Scotland and DfT agree that our respective guidance indicates that the Flyvbjerg results are not sufficiently robust for rail schemes and sticks to the Mott McDonald / Green Book references.

The key point that I made earlier is that, in general, both Transport Scotland and DfT require that allowances for optimism bias should be largest at the initial stage of the life of a transport project (e.g. Strategic Outline Business Case), reducing considerably the closer the project develops towards a more detailed business case (e.g. Outline Business Case) and at its lowest application in the presence of a fully detailed business case (e.g. Full Business Case). The Tram business case approach is therefore consistent with both Transport Scotland and DfT guidance – indeed the direct reference to the current position of the trams is what DfT refer to as Stage 3, which requires a 6% uplift as a minimum, in addition to the application of any relevant contingency

Hopefully this now clarifies the position of Transport Scotland regarding the application of Optimism Bias for the Edinburgh Tram project, and where appropriate, that of the Department of Transport in England. I hope that it also provides re-assurance that the Guidance has been applied, where appropriate, as part of the overall oversight that Transport Scotland maintain on all of its major projects programme, regarding costs, programme and risk.

[REDACTED]

Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland
Buchanan House
Glasgow G4 0HF
Tel [REDACTED]
mobile [REDACTED]

-----Original Message-----

From: [REDACTED] [mailto:\[REDACTED\]](mailto:[REDACTED])
Sent: 09 January 2007 16:08
To: [REDACTED]
Subject: Optimism Bias and the Edinburgh Tram project

Dear [REDACTED]

Thank you for your most helpful response.

I should be most grateful if you could forward to me a copy of any documentation you have in relation to the stance of the Department for Transport which you have described and their view that Professor Flyvbjerg's suggest OB uplifts are too high. If the DfT has given any written view on the OB uplifts to be applied to the Edinburgh Tram Scheme specifically, I should be most grateful to receive that as well.

I should also appreciate a copy of the detailed breakdown of capital costs, as requested in my previous correspondence, and confirmation that, where the latest business case has referred to risks being borne by the "public sector", this refers to local, rather than national, government.

Thank you for your continued assistance.

Yours sincerely,

From: [REDACTED]@transportscotland.gsi.gov.uk <[REDACTED]@transportscotland.gsi.gov.uk>

Date: 12-Jan-2007 10:24

Subject: Re: Optimism Bias and the Edinburgh Tram project

To: [REDACTED]

Thank you for your further email in response to our earlier exchanges. Please be assured that i shall do all I can to assist you with your request for information, which I will treat as a formal request under "Freedom of Information" Act.

Meantime 2 points appear to need some immediate response so that there is a clear understanding regarding what I am able to provide and what I cannot either because you are seeking comment / information on what is either the policy responsibility of others than Transport Scotland (viz the Department of Transport in England) and therefor not relevant to the Edinburgh Tram project, or, because the detailed information you have requested is either already available in the public version of the draft Final Business Case (as released by CEC) or it is currently withheld and covered by "Commercial in Confidence" agreements due to the ongoing procurement processes. I am sure you will appreciate why release of such information would jeopardize current contract negotiations..

There is also the point which needs to be made clear that there are some issues regarding the draft Final Business Case which can only be commented on by Transport Scotland once Ministers have had the opportunity to consider and decide future actions.

Sent from my BlackBerry Wireless Handheld

From: [REDACTED]@transportscotland.gsi.gov.uk <[REDACTED]@transportscotland.gsi.gov.uk>

Date: 01-Feb-2007 15:27

Subject: RE: Optimism Bias and the Edinburgh Tram project

To: [REDACTED]

Cc: [REDACTED]@transportscotland.gsi.gov.uk

In my most recent email to yourself, I advised you further comment by Transport Scotland on your queries regarding the Scottish Executive's position on the Edinburgh Tram draft Final Business Case would only be appropriate once Ministers have had the opportunity to consider and decide future actions. While this is

particularly relevant to questions regarding key aspects of the draft Final Business Case you may wish to note that specific information on costs is also restricted "Commercial in Confidence"

Meantime, however, I am able to confirm your queries regarding the position of Department for Transport (DfT) and Transport Scotland, namely;

- DfT have never taken a view on levels of OB on the Edinburgh Trams and it would be wholly inappropriate for them to do so.*

· There is no documentation in the possession of Transport Scotland regarding the DfT view of the Flyvberg OB report, nor has any such documentation been seen by Transport Scotland officials. The DfT's view of Flyvberg is very much a matter for their officials to deal with.

· However, it must be appreciated that, the requirement at the UK Government level, currently including the Scottish Executive, is that all infrastructure schemes deal with OB in a way that is consistent with the Treasury Green Book. The Scottish Executive additional requirement for transport schemes is that schemes are consistent with STAG. STAG itself refers to the Green Book and the more specific guidance produced by Mott McDonald. As stated above, Edinburgh Trams are consistent with this guidance. Any other work whilst academically interesting, is irrelevant.

I shall reply to your other business case related queries, once ministers have reached a decision. As I pointed out above, any further response from Transport Scotland at this time would be inappropriate.

*[Redacted]
Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland
Buchanan House
Glasgow G4 0HF
Tel [Redacted]*

From this correspondence, it can be seen that, not only did CEC appear to have little interest in managing risk appropriately or as required by official guidance, but similarly Transport Scotland did not appear to fully appreciate the need to protect the taxpayer from the effects of unforeseen events by applying the correct level of OB uplift in December 2006 when the decision to build was taken.

Phase 1(a) of the tram project has cost £776 million (excluding the £15,597,658.17 paid by the Scottish Government between 2002 and 2005 for initial costs) for 14.8 km of track – over 6 times its original cost estimate. It is obvious that those charged with the management and scrutiny of the project on behalf of the taxpayer failed. Indeed, even if the appropriate OB uplifts had been used at the “decision to proceed” stage (57% for 80% cost certainty), the funding requirement identified (£717m) would not have delivered Phase 1A and, in fact, would have been insufficient to cover the cost of the Airport to York Place phase.

The objectors were not technical or financial experts. They had no previous experience of major construction projects. They were ordinary people who examined the supporting documentation and considered the experience of other recent major projects. Many tried repeatedly over a period of years to draw the attention of decision-makers to the risks being posed to the taxpayer and the people of Edinburgh, without success.

At this point, I draw the Inquiry Team's attention to the British Department for Transport Report, entitled "Procedures for Dealing with Optimism Bias in Transport Planning" (June 2004), and, in particular, Section 5: "Causes of Optimism Bias and Possible Cures"

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191523/Procedures_for_dealing_with_optimism_bias_in_transport_planning.pdf):

"Psychological Causes - Psychological explanations attempt to explain biases in forecasts by a bias in the mental makeup of project promoters and forecasters. Politicians may have a "monument complex", engineers like to build things, and local transport officials can be very keen to see projects realised. The most common psychological explanation is probably appraisal optimism. According to this explanation, promoters and forecasters are held to be overly optimistic about project outcomes in the appraisal phase, when projects are planned and decided.

Economic causes - Economic explanations conceive of cost underestimation in terms of economic rationality. When a project goes forward, it creates work for engineers and construction firms. If these actors are involved in or indirectly influence the forecasting process, then this may influence outcomes in ways that make it more likely that the project will be built.

Political Institutional Causes - Political-institutional explanations see optimism bias in terms of interests, powers, and the prevailing institutional setting that surrounds decision-making on transport projects. A key question is whether cost forecasts are biased to serve the interests of project promoters in getting projects funded and started. This raises the issue of deception: whether project promoters deliberately deceive project sponsors or whether the deception takes place as a result of an institutional set-up that creates inappropriate routines.

Play the game - local transport authorities "play the game"... They have had a clear perception that it would pay off to keep the budgets low and not focus too much on the likelihood of unforeseen costs and to emphasise the benefits ... This finding is not surprising given existing research that generally indicates that project promoters ignore, hide or otherwise leave out important costs in order to make total costs appear low."

In his paper "Underestimating Costs in Public Works Projects – Error or Lie?" (2002), Professor Flyvbjerg offered the following advice:

"Based on a sample of 258 transportation infrastructure projects worth US\$90 billion and representing different project types, geographical regions, and historical periods, it is found with overwhelming statistical significance that the cost estimates used to decide whether such projects should be built are highly and systematically misleading. Underestimation cannot be explained by error and is best explained by strategic misrepresentation, that is, lying. The policy implications are clear: legislators, administrators, investors, media representatives, and members of the public who value honest numbers should not trust cost estimates and cost-benefit analyses produced by project promoters and their analysts."

In view of this, I would request that the Public Inquiry Team examine what underlying reasons may have existed which resulted in each of these parties failing to protect the taxpayer from the unanticipated huge increase in the project's price.

The Parliamentary Process

In order to be permitted to lodge an objection to the Tram Bill, one had to be “directly affected” by the tram’s route, ie, one had to own/occupy property situated immediately adjacent to the proposed tramline. The opportunity to object to the “principles” of the Bills, eg, the funding requirement, the proposed route, questionable benefits, etc, were not open to the wider public. This fact also encouraged official objectors to scrutinise issues more thoroughly than might otherwise have been the case.

As stated previously, the majority of the tram objectors were ordinary people with no particular technical or financial expertise.

TIE had very significant resources, including many individual consultants, solicitors and a QC.

The Private Bill process was considered by the Scottish Parliament officials to be a cumbersome and outdated one. It also involved an “adversarial” procedure, whereby witnesses required to present written evidence, rebuttal statements were then produced, oral evidence was heard where each side could “cross examine” the other.

The level of commitment required from objectors, including myself, to effectively put forward their concerns was onerous. Many objectors worked full-time and required to take significant leave. The promoter’s witnesses were, of course, employed to work on the tram project.

The promoter also engaged the services of Dundas & Wilson, Solicitors, and Malcolm Thomson, QC. Objectors could not afford to employ a QC and had to rely on their own resources and the fair-mindedness of the respective Committees, from whom it was hoped, they would receive the “level playing field” which had not been afforded them throughout the previous Council consultation/scrutiny process.

However, before oral evidence sessions commenced, objectors were invited to a meeting with the Scottish Parliament’s Private Bills Unit to discuss procedure. On arrival, we were shown into a meeting room where a representative of TIE’s solicitor was already present. On enquiring of the Principal Clerk of the Private Bills Unit the reason for her presence, objectors were advised that it was thought that it might be “helpful”. When objectors asked whether they would be permitted access to meetings between the Private Bills Unit and the promoter, the Clerk said “no” but did comment that the promoter had “practically pitched camp in the Private Bills Unit” (PBU), which immediately raised concern amongst objectors that there was already a bias in favour of the promoter.

As the process got underway, it became increasingly apparent that the promoter was regarded by the Committees as the only party acting in the public interest and that, whilst Committee members were obliged to listen to objectors’ arguments, the amount of time and effort involved was not appreciated.

Objectors were often disappointed in the standard of questioning of the promoter’s witnesses by Committee members who appeared to accept that many of the issues raised by objectors would be dealt with by the promoter at a later stage, ie, after the Tram Bills were passed. Indeed, objectors frequently wondered whether Committee members had actually read the evidence and formulated their own questions, or whether the PBU had performed those tasks for them.

Following oral evidence sessions, the Committees would go into closed sessions to consider evidence. This was worrying to objectors because, having been made aware that the promoter had “practically pitched camp” in the PBU, its witnesses might be allowed additional opportunity to ensure to sway the PBU

and Committee members. Also, objectors were completely unable to discern the Committees' reaction to evidence heard or even to be sure that the Committee had fully understood objectors' concerns and the consequences of failing to address those concerns.

As the Bills progressed through Parliament, objectors became concerned that, despite their efforts to convince the Committees of the need to address the many technical and financial risks inherent in the project, the exercise was actually just a "tick-box" one where the decision to recommend approval of the Bills appeared to have already been made at a political level.

I know that many objectors will feel that it would have been more honest not to invite evidence from objectors if the significant issues relating to finance/routes/technical difficulties would not be addressed as part of the process. I shudder to think how much the parliamentary stage collectively cost objectors, in terms of time and loss of earnings, which they accepted because there appeared to be nobody else in a position of authority scrutinising the risks of the project in an attempt to protect the wider public from their potential consequences.

