ALAN COYLE – Areas for Discussion

This note identifies the broad subject areas which we would like you to address. We have tried to include all documents that may assist you in answering the Inquiry's questions.

STRUCTURE

The structure of this note is as follows:

- Introduction
- August 2007 – December 2007
- Wiesbaden agreement
- January 2008 – March 2008
- March 2008 – May 2008 (financial close)
- Infraco schedule part 4
- Post-financial close: May 2008 – December 2010
- Preparation for mediation
- Mediation and immediate aftermath – March to May 2011
- Reports to CEC, summer 2011, and the Settlement Agreement
- Operation of the project after the Settlement Agreement
- Total project costs
- Costs and funding
- Impact on public
- Project Management, Governance and Contractors
- Final comments

Introduction

We understand that you were employed by CEC over the duration of the tram project.

1) Please provide a brief overview of your career, your qualifications and experience (especially insofar as relevant to your role(s) on the tram project).

> I am a qualified accountant through the Chartered Institute of Management Accountants. I was in the employment of the City of Edinburgh Council over a number of years in various service departments undertaking Accountant, Finance Manager and Principal Finance Manager roles. Subsequently in moved into project delivery and transformational change roles.

2) Please append a brief CV.

Roles on the tram project

3) What positions did you hold with CEC over the duration of the project (with dates, where possible)?

Finance Manager – 2007-2009

Principal Finance Manager (mat cover)– 2009-2011

Finance Commercial and Legal Manager (Tram) – 2011-2013

Major Project Manager – 2014-2015

4) What were your responsibilities in those positions?

Finance Manager – Reporting to the Principal Finance Manager, City Development Department on tram related matters including reporting to Transport Scotland, CEC Funding requirements and assisting the Principal Finance Manager in liasing with tie Ltd on financial reporting matters.

Principal Finance Manager(mat cover) – City Development Department, responsible for the management and financial reporting of the service departments financial position including financial reporting requirements on the tram project

Finance Commercial and Legal Manager – post mediation led on all Finance matters pertaining to the tram project, reporting to the Finance Director in CEC. Responsible for liaising with Commercial and Legal support on aspects of the project.

Major Projects Manager – responsible for reporting, assurance and oversight of the Council's portfolio of major projects.

5) What proportion of your work related to the tram project?

Finance Manager – 100%

Principal Finance Manager – 50%

Finance, Commercial and Legal Manager – 100%

Major Projects Manager – 40%

6) To whom did you report, who reported to you, and with whom did you generally work?

Finance Manager - Rebecca Andrew (line manager), Donald McGougan (Director), Andy Conway, Nick Smith, Duncan Fraser

Principal Finance Manager – Hugh Dunn, Donald McGougan, Nick Smith, Andy Conway, Bob McCafferty

Finance, Commercial and Legal Manager – Donald McGougan, Sue Bruce, Colin Smith, Bob McCafferty, Alastair Maclean

7) Did you sit on, or report to, any boards, committees or other groups relevant to the tram project?

Occasional reporting to sub committees of the tram project board, IPG and laterally meeting of the City of Edinburgh Council

8) If so, please specify them, with dates where possible, and provide an overview of the nature of your involvement.

The IPG would typically receive a reporting on Finance which would include the Council's funding position and the spend to date on the project which I would report on.

Laterally (post mediation) I would brief Councillors and attend Council meetings on Financial matters pertaining to the project

We understand that a team of officials at CEC was known as "the B team".

9) What was it, and who did it consist of?

The "B team" was a group of council officers that reported into senior officials across Legal, Finance and Engineering disciplines. This consisted of Rebecca Andrew, Colin MacKenzie, Nick Smith, Andy Conway, Duncan Fraser and I.

10) What was its role, relative to the senior officials?

The "B team" reported into the senior officials on tram matters.

Role re cost estimates and risk - overview

11) In overview, to what extent were you involved in the following (and if you were involved, please provide a summary of your role and who you worked with):

- Project cost estimates;

  to the extent that this relates to the pre-mediation phase of the project I was not involved in the creation of the cost estimates but was involved in the reporting thereof.

- The project business cases;

  to the extent that this relates to the pre-mediation phase of the project I was not involved and FBCv2 had been drafted prior to my involvement in the project.