Following the enactment of the Tram Bills, the Scottish Parliament's Local Government and Transport Committee considered a new Transport and Works (Scotland) Bill and invited myself and two other TL1 objectors to contribute to their considerations at a meeting on 26 September 2006. The following transcript explains what I believe was the widely held view amongst objectors of the parliamentary process for the tram project

<http://archive.scottish.parliament.uk/business/committees/lq/or-06/lq06-2302.htm#Col3994>

It can also be seen that we suggested (unsuccessfully) the need for an independent peer review process at all stages of major projects, from inception to approval, to ensure that flaws and risks could be identified and resolved, or at least, mitigated, at the earliest opportunity. We suggested this also because, having received Parliamentary approval, the tram project was remitted back to the CEC and TIE to deliver. However, CEC and TIE was not only the promoter of the tram project but were responsible, along with Transport Scotland, for scrutinising the project thereafter and previous experience had indicated that none of the major technical and financial risks were likely to be resolved until disaster struck. "*Quis custodiet ipsos custodies?*"

The Approval by CEC of the Draft and Final Business Cases

In January 2006, CEC considered a report regarding the funding of the tram project and setting out a phased construction approach.

The Draft Final Business Case (DFBC) of November 2006 stated that the capital cost estimate for the tramline from Edinburgh Airport to Leith had increased to £500 million; with the Haymarket to Roseburn estimate standing at £92 million.

Paragraph 1.91 of the DFBC states: "*The responsibility for delivering this document was given to the Tram Project Board by the City of Edinburgh Council through Transport Edinburgh Limited and by Transport Scotland. It is these organisations who now have the responsibility of concluding on the way forward for the project, based on the evidence presented in this business case*".

Paragraph 3.10 details the “key players”, being CEC, TEL, TIE and Transport Scotland. The first three of these organisations were directly controlled by CEC which had demonstrated a strong commitment to the project, regardless of previous increases in cost estimates, programme delays and the reduction in scope of the project.

Transport Scotland’s commitment to provide £500 million of funding should have ensured that it would effectively interrogate the DFBC and FBC. However, Transport Scotland was *“the agency responsible for the delivery of the Scottish Executive’s transport investment programme”*. The Edinburgh Tram had been recognised as a component of that investment programme and, therefore, that agency had a direct interest in progressing the project.

Many consultants were involved in the preparation of these documents, all paid for by these “key players”. There was no independent scrutiny of these documents, other than by members of the public.

The DFBC stated an anticipated cumulative expenditure of the project to September 2007 to be £119 million (21.8% of the £545 million budget) and suggested a “phased approach” to construction. The detailed design was far from complete, the location of utilities and the extent of the diversions required were unknown, no contractors had been engaged and no construction works had commenced but 21.8% of the budget would already be spent when the final decision to proceed was taken.

By the time the DFBC was produced in December 2006, Councillor Steve Cardownie had become CEC’s sole SNP member and had stated opposition to the tram project. He asked me to review the DFBC on his behalf and my concerns – which focussed primarily on the high level of risk to be retained by CEC and the inadequacy of identified finance – formed the basis of his statement to the Council meeting on 21 December 2006 and his proposed amendment to the Motion:

“Amendment 1) To agree that the ‘Business Case’ for the Edinburgh Tram Network had not been made. 2) To agree that the financial risks coupled with the planned route and technical difficulties dictated that work on this project should cease as soon as possible. 3) To agree that approaches should be made to the Scottish Executive to secure the appropriate funding to improve and enhance the bus service currently enjoyed by the citizens of Edinburgh. - moved by Councillor Cardownie, seconded by Councillor Shiels.”

As per CEC’s meeting of 11 December 2003, the mood in City Chambers was very light: Councillors were again writing Christmas cards and Councillor Cardownie was subjected to ridicule from 56 of his colleagues, who dismissed the points he put forward with little serious discussion or debate.

Both the DFBC and the FBC made clear the risks (particularly those associated with changes in the design and utility diversions) which would be retained by CEC. However, this information was repeatedly confused by statements by CEC/TIE that the project would be “fixed price”.

I am advised by my local councillor ([REDACTED]) that CEC/TIE officials were questioned robustly on these issues and received “reassuring” responses from briefings. However, the project’s supporting documents were very clear: the design was not complete, the locations and extent of the utilities were not properly identified, posing the risk of delay in construction works and significant risk would rest with the public sector.

In October 2011, Dr Jochen Keysberg of Bilfinger Berger in an interview with the BBC (<http://www.bbc.co.uk/news/uk-scotland-15245444>) confirmed that the risks which would have been foreseeable, eg, changes to the design, “would have substantially increased the price”.

It would be helpful to ascertain precisely what information CEC/TIE officials gave at verbal briefings and whether they were asked for or presented any “worst case scenario”, together with an explanation of its potential consequences. It would also be helpful to understand why elected members apparently accepted these reassurances when they were so clearly contradicted by the DFBC and the FBC.

It is simply not credible that the many professionally qualified individuals within CEC, TEL, TIE, their consultants and, possibly, Transport Scotland did not appreciate the potential consequences of proceeding with a project whose business cases, produced by those very agencies, were based on many economic and development assumptions outwith those agencies’ control.

Signing of the INFRACO Contracts

In response to correspondence of 1 September 2010, the following letter was received and it can be noted that CEC refused to provide information in relation to points 4 and 5. I have permission from the recipient to include this correspondence.

RFI No: 164862

Your Ref:

Date: 17 September 2010

Dear Sir

Freedom of Information (Scotland) Act 2002 – Request for Information 164862

Thank you for your request for information. I have dealt with this request in accordance with the Freedom of Information (Scotland) Act 2002 ("FOISA").

I refer to your enquiry dated 1 September 2010 in which you requested certain information under FOISA.

In short, the Council is refusing your request for a number of reasons, including:

Certain of the information is exempt in terms of s.36(1) of FOISA;
In any event the Council estimates that the cost of complying with your request would exceed £600 and the Council is therefore not obliged to respond.

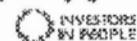
However, in an effort to assist you, I can advise as follows:

1. Details of all companies/organisations/City of Edinburgh Council departments/officials involved in the production of the INFRACO contracts;

The contract was negotiated by Tie Limited, a wholly-owned Council company. Officers from City Development, Finance and Corporate Services were advised on the progress of negotiations by Tie Limited.

2. Details of who the persons were who provided advice (including their professional capacity/organisations) to the City of Edinburgh Council/TIE in relation to the final contracts pertaining to the INFRACO works;

Principal Solicitor, Commercial Practice, Corporate Services
Level 3.1, Waverley Court, 4 East Market Street, Edinburgh EH3 8EG Tel: [REDACTED] Fax 0131 529 3805
alastair.maclennan@edinburgh.gov.uk



The contract was negotiated by tie Limited. The legal advisers to the project were DLA Piper. Dundas & Wilson also acted for tie Limited and the Council on certain legal matters.

3. The professional capacity of all parties who were privy to such legal advice on behalf of the City of Edinburgh Council/TIE;

The Council Solicitor and her team as well as other senior Council Officials were provided with certain relevant legal advice.

4. Confirmation of whether any concerns/issues were raised by legal advisors in relation to the INFRACO contracts;

Such advice is exempt in terms of s.36(1) of FOISA. The information is protected by legal professional privilege.

I do not consider that it is in the public interest for such information to be released. The Scottish Information Commissioner, in a previous decision (Decision 23/2005), stated that the public interest argument for disclosure of legal advice will only apply in "highly compelling cases". I do not consider this to be the case here, especially given that there are still dispute matters between the contracting parties. Authorities need to be able to seek comprehensive and frank legal advice and consider it in private and, accordingly, the requested information is not being released to you.

In addition sections 30(b) and (c) and 33 of FOISA apply.

5. If such concerns/issues were raised in relation to the INFRACO contracts, details of the advice provided to the City of Edinburgh Council/TIE regarding the nature and potential implications of such issues. I would appreciate copies of any relevant documentation in this regard (including file notes/minutes of any meetings at which such issues were discussed), which failing an explanation of the issues identified and whether their potential implications were fully explained to the City of Edinburgh Council/TIE representatives and by whom;

Such advice is exempt in terms of s.36(1) of FOISA. The information is protected by legal professional privilege.

I do not consider that it is in the public interest for such information to be released. The Scottish Information Commissioner, in a previous decision (Decision 23/2005), stated that the public interest argument for disclosure of legal advice will only apply in "highly compelling cases". I do not consider this to be the case here, especially given that there are still disputed matters between the contracting parties. Authorities need to be able to seek comprehensive and frank legal advice and consider it in private and, accordingly, the requested information is not being released to you.

In addition sections 30(b) and (c) and 33 of FOISA apply.

6. Which legal advisors recommended signature of the INFRACO contracts on behalf of the City of Edinburgh Council/TIE;

Such advice is exempt in terms of s.36(1) of FOISA. The information is protected by legal professional privilege.


I do not consider that it is in the public interest for such information to be released. The Scottish Information Commissioner, in a previous decision (Decision 23/2005), stated that the public interest argument for disclosure of legal advice will only apply in "highly compelling cases". I do not consider this to be the case here, especially given that there are still dispute matters between the contracting parties. Authorities need to be able to seek comprehensive and frank legal advice and consider it in private and, accordingly, the requested information is not being released to you.

In addition sections 30(b) and (c) and 33 of FOISA apply.

7. Who authorised signature of the INFRACO contracts on behalf of the City of Edinburgh Council/TIE;

The Council reports of 1 May 2008 and 20 December 2007 are available for viewing on www.edinburgh.gov.uk. These reports detail the matters requested and it is considered exempt under s.25 of FOISA.

8. Who signed the INFRACO contracts on behalf of the City of Edinburgh Council/TIE.

 tie Limited's Chief Executive at the time, signed the contracts on behalf of tie Limited.

If you are not satisfied with the way your request has been dealt with you have the right to request a review of our actions and decisions by writing to the Head of Legal and Administrative Services, Waverley Court, 4 East Market Street, Edinburgh, EH8 8BG or email: legal.foi@edinburgh.gov.uk.

Please note that your request must be in a recordable format (email, letter, audio tape etc.) and that you have 40 working days upon receipt of this letter to ask for a review. You will receive a full response to your review request within 20 working days of its receipt. Please remember to quote the RFI reference number above in any future communications.

If you remain dissatisfied with the way the Council has dealt with this FOISA enquiry you have six months within which you may ask the Scottish Information Commissioner to conduct a review of the Council's decision. You can contact him at: Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS.

Yours sincerely



for Head of Legal and Administrative Services

In December 2010, I wrote to the then new CEC Chief Executive, [REDACTED], requesting that she investigate why outgoing Chief Executive, [REDACTED] authorised [REDACTED] of TIE to sign the tram contracts. Whilst [REDACTED]'s response does not explain why a contract which subsequently formed the basis of a major dispute and had major financial repercussions for CEC was signed, it does suggest that she was unconcerned as the reviews by the auditors of Transport Scotland/CEC and the Audit Scotland report brought "an external assessment and independent perspective".

RASM Bourne

From: "RASM Bourne" <rasmbourne@[REDACTED]>
 To: <Susan.Bruce@edinburgh.gov.uk>
 Sent: 17 December 2010 23:38
 Subject: Edinburgh Tram Contracts
 Dear Ms Bruce

I was a formal objector to the Edinburgh Tram Line (One) Bill and have followed the progress of the Edinburgh Tram Project with great interest since 2003.

Prior to the kiding of the Tram Bills with Parliament, I advised all 52 councillors that the background papers disclosed a funding shortfall of over £200m. Unfortunately, they chose to ignore this issue and proceeded to lodge the Bills with the Scottish Parliament. I raised the same concern with the Scottish Parliament, as did many other objectors but, again, regrettably, to no avail.

Upon the Tram Bills receiving Royal Assent, it became extremely difficult to obtain pertinent technical/financial information from TfE, CEC or Transport Scotland as this was usually refused on the basis of "commercial confidentiality/sensitivity". This lack of transparency and inability to scrutinise supporting information or documents consequently made it difficult to substantiate concerns to councillors, CEC officials and MSPs. In short, I have found my experience of the Edinburgh Tram Project, for over 7 years, similar to "watching a car crash in slow motion".

My reason for writing to you at this stage is to request that you instigate, without delay, a formal investigation into why CEC's outgoing Chief Executive, [REDACTED], gave authority to [REDACTED] (formerly of TfE) to sign the tram contracts. I note from Council reports that Mr Alchison was authorised by the Council, in December 2007, to decide when outstanding issues had been satisfactorily resolved to allow the contracts to be signed. He was to be supported in this decision by the then Director of City Development, the Director of Finance and the Council's Solicitor. The InfraCo contract was not signed until May 2008.

Given the subsequent difficulties in relation to the contracts and as both [REDACTED] and [REDACTED] are soon to retire, I feel it essential that inquiries be made without delay as to what advice was tendered by whom to [REDACTED] and the full reasons for his decision that it was appropriate, in May 2008, to authorise signature of the contracts by TfE.

Amount of £400m has so far been spent on the Edinburgh Tram Project (with more committed), the city has suffered great upheaval and businesses have suffered. It is now debatable whether any viable length of tramline will ever be delivered at a cost which the City of Edinburgh Council can afford, given its difficult economic outlook. Despite the best endeavours of the public to ensure that significant issues would be addressed which would avert the current problems with the project, there has been very little transparency since the passing of the Tram Bills. I therefore, feel very strongly that the public is, at the very least, entitled to an explanation for this unacceptable position and full accountability - neither of which is likely to be forthcoming once Mr Alchison and Mr McGougan retire.

I look forward to hearing from you with your confirmation that my request for a formal investigation is being considered and will take place.

Yours sincerely

MRS ALISON BOURNE

10/11/2014

Mrs Alison Bourne
[REDACTED]

Our Ref: I/bourne003/aln

Your Ref:

Date: 7 February 2011

Alison Bourne
TRAM PROJECT

I refer to your recent letter regarding a number of aspects of the Tram project and suggesting a formal investigation in relation to associated contractual issues.

Since taking up the position of Chief Executive of the City of Edinburgh Council on 1 January 2011, I have been provided with a series of briefings on the Tram project but, as you would expect, there is an enormous amount of information to absorb. I am, however, acutely aware of the importance of this project for the city and of ensuring improvements to the public transport service without undue strain on the public purse.

A number of decisions by the Council authorised entry into the tram contracts. These are detailed below:

1. The Council, at its meeting on 20 December 2007, approved the Tram final business case and authorised [REDACTED], my predecessor as Chief Executive, to, amongst other things, allow the Limited to enter into the contracts with the tram consortium members. This was subject to the proviso that the remaining issues were resolved to the satisfaction of the Chief Executive as detailed in that report. This decision was carried by 43 votes to 12;
2. At the Council meeting on 1 May 2008, a report entitled "Edinburgh Tram - Financial Close and Notification of Contract Award" was considered and a unanimous decision made to refresh the delegated authority given to the Chief Executive referred to in paragraph 1; and

Sue Bruce, Chief Executive

Waverley Court, 4 East Market Street, Edinburgh City 886 Tel: [REDACTED] sue.bruce@edinburgh.gov.uk



3. On 13 May 2008, the Council's Policy and Strategy Committee considered a further report entitled "Edinburgh Tram – Financial Close and Notification of Contract Award" which updated elected members on the current position. The Committee reconsidered the matter as there had been a material change of circumstances and unanimously agreed to renew the authorisation to the Chief Executive to instruct the Limited to enter into the tram contracts with the consortium.


Following contract close, an update report was submitted to the Council's Tram Sub-Committee on 17 June 2008 entitled "Edinburgh Tram – Update on Financial Close".

From these reports, it would appear that the Council was kept fully advised and updated on the award of the contract and related matters at that time. The relevant Committee and Council papers can be accessed through the Council's website.

I would also point out that the auditors for Transport Scotland and the City of Edinburgh Council include commentary on the Trams project in their annual audit reports for 2009/10. You will also be aware from recent media coverage that Audit Scotland has produced an interim report on the project. These reviews bring an external assessment and independent perspective.

I hope that this information is of assistance. Thank you for your continued interest in the project.

Yours sincerely


SUE BRUCE
Chief Executive

At contract close, TIE issued a media release, of which the following is an excerpt, which stated clearly that the contracts were “fixed price”:

With these final fixed price contracts now completed all parties can proceed to delivering this project safely to programme and budget and to the detailed specifications determined by tie as agreed with the City of Edinburgh Council and Transport Scotland.

The final contract agreements have been conducted in difficult and uncertain international economic conditions, combined with an extremely heated UK construction sector in terms of both material prices and demand on resources.

In reaching this final agreement tie with BBS have worked to minimise the consequences of the above factors and together have consolidated and

therefore eliminated more of the risks associated with the cost and delivery of the programme. A major benefit of this approach has been to incentivise the BBS consortium to secure the delivery of the project through key milestones based on programme and cost. Intensive last minute negotiations with BBS over the past seven days have culminated in an agreement that sees a significant additional shift of risk transferred from the public to private sector and which reflects a full and final conclusion to the negotiations and price.

The final price agreed between all parties is £512 million, which is a rise of 2.8% on the price forecast in the Final Business Case and remains well within the funding envelope of £545million set for the Edinburgh Tram Project.

tie has recommended that the final terms negotiated represent the best result achievable for the public sector and has asked CEC to authorise tie to proceed with the contract close.

In October 2011, Dr Jochen Keysberg of Bilfinger Berger in an interview with the BBC (<http://www.bbc.co.uk/news/uk-scotland-15245444>) confirmed what objectors had always said, ie, that, according to the contracts “the vast responsibility of the risk was still within the responsibility of TIE ... including design changes and utility problems were clearly within the responsibility of TIE”.

I am led to believe that Messrs McGrigors prepared a report on the tram contract, the conclusions of which have been described to me, as “damning”. If that is the case, then many questions arise as to why the contracts were signed; whether any representatives of TIE, CEC or their external advisors were aware that the contracts would leave the vast responsibility for risk with the taxpayer; why the dispute was allowed to drag on, costing over £200 million in that period, with apparently no TIE/CEC political representatives prepared to discuss the situation directly with the contractors; and whether [REDACTED] and the Director of Finance made aware of the contract’s deficiencies prior to authorising their signature.

Management of the Scottish Government Grant

The following letter from Transport Scotland shows that, in addition to the Scottish Government's £500 million grant to the tram project, the sum of £15,597,658.17 was paid to cover associated tram costs and that, in addition, at 5 April 2009 (shortly after the contractual dispute commenced), a total of £212,413,584.07 of the Scottish Government's £500 million grant had been spent.

In addition, CEC would have paid their pro rata share of around 9% (around £19.2 million), bringing out a total spend on the project, at 5 April 2009, of approximately £232 million.

Special Projects
Major Transport Infrastructure Projects

Victoria Quay, Edinburgh, EH6 6QQ
Direct Line: [REDACTED] Fax: [REDACTED]
Allan.Roberts@transportscotland.gsi.gov.uk



Mrs Alison J Bourne

Your ref:

By e-mail: rasmbourne@transportscotland.gsi.gov.uk

Our ref:
Foi/14/01041

Date:
July 2014

Dear Mrs Bourne

**FREEDOM OF INFORMATION (SCOTLAND) ACT 2002
EDINBURGH TRAM**

Thank you for your requests dated 16 and 17 June under the Freedom of Information (Scotland) Act 2002 (FOISA).

Your request

You asked for;

1. Details of the amounts paid by the Scottish Government to the Edinburgh Tram Project for each year from the award of the government grant to the project in March 2003 to date.
2. Confirmation that no further funding was provided by Transport Scotland for the purposes of trams in Edinburgh prior to March 2003
3. Confirmation on whether the £500m grant is the total which the Scottish Government has given to the tram project since its inception.
4. Details of any additional sums paid for associated items paid for by the Scottish Government over and above the £500m grant.

Response to your request

Details of the payments made to CEC by the Scottish Government are shown in the table below

www.transportscotland.gov.uk



An agency of
The Scottish Government

Financial Year	Amount	
2002-2003	£2,032,542.18	
2003-2004	£7,156,263.30	
2004-2005	£6,408,852.69	
Total	£15,597,658.17	
2005-2006	£13,500,625.21	
2006-2007	£25,632,951.13	
2007-2008	£50,654,334.99	
2008-2009	£122,625,673.54	
2009-2010	£107,192,129.22	
2010-2011	£58,400,623.00	
2011-2012	£62,484,446.00	
2012-2013	£24,514,214.99	
2013-2014	£34,995,001.92	
Total	£500,000,000.00	SG Grant contribution for Phase 1a

In addition to the above, a grant of £4,099,780.40 was awarded to CEC on 23 March 2013 to cover the additional costs incurred by the tram works to accommodate the planned new Edinburgh Gateway station and interchange at Gogar. A balance of £1m of this grant remains and is expected to be paid by the Scottish Government this financial year.

No payments were made by the Scottish Government prior to March 2002.

Between 2002 and 2005 there were previous grant awards covering additional items outwith the £500m grant such as the parliamentary process and development costs associated with North, West and South East Edinburgh light rail projects. Details on how this funding was subsequently allocated by CEC are not held by the Scottish Government and will be available from the Council.

The £500m grant offer dated 17 January 2008 was in respect of Eligible Capital Costs only for delivering Phase 1a of the Edinburgh Trams network and includes such costs already defrayed or incurred up to 31 March 2008.

While our aim is to provide information whenever possible, in this instance the Scottish Government does not have some of the information you have requested. However, you may wish to contact the City of Edinburgh Council at 4 East Market Street, Edinburgh, EH8 8BG who may be able to help you. The reasons why we don't have the information are explained in the Annex to this letter.

Your right to request a review

If you are unhappy with this response to your FOI request, you may ask us to carry out an internal review of the response, by writing to [REDACTED] Chief Executive, Transport Scotland, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF. Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your rights is available on the Commissioner's website at: www.itspublicknowledge.info.

Yours sincerely



Head of Administration Team

Paragraph 4.2 of CEC's report, dated 16 May 2011, discloses a total spend on the project at that date of approximately £440 million.

Given that very little progress was being made on the construction of the tramline from February 2009 until May 2011, will the Inquiry Team ascertain where the approximate £208 million went during this period?

The effect of the result of the Scottish Parliament election of May 2007 on the Project

Following the 2007 election, the Scottish Government asked the Auditor General to review two of TIE's projects: The Edinburgh Airport Rail Link and the Edinburgh Tram Project. Although it is apparently unusual for Audit Scotland to review projects which are not complete, the organisation accepted the instruction but limited the scope of the investigation. Whilst Audit Scotland highlighted major areas of concerns with the Edinburgh Airport Rail Link, it concluded that the appropriate management structures were in place for the tram project and that the methodology used in the calculation of costs was sound. It did not express a view on whether the costs put forward by TIE were robust, as the exchange of e-mails below confirms:

-----Original Message-----

From: rasmbourne@[REDACTED]mailto:rasmbourne@[REDACTED]

Sent: 09 September 2009 12:57

To: Robert Leishman

Subject: Re: Edinburgh Tram Project

Dear Mr Leishman

I refer to my request under the Freedom of Information Act 2002 in relation to the above, together with our exchange of e-mails earlier this week.

In relation to the first part of my request, I now request evidence (regardless of format) in relation to any view expressed by Audit Scotland on the extent to which the Edinburgh tram project will be delivered against its budget.

I look forward to hearing from you.

Alison Bourne

---Original Message---

From: Robert Leishman

Sent: Friday, September 18, 2009 10:09 AM

To: 'rasmboume@[REDACTED]'

Subject: RE: Edinburgh Tram Project

Dear Ms Bourne

Audit Scotland has not expressed any views, in any format, on the extent to which the Edinburgh Tram Project will be delivered against its budget. As I indicated in my earlier response the primary mechanism for expressing our opinions is through audit reports which are public documents published on our website.

Bob Leishman

Portfolio Manager - correspondence

From: Robert Leishman

Sent: Tuesday, October 06, 2009 3:48 PM

To: 'rasmboume@[REDACTED]'

Subject: Edinburgh Trams Project

Dear Ms Bourne

I am writing in response to further enquiries you made on 18th September about how ongoing audit work is monitoring the Edinburgh Trams Project. I shall deal with each of your enquiries in turn:

In relation to controls over project costs

The City of Edinburgh Council is involved in a range of projects across the city, one of which is the tram project. The ongoing management and control of those projects including decision making and control of associated expenditure is the responsibility of the council. With regard to the tram project, responsibility for its delivery lies with the Tram Project Board which has representation from a range of bodies including the City of Edinburgh Council, tie Limited and Transport Edinburgh Limited (TEL). Council representation includes the Director of City Development and the Director of Finance.

An auditor plays no part in any day-to-day management of a council and has no locus in decisions taken about operational matters such as the control of expenditure against budgets.

The Accounts Commission appoints the external auditor for all councils in Scotland. For the City of Edinburgh Council, the appointed auditor is Audit Scotland. In this regard, the auditor's role is to consider the corporate governance arrangements within the council, stewardship of public funds and the adequacy of the financial systems which support the council's financial statements. In addition, the auditor has responsibilities to assess how well a council is addressing its duty to achieve best value and continuous

improvement in the services they provide. The auditor's duty is an independent assessment of procedures in place and actions already taken by the council.

On that basis you should address any questions about the current financial position of the project to the council. The extent to which any material they, or any other public body, may hold about the project is available under freedom of information is a matter for the Scottish Information Commissioner.

In relation to audit reports

I am sorry if my earlier responses led you to believe that we had produced audit reports on the Trams Project. Other than the 2007 report that you have identified, that is not the case. As I noted we are currently monitoring the project through our ongoing audit of the Council and, as such any comments we may have on the project will be included in the auditor's annual report on the Council. These are normally published in the autumn each year and are published on our website. A copy of the annual report for 2007/08 is attached.

I hope this information is of use to you.

Bob Leishman"

Unfortunately, at the following Parliamentary Debate on the tram project, it became clear that very few, if any, MSPs had understood that Audit Scotland had not stated that they believed the tram project would be “*delivered against its budget*” – quite the contrary, they believed that the report gave the tram project a “clean bill of health.” Whereas, it had been very difficult to have any elected representative address my concerns over the financial risks of the tram project, it subsequently became impossible as each time I raised the matter I was told that the Audit Scotland had given the project a “clean bill of health”.

Not only was it astonishing that not one of the SNP MSPs corrected their colleagues’ misinterpretation of the report, but that the Audit Scotland did not subsequently take steps to clarify that it had not expressed a view on the accuracy of the costs. Audit Scotland bills itself as “the public’s financial watchdog” but it cannot be in the public interest that decisions taken by elected representatives, either nationally or locally, are founded upon information which has been “misunderstood”, and it was clearly Audit Scotland’s role to ensure that there was a clear understanding of their report.

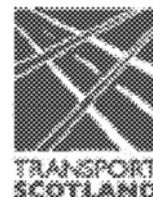
As a consequence of Parliament’s decision, it appears that Transport Scotland deemed it appropriate to make some changes regarding its own role in the tram project and its management of the £500 million grant. I do not recall that Mr Swinney, MSP, mentioned the need for such changes during the course of the Parliamentary debate and, therefore, elected representatives apparently felt assured that Transport Scotland would continue to have a direct role in the project, if only through the management of the £500 million grant.

When the contractual dispute broke out in early 2009, a letter was submitted to Transport Scotland in relation to financial and business case aspects of the project, to which the following response was received in April 2009 (nearly 2 years after the debate in the Scottish Parliament). I have the recipient’s permission to incorporate that response into my evidence:

Major Projects
Rail Delivery

Buchanan House,
98 Port Dundas Road,
Glasgow G4 0HF

Direct Line [REDACTED]
Email [REDACTED]@transportscotland.gsi.gov.uk



Your ref:

Our ref:
62000/0300043

Date:
14 April 2009

Dear Mr Hattie

I refer to your recent correspondence to the First Minister, John Swinney, Cabinet Secretary for Finance and Sustainability and Stewart Stevenson, Minister for Transport, Infrastructure and Climate Change about your concerns over financial aspects of the Edinburgh Tram project. While your views on the project have been noted, this is a matter delegated to Transport Scotland and Ministers have asked me to respond on their behalf.

You have raised around a dozen or so questions regarding financial and business case related aspects of this project and while I will be able to provide much of the information you seek, on some, I am afraid that there are aspects of this project which are "Commercial in Confidence" between the promoter and Transport Scotland which I cannot release or divulge. Hopefully, however, I can reassure you that the Scottish Government has control over the public financial concerns that you raise

When Parliament decided in June 2007 that the Scottish Government should continue to financially support the Edinburgh Trams, they had noted the report from Audit Scotland regarding the financial management – costs etc of this project. And although Ministers agreed to sustain Parliament's wishes they did require a substantial series of qualifications from the promoter to ensure the fiduciary competence of the ongoing project support and remain the key tests of the formal financial agreement covering this project. Essentially the criteria set by Ministers for continued funding of the Trams project requires the promoter to ensure that the project;

- remains affordable (i.e. within the overall affordability limits;
- continues to demonstrate a Benefit Cost Ratio of above 1; and,
- requires no ongoing operating subsidy from the government
- monthly project reporting (meeting Transport Scotland's standard requirements, covering both programme cost and technical project matters)
- continued pro-rata / proportional promoter investment i.e. to ensure the pledged £45m is inputted at the required rate.

From the above you will note that those concerns you have raised regarding;

- release of funding on milestone completion, (which incidentally is "finely grained") is maintained through the monthly reports;
- that the investment from the promoter is proportional to the overall ratio of 91.7% invested by the Scottish Government. To date you are correct in referring to the £236m released by Transport Scotland. For its part, City of Edinburgh Council has invested £18.5m so far this year.

As regards ongoing monitoring of the financial aspects and business case etc, please be assured that all of the issues you have raised are in a variety of ways covered through the monthly analysis that Transport Scotland reporting procedures require and that there are further quarterly reviews imposed at senior management levels on all projects. While from time to time throughout the year, there may be issues that cause concern, particularly regarding variations in programme and costs that all major transport infrastructure projects are prone to, the overall issues of affordability and business case fundamentals at this stage are not of concern to Transport Scotland. You will also wish to note that Audit Scotland has conducted further project audit of the Edinburgh Trams, and approved Transport Scotland's current management procedures.

I hope this provides a reassuring and informative response to your enquiry.

Yours Sincerely



Project manager - Edinburgh Trams

However, as the dispute continued and media reports indicated CEC/TIE had lost some adjudication decisions but that the money spent was escalating regardless, I became concerned that Transport Scotland must be paying substantial instalments of the grant whilst little work was actually being undertaken (ie, not upon "milestone completion"). In 2010, I entered into the following exchange of correspondence with Transport Scotland and John Swinney, MSP, in an attempt to ascertain what was happening with the control of the grant and to suggest that it might be appropriate to suspend grant payments to force a review of the project and possible renegotiation of the contracts.

From: RASM Bourne [mailto:rasmbourne@]

Sent: 06 January 2010 23:06

To: Ramsay J (John)

Subject: Edinburgh Trams

Dear Mr Ramsay

You will recall that we corresponded previously in relation to the Edinburgh Tram Project.

I have been following the progress of the tramline construction with interest and am not confident that it can be completed within budget.

I would, therefore, enquire whether Transport Scotland, as part of its monitoring of the project, has undertaken, or instructed the production of, an updated cost estimate for the completion of the tramline?

Regards.
Alison Bourne

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@ [REDACTED]

Sent: Thursday, January 07, 2010 12:06 PM

Subject: RE: Edinburgh Trams

Dear Mrs Bourne

Thank you for your enquiry on the project.

I can confirm that Transport Scotland does not passively observe the development of any of our project portfolios be they road, bridge or rail. We undertake regular (monthly) project monitoring reviews which include both programme and cost evaluation; where necessary these can require the production of cost re-evaluations and consequent impact assessment.

I hope I have been able to re-assure you on the concerns you have raised this time,

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

From: RASM Bourne [<mailto:rasmbourne@>] [REDACTED]

Sent: 07 January 2010 14:55

To: Ramsay J (John)

Subject: Re: Edinburgh Trams

Dear Mr Ramsay

Thank you very much for your swift response.

I am, of course, greatly reassured that Transport Scotland undertakes continual monitoring of the Edinburgh Tram Project.

For the sake of expedience, I would enquire whether Transport Scotland, upon receipt of a request for information, submitted under the Freedom of Information (Scotland) legislation, in relation to up-to-date programme/cost evaluations, and possible consequent impact assessments for the Edinburgh Tram Project, would be minded to disclose such information?

Regards.

Alison Bourne

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@ [REDACTED]

Sent: Monday, January 11, 2010 2:53 PM

Subject: RE: Edinburgh Trams

Mrs Bourne

Thanks for coming back with your query about how Transport Scotland might treat a FOISA request along the lines you have suggested.

Obviously without the actual text of such an enquiry in front of me, all I can do is continue your hypothetical line but I doubt that under present situations much of this information, is likely to be disclosable by Transport Scotland especially as it is supplied to us by the promoter and we appreciate their commercial sensitivity on negotiations to end the current dispute.

In terms of publically available information, there is a good deal of current Council papers which set out the basic material on the project, available via their website. I am sure that this together with the more direct communication channel will provide a useful current update.

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

----- Original Message -----

From: RASM Bourne

To: john.swinney.msp@scottish.parliament.uk

Cc: [REDACTED] MSP@scottish.parliament.uk

Sent: Monday, June 28, 2010 6:42 PM

Subject: Edinburgh Tram - Transport Scotland

Dear Mr Swinney

I refer to the article which appeared in "The Sunday Herald" on 27 June 2010:
<http://www.heraldscotland.com/business/analysis/audit-watchdogs-to-pursue-transport-scotland-over-250m-trams-payment-1.1037466>.

Having been a formal objector to the Edinburgh Tram Line (One) Bill, I have followed with great interest the progress of the scheme and share your Party's view in relation to the Tram Final Business Case. That said, it is surely the case that the SNP Government, whilst not supporting the project, does have a

responsibility to the taxpayer to ensure that payment of its £500m contribution to the project is properly controlled and complies with official guidance regarding the criteria to justify payments.

I, therefore, write to enquire what action you propose to take in relation to Transport Scotland's role, as disclosed in the Herald report. If Transport Scotland has paid money without having ascertained that "finely grained key milestones" had been achieved or whether the tram scheme continued to demonstrate a positive benefit:cost ratio, then it has played a part in allowing the project cost to continue uncontrolled and thereby in exposing the City of Edinburgh Council to the currently anticipated significant financial shortfall.

As you must, above all others, know, many people are now facing pay freezes/cuts, possible unemployment, higher taxes and an uncertain economic future. It is completely unacceptable that the expenditure of £250 million of public money may have been spent on the tram project without proper scrutiny or regard to value for money by Transport Scotland.

The Edinburgh Tram Scheme has been much heralded as the highest-profile transport project in Scotland for many years. If Transport Scotland are unable to financially manage this, our largest project, then what confidence can the taxpayer have that the rest of its £2 billion budget is being properly controlled?

I do not, for one instant, suggest that the Scottish Government should pay a penny more to the Edinburgh Tram Project - on the contrary, I suggest that Transport Scotland should make no further payment until (a) it is ascertained that the tram scheme, in these dramatically altered economic conditions, can demonstrate a positive BCR and, (b) the appropriate key milestones, which should have justified a total payment of £350 million by the Scottish Government, have been achieved. If that were to happen, then I feel fairly confident that TIE and the City of Edinburgh Council would, in a new and refreshing spirit of transparency, be obliged to disclose the extent of the project's financial, technical and programme problems so that informed decisions as to the scheme's future may be made. This would also allow Edinburgh residents to have accurate and robust information in relation to the project so that they may influence the decision as to whether, and to what extent, the tram project should continue.

Please note that it is not necessary to pass my correspondence to Transport Scotland for reply. I have been expressing concern about financial aspects of the tram project to TS for years now and been fobbed off by them too many times with refusals under "commercial confidentiality", etc, to welcome a response from them now!

Yours sincerely

Mrs Alison J Bourne

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@ [REDACTED]

Sent: Wednesday, August 11, 2010 3:49 PM

Subject: Edinburgh Trams - Correspondence Reference: 2010/000236

Dear Mrs Bourne

Thank you for your email of 30 June 2010 to John Swinney, Cabinet Secretary for Finance and Sustainable Growth about your concerns following the Sunday Herald article of 27 June about the Edinburgh Tram project. While Ministers have noted your concerns on this issue, this continues to remain a matter delegated to Transport Scotland and your correspondence has been passed to me for reply. Please accept my apologies for the delay in providing this.

I think it will come as little surprise that Transport Scotland does not accept the basis of the Sunday Herald article – it is ill informed and at best misunderstands the rather limited and inaccurate information it has been given. I understand that tie.Ltd has also pointed this out in their responses to the newspaper.

As you know, Parliament agreed on 27 June 2007 that the Scottish Government should continue to provide financial support on the proviso that the promoter, the City of Edinburgh Council accepts full financial responsibility for this project. This was reluctantly accepted by Ministers and the role of Transport Scotland from that date on was revised accordingly.

While both ministers and Transport Scotland have concerns about the impact that the current contractual dispute has had and continues to have, it is important to recognise that there is a Financial Agreement in place between Transport Scotland and the City of Edinburgh which requires Transport Scotland to approve grant payments to CEC in accordance with the terms and conditions of the Grant Agreement with CEC and the decision of Parliament on 27 June 2007. Payment is made on a Cost of Work Done basis only – not in advance of need. It is also important to recognise that the total paid to date reflects considerably more than just the area of the contract that is the thrust of the Herald's article and why it mis-represents the reality of the current situation. Rather than add to the volume of this reply I would urge you to read the Report to the full City of Edinburgh Council of 24 June 2010 which provides a breakdown and explanation for the sums paid to date. I think you will have access to this already but if not I would be happy to oblige

The Financial Agreement also establishes the formal financial and reporting relationship with the Council (there is no relationship between Transport Scotland and tie ltd). The delivery and financial management of the trams project is thus entirely a matter for CEC and it is their duty to demonstrate that the grant receipts are spent on the project as stated. This is verified by both CEC's Director of Finance and their Auditors. The Scottish Government has not been and is not party to any of the final contracts between the promoter (CEC) and their contractors.

Finally, I understand your continuing interest and concerns about this project. And while I appreciate why you may feel that you have been "fobbed off" by Transport Scotland under "commercial confidentiality" I should be grateful if you would accept that it remains important to Transport Scotland to continue to respect the confidentiality of any commercial or industrial information received during current commercial

and legal proceedings. Also, as the Edinburgh trams project is still being progressed at such a difficult period, release of such current information at this time, could effect further commercial and legal negotiations and prejudice the interests of the City of Edinburgh Council.

I hope that this reply has been informative but if there is any particular aspect which you wish to discuss further please feel free to call me. If you wish a hard copy of this response it would be helpful if you could confirm your address.

John Ramsay
Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland

From: rasmbourne@
Sent: 12 August 2010 09:06
To: Ramsay J (John)
Subject: Edinburgh Trams

Dear Mr Ramsay

Thank you for your e-mail which I am now considering.

In the meantime, could you please forward to me a copy of the Financial and Grant Agreements to which you refer?

Alison Bourne

On 13 August 2010 10:18, <John.Ramsay@transportscotland.gsi.gov.uk> wrote:

FAO Alison Bourne.

I regret I cannot accede to your request as disclosure of the Grant / Financial Agreement between Transport Scotland and the City of Edinburgh Council is covered by a mutual confidentiality clause.

I note meantime that you haven't confirmed your address so preventing me providing a hard copy of my earlier response.

John Ramsay
Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland

From: rasmbourne@
Sent: 13 August 2010 11:31
To: Ramsay J (John)
Subject: Re: Edinburgh Trams

Dear Mr Ramsay

I acknowledge receipt of your e-mail and would advise that my address is

I would be grateful if you would confirm why a mutual confidentiality clause applies to this Agreement. Both Transport Scotland and the City of Edinburgh Council are public bodies and the Agreement relates to a publicly-funded project, so I am puzzled as to why they are unavailable to the public.

Alison Bourne

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@

Sent: Friday, August 13, 2010 11:51 AM

Subject: RE: Edinburgh Trams

Mrs Bourne

It is a standard clause throughout - some information may be disclosed but in this case not the Agreement itself.

John Ramsay
Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland

From: RASM Bourne <rasmbourne@>
To: Swinney J (John), MSP
Sent: Wed Aug 25 19:57:55 2010
Subject: Edinburgh Tram Project

Dear Mr Swinney

You may recall that I recently wrote to you in relation to the above matter. I have received a reply, on your behalf, from Mr Ramsay of Transport Scotland (below), which serves only to confuse the situation further.

Having re-read the transcript of the 2007 Parliamentary Transport Debate, I note that, at its conclusion, you said, "I confirm to Parliament that the Government will accept and implement the provisions in the resolution that has been agreed by Parliament in relation to the Edinburgh trams project. We welcome the fact that Parliament has agreed to a commitment that the project must be delivered within the budget limit

set by the previous administration, noting that it is the responsibility of Transport Initiatives Edinburgh and the City of Edinburgh Council to meet the balance of the funding costs."

Mr Ramsay has now explained that, following this Debate, **in 2007**, the role of Transport Scotland in relation to the Edinburgh Tram Project was revised and a Grant Agreement put in place with the City of Edinburgh Council whereby "delivery and financial management of the trams project is thus entirely a matter for CEC and it is their duty to demonstrate that the grant receipts are spent on the project as stated".

However, the Sunday Herald article of 27 June 2010 regarding the apparent overpayment of money to the project by Transport Scotland mentions a response to a Freedom of Information request, issued by Transport Scotland, **in April 2009**, which outlined a method of payment dependent on the City of Edinburgh Council demonstrating completion of "finely grained key milestones" and the meeting of a "substantial series of qualifications from [City of Edinburgh Council] to ensure the fiduciary competence of the ongoing project support." This process closely resembles your Government's "Gateway procedure for major contracts".

Furthermore, I received an e-mail response from Mr. Ramsay, dated **7 January 2010**, in which he advised that, "...Transport Scotland does not passively observe the development of any of our project portfolios be they road, bridge or rail. We undertake regular (monthly) project monitoring reviews which include both programme and cost evaluation; where necessary these can require the production of cost re-evaluations and consequent impact assessment." This e-mail accords with the terms of the Fol response of April 2009 from Mr Ramsay, which was quoted in the recent Sunday Herald article. This, too, follows the "Gateway procedure", and directly contradicts his most recent e-mail to me of 11 August 2010.

If the role of Transport Scotland did change following the 2007 Debate, perhaps you could answer the following:

Why was the normal process changed?

Who authorised that change?

How were these changes, and their potential implications for the City of Edinburgh Council, communicated to Parliament?

Why, if as Mr Ramsay assures me, the control process did change after the 2007 Debate, did he produce the letter of April 2009 and the e-mail of January 2010, giving assurances that there was a robust "Gateway" type procedure in force based on staged completions that would protect the taxpayers' funds?

As this is a very serious matter and I have drawn to your attention apparent contradictions contained within correspondence issued on your behalf, I would request that you reply in person to my further queries and look forward to hearing from you at your earliest convenience.

Yours sincerely

Alison J Bournie

From: RASM Bourne [REDACTED]
To: Ramsay J (John)
Sent: Wed Aug 25 20:26:43 2010
Subject: Re: Edinburgh Trams

Dear Mr Ramsay

I have now had the opportunity to reread the transcript of the Scottish Parliament's Transport Debate in 2007, together with various other documents.

There are still issues which I am unable to reconcile and, as you have corresponded with me on Mr Swinney's behalf, I have reverted to Mr Swinney on these points.

In the meantime, I thank you for your attention.

Alison J Bourne

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk
To: rasmbourne@ [REDACTED]
Sent: Thursday, August 26, 2010 8:57 AM
Subject: Re: Edinburgh Trams

Mrs Bourne

Thank you for your email and continuing interest.

It may expedite a quicker response if you also let me know these further questions. I would be happy to help wherever possible.

John Ramsay
Project manager - Edinburgh Trams
Rail Directorate
Transport Scotland

From: RASM Bourne [<mailto:rasmbourne@>] [REDACTED]
Sent: 06 September 2010 16:35
To: Ramsay J (John)
Subject: Re: Edinburgh Trams

Dear Mr Ramsay

Whilst I await a response from Mr Swinney, I wonder if you could assist me further?

I note from the Council's tram update report, dated 24 June 2010, that, to the financial year end 2009/10, a total of £347.8m had been spent on the tram project. Could you please advise me what the total spend stands at today, and how much of that figure has been paid by each of Transport Scotland and The City of Edinburgh Council?

Alison J Bourne

On 7 September 2010 13:21, <John.Ramsay@transportscotland.gsi.gov.uk> wrote:

Mrs Bourne

thank you for your enquiry.

Given that the project promoter is the City of Edinburgh Council, I think you should in the first instance address this to them

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

From: bourne richard [mailto:rasmbourne@]

Sent: 07 September 2010 15:04

To: Ramsay J (John)

Subject: Re: Edinburgh Trams

Mr Ramsay

Transport Scotland makes payments of the grant to the City of Edinburgh Council and so, with respect, I think my query as to how much Transport Scotland has paid so far towards the tram project is correctly addressed to you.

On receipt of this figure from you, I shall then assume, unless otherwise advised by you, that the City of Edinburgh Council has also paid 9% of that figure to calculate the total current spend to date.

I look forward to hearing from you.

Alison

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@

Sent: Tuesday, September 07, 2010 2:13 PM

Subject: RE: Edinburgh Trams

Mrs Bourne

Are you seeking this information under the Freedom of Information regulations? If so I will be able to confirm the total paid to date by Transport Scotland

I was merely indicating that as the Council are the project promoter, it would be more formal to seek their confirmation first regarding their total spend and their contribution.

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@ [REDACTED]

Sent: Tuesday, September 07, 2010 3:42 PM

Subject: Re: Edinburgh Trams

Mrs Bourne

I meant to add to my last response that given the sensitivity of the ongoing commercial discussions between Tie and the construction consortium, Transport Scotland believes it is important these should be given the best opportunity for success so the negotiations may conclude as soon as is practicable.

Thanks

From: rasmbourne@ [REDACTED]

Sent: 07 September 2010 19:51

To: Ramsay J (John)

Subject: Re: Edinburgh Trams

Mr Ramsay

If it is necessary that my request be made under the Freedom of Information (Scotland) legislation, then I take this opportunity of doing so formally now.

In addition to the total sums paid to date by Transport Scotland and the City of Edinburgh Council, respectively, to the tram project, I also request an itemised list of payments made by Transport Scotland since 5 April 2010, including the dates upon which any such payments were made.

Alison Bourne

Mrs Alison Bournie

7 September 2010

Dear Mrs Bournie,

Thank you for your correspondence of 25 August seeking clarification of previous statements and alleged inconsistencies regarding the Edinburgh Tram project made by Transport Scotland on my behalf.

The role of the Scottish Government regarding the Edinburgh Trams Project, preceding the election of 2007 was of full financial support for the design and development costs of the project. Transport Scotland also had an advisory place on the Tram Project Board.

Following the decision of Parliament in June 2007 to proceed with the Edinburgh trams project, Ministers reluctantly accepted that the role of the Scottish Government was to continue to provide financial support for the project, capped to funding availability - £500m. City of Edinburgh Council has always been project promoter and together with its subsidiary company Tie Ltd, accepted full responsibility for delivering the project.

Parliament's decision that the Scottish Government should continue to provide funding up to a maximum of £500m necessitated revised governance arrangements. In the run up to Financial Close it was right that Transport Scotland step back from any advisory role on the Tram Project Board. Additionally, Transport Scotland was not involved with either the development of the contractual arrangements or negotiations leading to contract close in May 2008. These were, and remain entirely matters for the Council, Tie Ltd and its contractors.

Accordingly the previous grant terms and conditions had to reflect the revised roles and responsibilities. This was agreed by the City of Edinburgh Council and the terms and conditions established in the Financial Agreement which supports the continuing financial support from the Scottish Government. This was drawn up on the standard Scottish Government grant model and is compliant with the Scottish Public Finance Manual.

With regard to your point about alleged inconsistencies, it should be noted that it is a condition of the Financial Agreement that payments are made on a cost of work done basis, directed solely to the trams project. The Financial Agreement also requires annual certification of this by both the Council's Director of Finance and its Auditors.

"Gateway" reviews were a requirement prior to Parliament's decision in June 2007 and it was a consequent requirement of the Financial Agreement that the project should undertake all recommendations of these reviews prior to contract close. The City of Edinburgh Council has confirmed to Transport Scotland that this has been complied with. The reference to milestones in earlier correspondence was made on the basis of reports from the City of Edinburgh that it monitors milestone completion by its contractors.

I trust that this explanation has been helpful and you now appreciate more fully the Financial Agreement established for this project.

John Ramsay

JOHN SWINNEY

----- Original Message -----

From: John.Ramsay@transportscotland.gsi.gov.uk

To: rasmbourne@

Sent: Wednesday, September 08, 2010 7:37 AM

Subject: RE: Edinburgh Trams

Mrs Bourne

Thank you for your response.

I am now dealing with your request as a formal request made under the Freedom of Information legislation and shall respond accordingly

John Ramsay

Project manager - Edinburgh Trams

Rail Directorate

Transport Scotland

Buchanan House

Glasgow G4 0HF

Tel [0141 275 2000](tel:0141 275 2000)

----- Original Message -----

From: RASM Bourne

To: CabinetSecretaryforFinanceandsustainablegrowth@scotland.gsi.gov.uk

Sent: Friday, September 10, 2010 11:38 AM

Subject: Re: Edinburgh Tram Project

Dear Mr Swinney

Thank you for your letter of 7 September 2010 in relation to the above matter.

I accept the initial role of Transport Scotland as set out by you; the respective roles of the City of Edinburgh Council and TIE for delivery of the tram project; and that the role of Transport Scotland changed upon the signing of the Financial Agreement, and bears no responsibility for either the contractual arrangements or subsequent negotiations or, indeed, the reporting of the project to fulfil the requirements of the Financial Agreement.

However, since financial close, in May 2008, Transport Scotland has had control of the grant through the Financial Agreement which has embedded within it the Gateway process which The City of Edinburgh is obliged to follow. Therefore, Transport Scotland does have indirect control of the project by being able to decline grant payments if progress is not as expected.

You may be aware that I requested a copy of the Financial Agreement from Mr Ramsay but that this was refused on the basis of commercial confidentiality. I have to say that the issue of "commercial confidentiality", which has pervaded several important aspects of the tram project since Parliamentary approval, has, in my view, obliterated the public's right to transparency and to be able to "follow the public pound". Had proper scrutiny of the financial and other aspects of the tram project been transparent and open to the public, then perhaps it would not have been allowed to reach its current unfortunate status. I would be most grateful if a copy of the Financial Agreement could be made available, together with any relevant appendices, schedules and relative confidentiality agreement. I also request copies of the various annual certifications from the City of Edinburgh's Director of Finance and the Auditors referred to in your letter. Given that the Financial Agreement and the payments of grant are intrinsically linked, could I please have a list of the milestones and those which have been completed to date?

I have referred to the Scottish Public Finance Model, and presume that the "Grant and Grant in Aid" section is the section which you refer to as "the standard Scottish Government grant model". In the absence of the actual document applicable to the tram project, I have further assumed that this formed the basis for the Financial Agreement with the City of Edinburgh Council and would draw your attention Paragraphs 3, 6, 8, 18 and 19 and, in particular, to the following paragraphs:-

Para 2 - basic principle of grants: "Grant is appropriate where Scottish Government wishes to maintain detailed control over expenditure".

Para 9 – "Payments to bodies / companies / individuals should be made in the form of a grant where the Scottish Government wishes to maintain detailed control over the expenditure and minimise the risk of funds not being used for the purposes intended. Business areas (in this instance, Transport Scotland)

are responsible for ensuring, so far as possible, that the recipient spends the grant for the specific purpose for which it was authorised.”

My difficulty is in reconciling the your statement that “the reference to milestones in earlier correspondence was made on the basis of reports from the City of Edinburgh Council that it monitors milestone completion by its contractors”, with the Scottish Government’s requirement “to maintain detailed control over expenditure”. I would make the following points:

1. In order to achieve “detailed control over expenditure”, it is surely inadequate to simply accept reports from the tram scheme’s promoter that it “monitors” milestone completion by its contractors.

An article in “The Herald” (7.9.10) supports my concern. It states that, “By March 2009, only 66 of the 444 planned “milestones” required for the release of Transport Scotland’s £500 million funding for the project had been completed, representing less than 15% of the expected progress”.

This appears to be the crux of the matter and I reiterate my concern that in order to maintain detailed control over its £500m grant for the tram project, Transport Scotland has a responsibility to interrogate progress reports and ascertain that key milestones had been completed before releasing payments to the City of Edinburgh Council. Had this been done by Transport Scotland, then it would not have been possible, by April 2010, to have expended over 70% of the funding for so few milestone completions.

2. In my view, the City of Edinburgh Council, as project promoter, can in no way be considered a sufficiently independent authority to certify that key milestones have been completed. The onus is on Transport Scotland to interrogate progress reports from the City of Edinburgh Council to ensure that it is exercising detailed control of the grant by ensuring that key milestones have been completed.

As stated previously, I commend the SNP Government as having been the only political party which recognised that the Tram Final Business Case was not robust. I also support the Scottish Government in its continued stance that the Grant will remain capped at £500m and that the City of Edinburgh Council should be responsible for any funding shortfall. In that way, perhaps promoters of future major projects will be encouraged to take a more realistic view of their project costs in the initial stages so that the taxpayer may never again have to suffer significant and unanticipated cost increases.

However, I remain greatly concerned that Transport Scotland has not fulfilled its responsibility of “maintaining detailed control over the expenditure” and do not believe that the simple acceptance of reports from the scheme’s promoter that key milestones are being “monitored”, rather than completed, has been sufficient scrutiny to justify Transport Scotland’s continued financial support of the project.

I look forward to hearing from you further on the points raised.

Yours sincerely

Alison Bourne

Major Projects
Rail Delivery

Buchanan House,
58 Port Dundas Road,
Glasgow G4 0HF

Direct Line: [REDACTED]
Email john.ramsay@transportscotland.gsi.gov.uk



Your ref:

Our ref:
FOI 2010/01208

Date:
14 September 2010

Mrs Allison Bourne
[REDACTED]

Dear Mrs Bourne

I am formally responding to your request which I received on 8 September 2010, under the Freedom of Information (Scotland) Act 2002 for information regarding payments made to the Edinburgh Tram project. I have considered your request and the information is set out below in the format requested.

1. The total sums paid to date by Transport Scotland to the tram project? and
2. The City of Edinburgh Council? respectively,
3. You also requested an itemised list of payments made by Transport Scotland since 5 April 2010, including the dates upon which such payments were made.

Respectively the answers to your questions are:

1. To date Transport Scotland has paid a total of £ £34.1m
2. The City of Edinburgh Council has paid £30.69m
3. The dates and payments made by Transport Scotland since 5 April 2010 were:
 - 19 April £8.3m
 - 26 May £5.6m
 - 18 June £4.4m
 - 16 July £3.6m
 - 13 August £8.1m

Conclusion

If you are unhappy with this response to your request, you may ask us to carry out an internal review by writing to David Middleton, Chief Executive, Transport Scotland, 8th Floor, Buchanan House, 58 Port Dundas Road, Glasgow, G4 0HF. Your request should explain why you wish a request to be carried out, and should be made within 40 working days of receipt of this letter, and we will reply within 20 working days of receipt. If you are not satisfied with the result of the review, you then have the right to make a formal complaint to the Scottish Information Commissioner.

[REDACTED]
John Ramsay
Project Manager - Edinburgh Trams

Leithen Secretary for Finance and Infrastructure
John Swinney MSP

T: 0845 774 1741
E: scottish.ministers@scotland.gsi.gov.uk



Mrs Alison Bourn



7 October 2010

Alison Bourn

Thank you for your e mail response to my earlier letter of 7 September regarding the Edinburgh Tram Project.

It is important to understand the distinction between responsibility for the management and oversight of the tram project which lies entirely with the City of Edinburgh Council and TIE and the management of grant payments which rests with Transport Scotland. Under the terms of the contract the contractor is entitled to payment for work done. It is for TIE to ensure those payments are consistent with the terms of the contract and are properly certified.

Transport Scotland does not control contract payments, either directly or indirectly, but it must satisfy itself that the grant payments are being properly directed to the tram project and not some other purpose. Transport Scotland complies with the requirements placed on it under the Scottish Public Finance Manual.

As I made clear in my evidence to the Transport, Infrastructure and Climate Change Committee earlier this month it is vital that there are clear governance structures in place for the control of any major projects. In the case of the tram the Council is the client and has full financial responsibility for the delivery of the project. I am anxious to encourage the Council to resolve the outstanding contractual disputes as they act to complete the tram project as soon as possible.

I have asked my officials to take forward your requests for various pieces of information relating to the project.

I hope this is of help

John Swinney



JOHN SWINNEY

----- Original Message -----

From: RASM Bourne

To: John.Swinney.msp@scottish.parliament.uk

Sent: Tuesday, November 23, 2010 11:38 PM

Subject: Edinburgh Tram Project

Dear Mr Swinney

Further to recent correspondence in relation to Transport Scotland's control (or not) of the Scottish Government's £500m grant to the cost of the Edinburgh Tram Project, I have taken the matter up with Mr McGougan, Director of Finance, City of Edinburgh Council.

You will see from his e-mail to me (below), dated 12 November 2010, that he states: " As part of this process there is also a 4 weekly meeting with Transport Scotland to go over any areas of concern prior to payment of the grant."

It would, therefore, appear that, if Transport Scotland were dissatisfied with any aspect, they had, and continue to have, the option of withholding grant payments.

I also note from page 8 of the City of Edinburgh Council's Audited Financial Statements 2009/10, that "the terms and conditions of the grant letter with Transport Scotland include a Conditions Precedent which, inter alia, states that the business plan for the tram for the scope of Phase 1a must be delivered within a maximum capital cost of £545m."

In around April 2010, the City of Edinburgh Council stated that it would be "very difficult" to deliver Phase 1A within the £545m budget and, in June 2010, it produced a report confirming that position.

In view of this apparent breach of the Conditions Precedent, and Mr McGougan's statement, why is Transport Scotland continuing to make payments of the grant?

It seems to me that the Scottish Government has, since April 2010, had ample reason and authority to cease funding the tram project but has chosen not to do so. It continues to throw millions of pounds of taxpayers' money at the project, which now has no prospect of being delivered within budget and whose additional cost to the City of Edinburgh Council to do so would be significant. Is your Government prepared to pay what remains of its £500m grant with no guarantee of how much, if any, of the tramline will be built?

On a related matter, it now seems a clear possibility that the whole issue may proceed to formal litigation and I would enquire whether the cost of such litigation would also be covered by the Government grant? Surely legal costs, which would be very substantial, to terminate the contract with the construction consortium is not a "key milestone" of the tram project?

Yours sincerely

Alison J Bourne

----- Original Message -----

From: RASM Bourne

To: John.Swinney.msp@scottish.parliament.uk

Sent: Sunday, December 12, 2010 12:41 AM

Subject: Fw: Edinburgh Tram Project

Dear Mr Swinney

I refer to my e-mail to you of 23 November 2010 and wonder whether you are yet in a position to respond.

I take this opportunity of drawing your attention to this article which appeared in today's edition of "The Edinburgh Evening News": <http://edinburghnews.scotsman.com/topstories/Tram-bosses-admit-Evening-News.6657609.jp#5835578>

In particular, I note Councillor Mackenzie's comment that: "We expect to get to St Andrew Square within the £545m. The contractor has not shown any appetite to do any more than that and it will be a challenge to get as far as St Andrew Square. We will have to look at the finances as we go along, but the commitment is there to build the whole route. They (the contractor) don't want to go further than Haymarket because they don't want to get on to any on-street sections."

I am deeply concerned that the tramline would be built even from the Airport to Haymarket within the £545m budget but that CEC are committed to spending the entire government grant regardless.

As stated in my previous e-mail to you, page 8 of the City of Edinburgh Council's Audited Financial Statements 2009/10 states that "the terms and conditions of the grant letter with Transport Scotland include a Conditions Precedent which, inter alia, states that the business plan for the tram for the scope of Phase 1a must be delivered within a maximum capital cost of £545m."

CEC are now clearly in breach of these conditions. It is clear that neither the City of Edinburgh Council nor TIE are wholly incapable of exercising proper financial or project management in relation to the tram project. Are you, nevertheless, going to allow the rest of the government grant to be spent with no assurance of how much, if any, viable tramline would eventually be delivered?

I look forward to hearing from you with your early response.

Yours sincerely

Alison Bourne

Transport Scotland released to me a redacted copy of the Grant Offer to CEC and the Financial Agreement, the original of which I am assuming the Inquiry Team has its possession.

----- Original Message -----

From: RASM Bourne

To: John.Ramsay@transportscotland.gsi.gov.uk

Sent: Monday, December 27, 2010 11:48 PM

Subject: Edinburgh Tram

Dear Mr Ramsay

Thank you for forwarding to me the Financial Agreement in relation to the above project.

I would be grateful to receive a copy of Annexes 1 and 2, which are referred to in the document but which appear to be missing.

I look forward to hearing from you further.

Alison Bourne

Rail Delivery

Buchanan House, 58 Princes Street, Glasgow G4 0HF
Direct Line: [REDACTED] Fax: 0141 272 40873
John.Ramsay@transportscotland.gov.uk



Mrs Alison Bourne
[REDACTED]

Your ref:

Our ref:
2010/1201143

Date:
28 December 2010

Dear Mrs Bourne

EDINBURGH TRAM PROJECT –

Thank you for taking the time to email, the Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP, on 23 November 2010, following your exchanges of correspondence with Donald McGaughey, Director of Finance for the City of Edinburgh Council. The main thrust of your correspondence appears to be that Transport Scotland should withhold further grant support under the terms and conditions of the Scottish Government's grant to the City of Edinburgh Council regarding the Edinburgh Tram project.

In response to the points made, I think it would be helpful to explain the key principles underpinning Transport Scotland's administration of the grant agreement with the City of Edinburgh Council so that the current situation is more widely appreciated.

Firstly, the grant agreement (Financial Agreement) between Scottish Ministers and the City of Edinburgh Council (CEC) is a legally binding contract which in essence ensures that payment is made on a cost of work done basis. The fact that the Ltd and their civil engineering contractors are in dispute; the budgets for the project has risen, and there is severe programme slippage, are not in themselves breaches of the grant agreement between Scottish Ministers and CEC. Accordingly, and providing that the Council continue to satisfy and comply with the specific conditions laid out in the grant agreement, there is no reason that Transport Scotland should withhold grant payments due to the current difficulties being experienced, particularly where the project continues to be delivered.

Given the views expressed that Transport Scotland should cease further grant support to this project, I think it is also important to note, that even if it were accepted that the Council were in default of the grant agreement and grant payments were halted, this would not relieve CEC of their contractual obligations at this time. At a time when sensitive negotiations are continuing to resolve the contractual dispute, this action would only serve to ensure that CEC would then either default on the disputed contract or be required to seek funding elsewhere. Either option would jeopardise the Council's financial and legal position and with possible impact on Council taxpayers.

Thank you again for your comments to Mr Swinney. I hope that this reply is helpful.

Yours Sincerely
[REDACTED]

John Ramsay

www.transportscotland.gov.uk

An agency of  The Scottish Government

----- Original Message -----

From: RASM Bourne

To: John.Ramsay@transportscotland.gsi.gov.uk

Sent: Friday, February 11, 2011 8:24 PM

Subject: *Edinburgh Tram - Annexes to Financial Agreement*

Dear Mr Ramsay

I wonder if you are now in a position to respond to my request (below) of 27 December 2010?

Alison Bourne

In an interview with the BBC in October 2011 (<http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-15227555>), Finance Secretary, John Swinney, MSP, stated: *"I was on the receiving end of information passed to me by the city council in good faith, I have to say principally from Tie, and it was absolute rubbish - total rubbish ... I certainly feel fundamentally misled by Tie as an organisation. I think they fundamentally misled Edinburgh City Council and created enormous difficulties for the project. The fact that Tie has, essentially, now faced its day of reckoning is an outcome which I think was too long in the coming."* Mr Swinney also said *"he had feared opposition parties at Holyrood would use the tram issue to bring down the newly-elected SNP government in 2007."* This suggests that Mr Swinney simply accepted TIE's version of the contractual dispute without investigating "the other side of the story". This, combined with similar failures on the part of Audit Scotland, CEC and Transport Scotland, were significant and, in my view, led to hundreds of millions of pounds of public money being wasted.

The following response was received from CEC's Director of Finance in relation to various queries raised.

----- Original Message -----

From: Donald McGougan

To: rasmbourne@[REDACTED]

Sent: Tuesday, September 14, 2010 9:32 AM

Subject: *Edinburgh Tram Project - Acceptance of Contracts*

I have marked in blue below response to your questions.

[REDACTED] Secretary to the Director of Finance | Level 2/7 Waverley Court, 4 East Market Street, Edinburgh EH8 8BG | Tel: [REDACTED] | e-mail [REDACTED]@edinburgh.gov.uk

From: RASM Bourne [mailto:rasmbourne@[REDACTED]]

Sent: 06 September 2010 16:49

To: Donald McGougan

Subject: Edinburgh Tram Project - Acceptance of Contracts

Dear Mr McGougan

I note from the Council report, dated 20 December 2007, that you recommended approval of the Tram Final Business Case; the authorisation of the Council's Chief Executive to instruct TIE to enter into the InfraCo contracts; and approval of the issuing of the associated Guarantee by the City of Edinburgh Council.

I would be grateful to receive your explanation of:-

(a) the basis and reasons for these recommendations;

The basis and reasons for the recommendations made can be found in various reports to the Council. The Final Business Case v2, updated from Final Business Case v1 clearly sets out the objectives and benefits of the project. Final Business Case v1 was reported to Council on the 25th October 2007. The report on 25th October 2007 clearly summarises the key points from the Business Case. The Final Business Case v2 was materially unchanged from version 1 and was reported to Council on 20th December 2007.

In addition, the rationale for the award of the contracts is set out in two further reports to Council on the 25th October 2007 entitled, Edinburgh Tram Project Procurement of Tramco and Infraco and a supplementary report on the Procurement of Tramco and Infraco which provides further information.

(b) what, in your view, has gone wrong with the tram project;

Now is not the time to speculate on the difficulties being experienced on the tram project. Negotiations are at a delicate stage and the Council remains committed to ensuring the tram project is delivered for Edinburgh within the affordability constraints that exist.

(c) and what the financial implications would be for the City of Edinburgh Council, should the InfraCo consortium decline to build the tramline to York Place, as proposed by TIE.

As previously stated negotiations with the consortium are at a delicate stage. The way forward for the project will be the subject of future reports to Full Council and will be discussed with other stakeholders including Transport Scotland.

Yours sincerely

Alison J Bourne

From: RASM Bourne [mailto:rasmbourne@]

Sent: 29 September 2010 00:20

To: Donald McGougan

Subject: Edinburgh Tram Project

Dear Mr McGougan

Thank you for your reply.

Perhaps, with the benefit of hindsight, you may concede that clearly neither version of the Tram Final Business Case to which you refer was robust and that the city is now faced with serious financial implications as a result? If you feel unable to make such a concession, I would be grateful to receive evidence of advice given by you in relation to the nature of the risks remaining with the City of Edinburgh Council, and the potential financial and other consequences of any of those risks occurring.

In relation to your answer to my second question, I beg to differ. I understand that you are due to retire in the near future and, given your long and detailed knowledge of the project, it is, therefore, most important that you give your view as to what has gone wrong with the tram project before you leave. With some £170 million of the £545m remaining unspent (although quite possibly substantially committed), now would seem the most opportune time to ascertain what has gone wrong so that the public may be assured that any further money spent on the project will be applied to better advantage.

Furthermore, there seems to be a firm suggestion that the Council may borrow further monies for the tram project, thereby making it all the more important to ensure that these funds, too, are not expended for so little progress.

Finally, I note your reference to Transport Scotland being included in discussions about the future of the project. Correspondence to me from Transport Scotland has suggested that financial responsibility for the tram project is entirely a matter for the City of Edinburgh Council/TIE. I would, therefore, be grateful if you would confirm what information requires to be supplied to Transport Scotland to secure payments of the government grant, and who is responsible for ensuring that the tram project's key milestones have been met before such grant payments are released by Transport Scotland?

I look forward to hearing from you further.

Alison J Bourne

« ----- Original Message -----

From: Donald McGougan

To: RASM Bourne

Sent: Friday, November 12, 2010 10:26 AM

Subject: Edinburgh Tram Project

Ms Bourne

Thank you for your email dated 29 September.

I have not altered my position regarding the robustness of the Tram Final Business Case. I do not believe that the complex issues currently being experienced on the project are as a result of a deficient business case.

With regard to your point on the risks remaining with the Council and the potential consequences of these risks occurring, you may be aware that there will be a report to the December Council that will provide a comprehensive update on the project and outline the available options going forward including the risks to the Council. Please rest assured that I remain absolutely committed to protecting the interests of the Council and the public purse.

With regard to the information supplied to Transport Scotland, a comprehensive report and application for funding is submitted to Transport Scotland every 4 weeks using Transport Scotland's defined templates. These documents are completed by tie Ltd, checked by the Council and then scrutinised further by Transport Scotland's project manager and commercial team before payment is released. As part of this process there is also a 4 weekly meeting with Transport Scotland to go over any areas of concern prior to payment of the grant.

I trust that this information is helpful.

Regards

Donald McGougan"

The Minutes of CEC's post-mediation full Council meeting of 16 May 2011, suggest there was doubt over whether the Scottish Government were obliged to continue grant payments, regardless of changing circumstances and details the decision, *"To instruct the Chief Executive to seek absolute clarification on the new Scottish Government's intention in relation to the release of the remainder of the £500million Government Grant and that such an update be received by Council prior to any further decisions on this project."* The subsequent CEC report of 3 June 2011 (Paragraph 3.56), confirmed, *"The Scottish Government's current position is that they remain committed to a grant of up to £500m."*

When CEC voted to limit the cost of the project by completing the tramline from Edinburgh Airport to Haymarket only there was a media frenzy and it was at this point that John Swinney threatened to withhold the remaining grant sums. It would appear, therefore, that contrary to the terms of Transport Scotland and Mr Swinney's earlier communications with me, they did in fact have the authority to withhold grant payments and could have done so much sooner and forced a review of the project which would probably

have had far less adverse financial impact upon CEC and possibly left sufficient grant funds to construct the tramline further than York Place.

In June 2011, following mediation, CEC's Director of City Development, Dave Anderson, presented a report which was considered at full Council regarding the status of the project and the options available to the Council as to its progress. He confirmed that, at 21 May 2011, £461.4 million had been spent and reported on the options of terminating the infrastructure contract through a "mutually agreed separation" or through "unilateral termination of the contract by TIE Ltd", which could have led to litigation. A confidential appendix, in the preparation of which Messrs McGrigors had been involved, was available. I understand that councillors were required by Sue Bruce, the Chief Executive of CEC, to sign confidentiality agreements before being allowed access to this information. The McGrigors report was described to me by a senior councillor as "*damning*" of the contracts and I trust the Inquiry Team will have reviewed this document. Mr Anderson also confirmed at Paragraph 4.5 that, despite this likely radical change in the scope of the project, "*The Scottish Government's current position is that they remain committed to a grant up to £500m*".

I understand that Chief Executive, Sue Bruce, informed councillors that the £740 million cost reported for termination of the construction contract was "the mutually agreed settlement cost."

This figure appeared to me to be extraordinarily high for merely paying up outstanding invoices, particularly when the price for completing the tramline from Edinburgh Airport to St Andrew Square was estimated to be between £725 million and £773 million, **which included a "substantial risk allowance"**. I, therefore, asked Councillor Balfour to query why only one cost had been provided for terminating the construction contract and whether the £740 million figure related to "*mutually agreed separation*" or "*unilateral termination of the contract by TIE Ltd*". Alastair Maclean, the Director of Corporate Governance, advised the Council that the figure for amicable settlement had not been provided but failed to provide a reason for its omission.

An enquiry was submitted to CEC as follows: "*I refer to your recent report and the Council meeting on 30 June regarding the tram project.*"

Could you please clarify why the Council was not presented with a cost for "mutual separation" in the report, or a "walk-away figure" for mothballing the tram project at the Council meeting?"

The following response was received.

From: Dave Anderson [mailto:Dave.Anderson@edinburgh.gov.uk]

Sent: 18 August 2011 23:36

To: Ron Hastie

Subject: Re: Edinburgh Tram Project

Please accept my apologies. Your e mail came into my office whilst I was on leave and it would appear that it has not been dealt with. At the time of the previous Council report the consortium members had not presented the Council with sealed envelope costs for walking away from the project. These have now been received and will be referred to in the Council report for the 25 August Council meeting. Kind regards. Dave Anderson

[REDACTED]

Sent from my iPhone

The tram report of 25 August 2011 stated: "... in the event that the Council is unable to secure approval of the funding to complete to St. Andrew Square, termination of the contract by this mechanism, resolving all related liabilities, as at the 25 August, i.e. some £80m below the costs of unilateral separation as previously calculated. However, it should be noted that this is currently not legally binding ... This option is only available if the Council is unable to approve funding to complete to St. Andrew Square/York Place."

This suggests that the cost of "mutual separation" would have been £660 million. If the cumulative expenditure at 21 May 2011 was £461 million and invoices had been paid monthly on the basis of works done, why would it have cost a further £199 million to terminate the contract on an amicable basis?

I would be most obliged if the Inquiry Team could check the veracity of the respective prices of each option for the termination of the construction contract and whether Sue Bruce did, indeed, indicate to councillors that the cost of "mutual separation" was £740 million.

At the June 2011 meeting, councillors were also advised by senior officials that the contractors were demanding a final decision on how CEC wished to proceed by close of business that day and Councillors, terrified that lengthy and costly litigation could ensue, opted to build the tram line to St Andrews Square.

It is quite incredible that the contractors, who had been made to wait years before receiving clear instructions as to the precise works they were to carry out and having suffered considerable criticism regarding their role in the dispute, would have placed such a tight deadline upon the CEC. Again, I would request that the Inquiry Team investigate with the contractors, not only the veracity of the costs presented to elected members for each option, but also whether the contractors were so insistent that the Council must make such an important decision within such a tight deadline.

The decision to build the tram line from the Airport to St Andrews Square has had an extremely significant impact on the Council's overall financial position and was made without any form of consultation with the public. On top of ongoing public sector budget cutbacks, CEC was committed to the repayment and servicing of tram borrowing requirements for the subsequent 30 years.

Decision to complete the Tram Project from Edinburgh Airport to St Andrew Square

I would also request that the Inquiry Team investigate how it came to be that the tram line was, in fact, built to York Place. On 29 June 2012, I e-mailed CEC's Chief Executive, Sue Bruce, and, amongst other things, asked for "confirmation that the approval of the City of Edinburgh Council to add a temporary tram stop at the east end of York Place was sought, and when this approval was given; and, if the Council's approval was not sought, confirmation of why this was not considered necessary."

CEC replied as follows:

"From: [REDACTED]

Sent: Friday, July 13, 2012 11:41 AM

To: [rasmbourne@\[REDACTED\]](mailto:rasmbourne@[REDACTED])

Cc: [REDACTED]

Subject: FW: Trams - York Place

Ms Bourne

TRAMS YORK PLACE

With reference to your email below and your queries regarding point 3, the planning decision about York Place and the tram stop was approved by the

*18 April **Development Management Sub Committee of the Council** on 18 April, not by the full Council. In my email I sent you the link the various papers relating to this decision which are all available on the Council website. However, for convenience I have attached the basic subcommittee report on the basis of which the decision was made.*

Again, the various papers and background relating to the decision are all available at <https://citydev-portal.edinburgh.gov.uk/idxpa-web/applicationDetails.do?activeTab=summary&keyVal=M16VQEEW09Z00>"

However, this did not explain who took the decision to apparently divert allocated contingency funds in order to undertake these additional works. It appears to me that there was an attitude, not only within TIE but within CEC, that contingency funds could legitimately be regarded as money which was available to be spent, rather than provision to cover unforeseen events. Indeed, I would suggest that this attitude pervaded the project from the outset, ie, the emphasis was on completing the project within the funding allocated, rather than completing it to the cost estimate, excluding contingency funds.

Scottish Parliament Public Audit Committee

Following correspondence with the Vice Convenor of the Scottish Parliament's Public Audit Committee regarding the oversight of the Government's £500 million grant to the tram project, the Committee held a series of meetings, in early 2011, at which the Edinburgh Tram Project was to be considered. It took evidence from the Auditor General, the CEC and Transport Scotland.

<http://archive.scottish.parliament.uk/s3/committees/publicAudit/or-11/pau11-0402.htm#Col2527> – Audit Scotland

<http://archive.scottish.parliament.uk/s3/committees/publicAudit/or-11/pau11-0502.htm#Col2590> - CEC

<http://archive.scottish.parliament.uk/s3/committees/publicAudit/or-11/pau11-0602.htm#Col2631> – Transport Scotland

I understand that, during the dispute, the contractors attempted to discuss the situation with CEC elected representatives but they did not take up the suggestion. During the evidence, Audit Scotland stated that they had not thought it appropriate to discuss the tram project with the contractors and CEC's Chief Executive, Sue Bruce, stated that she considered Audit Scotland's report to be "fair and balanced". How can an official report on a project whose contracts are in serious dispute, and which has made no mention of the contractors' entirely different interpretation, possibly be considered "fair and balanced"? As was stated to me by a senior civil engineer, "the clue is in their name: they are contractors ... this is what they do... they know contracts".

It is clear that despite the best endeavours of Committee members to determine precisely who was responsible for the public's £500 million investment, none of these parties would accept any responsibility whatsoever. It is also notable that, despite the involvement of the "public's financial watchdog", both prior to and following the signing of the contracts, it failed to alter the outcome of the project or avert the financial consequences to CEC for which it is also engaged as external auditor.

Local Governance

Many Council officers involved in the project were members of professional bodies and bound by a professional code of conduct, which had the potential to place them in a position of conflict. Many also believed that they should act in the public interest and in the interest of the Council as a body. However, the duty placed on them to "implement policy" or be subject to disciplinary action also placed them in a position of potential conflict.

Although TIE was a Council owned arms-length company, I understand that it was bound by the Companies Acts under which its Board members were obliged, above all, to act in the interests of TIE. As TIE's projects dwindled to only one major one – the tram project – it would have been important to ensure that that project continued.

Although TIE was responsible for the delivery of the tram project, CEC "owned" the project and bore the financial risk. Therefore, all reports to Council on which elected members apparently based their decisions, were signed by senior Council officers. To my knowledge, no TIE employee ever put their name to a Council report.

Similarly, although there were elected members of CEC on the Boards of TIE and TEL, I understand that they were also bound by the provisions of the Companies Acts to act in the interests of each of those companies, respectively. Therefore, there were several areas of potential conflict of interest arising from their obligations to act in the interests of TIE, TEL, CEC, their respective political group, and the public.

In relation to the role of local councillors, in 2005, my local MSP, Margaret Smith, commented to me that *"Edinburgh is effectively controlled by a handful of councillors"*. At the time, I found this hard to believe but it seems she was correct. It is senior councillors who make the decisions and the others are expected simply to vote accordingly.

To my knowledge, councillors were not allowed a free vote in any decisions of the full Council in relation to the tram project. This had the effect of silencing those councillors who may have had concerns about the project, resulting in the scheme's weaknesses never being properly discussed by politicians openly on a public platform and issues not being addressed before the scheme was allowed to proceed further. This was particularly unfortunate in the early stages of the project up until 2005 when Councillor Steve Cardownie became the sole councillor opposed to the tram project. During this period, any concerns raised by members of the public directly with their local councillor received little, if any, proper consideration by the council because each political group had already decided to support the project and individual councillors were unwilling to be seen openly question any aspect of it.

In 2003, Councillor Lorna Shiels of the Labour Group advised me that she had several concerns about the project and intended to discuss these with Transport Convenor, Andrew Burns. However, on the day CEC voted to lodge the Parliamentary Tram Bills, I met Councillor Shiels outside City Chambers just prior to the tram item coming up on the agenda. She was very upset and advised me that she had been trying desperately to speak to Councillor Burns about the project but had “*just been told by him, in no uncertain terms, which way I am to vote*”. I understand that Councillor Shiels later had to be hauled to her feet to vote in support of the lodging of the Tram Bills. To my knowledge, Councillor Shiels did not seek re-election.

In 2007, Councillor Kate MacKenzie of the Conservative Group was suspended for failing to vote in support of the Tram FBC: <http://www.edinburghnews.scotsman.com/news/politics/tory-councillor-suspended-by-party-for-trams-vote-rebellion-1-1239280>.

Section 2.1 of the Standards Commission for Scotland’s Guidance for Councillors and Local Authorities in Scotland (http://www.standardscommissionscotland.org.uk/webfm_send/279) sets out its “*key principles*”:

“The general principles upon which this Code of Conduct is based should be used for guidance and interpretation only. These general principles are:

Duty *You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.*

Selflessness *You have a duty to take decisions solely in terms of the public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.*

Integrity *You must not place yourself under any financial or other obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.*

Objectivity *You must make decisions solely on merit when carrying out public business including making appointments, awarding contracts or recommending individuals for rewards and benefits.*

Accountability and Stewardship *You are accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.*

Openness *You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.*

Honesty *You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.*

Leadership *You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen the public's trust and confidence in the integrity of the Council and its councillors in conducting public business.*

Respect *You must respect all other councillors and all Council employees and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a Councillor.”*

However, it then states: “*The key principles are for guidance and councillors should ensure that they have regard to and follow these principles. However, a breach of one or more of the key principles does not itself constitute evidence of breach of the Code.*”

Whilst some local councillors may claim that the decisions they made were as a result of their need to rely on the advice of their officials; others may point to their obligation to vote along party lines or face internal disciplinary action as a reason why they made such poor decisions in relation to the tram project. However, the Code seems quite clear: their responsibility was to make their decisions in the interests of the public and CEC as a body, solely on merit and using Council resources prudently. Each one of them, therefore, bears individual responsibility for the failure of the tram project and for the consequent financial costs which are now necessitating significant cuts to Council budgets, including core services.

The Future

I ask that the Inquiry Team consider how it can be that ordinary members of the public have been more accurate in their assessment of the project’s technical and financial realities than the combined efforts of Scottish Government Ministers, experts at Transport Scotland, experts at Audit Scotland including the Auditor General, the Finance Department at the City of Edinburgh Council, its arms-length company TIE, and TIE’s financial consultants and CEC’s elected representatives.

It is my view that there was a systemic failure on the part of each of these organisations and individuals to recognise, understand and deal with the project’s risks. I doubt that many members of the public would find that acceptable at any time but, now that the public sector is facing significant financial challenges, necessitating devastating cuts to services which the public regard as morally and socially vital (not least in Edinburgh), the opportunity for another public sector project to career so spectacularly out of control must be stemmed.

If the Inquiry Team has considered the work of Professor Flyvbjerg of Oxford University (referred to above) (<http://flyvbjerg.plan.aau.dk/index.htm>), it will be aware of his position that radical new measures are necessary to force a change in the way that projects are initiated, assessed and implemented. The Edinburgh Tram Project, in my view, shares many of the characteristics of the 258 global transportation projects which Professor Flyvbjerg studied, which suffered increased costs and I wholeheartedly agree with his conclusion that “... *the question is not so much what planners can do to reduce inaccuracy and risk in forecasting, but what others can do to impose on planners the checks and balances that would give planners the incentive to stop producing biased forecasts and begin to work according to their Code of Ethics. The challenge is to change the power relations, which governs forecasting and project development. Here better forecasting techniques and appeals to ethics won't do; institutional change with a focus on transparency and accountability is necessary.*” <http://flyvbjerg.plan.aau.dk/liewithnumbers.php>.

I would suggest that that imposition of institutional change should not be restricted to planners, but to politicians, officials and associated consultants as well. The public entrusts significant levels of expenditure to projects on the basis of these parties’ recommendations. If such investment does not result in projects being delivered on time and budget, with the promised benefits, then those responsible should not be rewarded by peerages, promotions and generous pay-outs but should instead be prohibited from involvement in any future project where significant public investment is required.

Professor Flyvbjerg suggests several ways by which those incentives might be imposed, including, for example:

- *“Forecasts should be made subject to independent peer review. Where large amounts of taxpayers' money are at stake, such review may be carried out by national or state accounting and auditing offices, like the General Accounting Office in the US or the National Audit Office in the UK, who have the independence and expertise to produce such reviews. Other types of independent review bodies may be established, for instance within national departments of finance or with relevant professional bodies.” (In the circumstances, I would suggest that independent review bodies derived from relevant professional bodies might be appropriate.)*
- *“Professional and occasionally even criminal penalties should be enforced for planners and forecasters who consistently and foreseeably produce deceptive forecasts. An example of a professional penalty would be the exclusion from one's professional organization if one violates its code of ethics. An example of a criminal penalty would be punishment as the result of prosecution before a court or similar legal set-up, for instance where deceptive forecasts have led to substantial mismanagement of public funds (Garett and Wachs, 1996). Malpractice in planning should be taken as seriously as it is in other professions. Failing to do this amounts to not taking the profession of planning seriously.”*

I would ask that the Inquiry Team consider whether any meaningful change can be realised without measures being introduced to force transparency, open-ness and honesty in future public sector projects.

Alison Bourne

31 July 2015