- Production of, or understanding, the risk allowance for the project:

  to the extent that this relates to the pre-mediation phase of the project I was not involved in the production of the risk allowance.

12) When the Final Business Case was approved in December 2007, or at financial close in May 2008:

a) did you have any concerns about the cost estimates?

I was concerned about the movement in the cost estimates or that we had allowed enough for risk.

b) did you have any concerns about the treatment of risk?

I was concerned that CEC did not get conclusive answers on a number of points that were raised around the extent of the risk allowance and that "black flag" risks were being ignored.

13) If so, what (in overview) were your concerns and how (if at all) were they addressed?

Concerns noted above, I don't believe these were addressed despite them being raised many times.

14) What, in overview, was your understanding at those times of the treatment of the following risks, and the provision made for them in the risk allowance:

- delay and cost associated with completion of the design (including achievement of all approvals and consents);

  in discussion with legal and engineering colleagues my understanding was that there was concern that the costs of the project could escalate if design changes were made.

- delay and cost associated with completion of utility diversions?

  This was a significant risk to the project and the provision did not look adequate.

In overview:

15) Who did you understand to be responsible for managing and quantifying risk?

The responsibility for managing the risk resides with the risk owner.

16) Do you consider the management and quantification of risk to have been effective (giving reasons for your view)?

No I do not believe it was effective. The magnitude of the risks were not sufficiently covered.

August 2007 – December 2007

A report to CEC dated 23 August 2007 (CEC01068655) noted that Transport Scotland's funding had been capped at £500m with no allowance for inflation. The balance was to be funded by CEC, and, in light of that greater financial risk for CEC

> *"it is imperative that rigorous financial and governance controls are in place to manage the next crucial phases of the contract".*

The Highlight Report to the chief executive of CEC's Internal Planning Group on 30 August 2007 noted that, since CEC had become funder of last resort,

> *"it will be incumbent on the Council working with tie to determine the risks inherent in the bespoke Infraco Contract ... and assess what headroom is to be recommended for budgeting purposes." (CEC01566861, para 4.1).*

1) What was your understanding of this matter, and the response to it by CEC officials?

> My understanding was that the Council needed to understand more about the risks in order to be able to know what the extent of funding could be. CEC should have taken independent advice to assess the potential risk.

2) To what extent did CEC rely on tie, and to what extent did they assess these matters for themselves?

> CEC relied too heavily on tie.

In September 2007, Colin Mackenzie sent you risk matrices supplied by DLA relating to Infraco (CEC01567333; attachments at CEC01565174, CEC01565175, CEC01565176). He referred to outstanding work by Turner & Townsend on quantifying the risks. You asked about whether the matrices should have *"probabilities, values and how the risks were covered"*.

3) What was your view of the usefulness of these risk matrices in assessing risk, and of the information generally made available to CEC for that purpose by tie, DLA and others?

> The information was not useful as there was no overall context or quantification of what this could mean. The information provided to CEC by tie was not holistic and was essentially bits and pieces of information that did not give the full assessment of cost or risk.

4) What work was being done by Turner & Townsend in quantifying risk?

> I cannot comment on this.

Minutes of a CEC Property and Legal meeting on 4 September 2007 record discussions about CEC obtaining external legal advice on the Infraco contract (CEC01561179). They noted that the Council Solicitor had declined an opportunity to appoint independent solicitors and instead chose to rely on DLA's letter of comfort (page 2); and that it was the belief of the group that it was still prudent to seek legal advice before approving the contract (page 2).

On 23 August, Rebecca Andrew had raised her concerns with Donald McGougan that CEC lacked the internal resource to analyse the retained risks in the contract and their potential financial impact (CEC01560815).

5) You were not at the meeting, but what was your understanding of this issue?

> My understanding is that officers in CEC were not comfortable with the level of potential risk CEC would be signing up to and suggested we best protect ourselves by taking independent advice.

6) Did you have a view on whether or not CEC should obtain its own advice, independent of tie's, on the Infraco contract? What was it?

> My view is that CEC should have taken independent advice.

Mark Hamill of tie circulated contract risk matrices to you, amongst others, on 5 October 2007 (CEC01547983, CEC01547984, CEC01547985, CEC01547986, CEC01547987, CEC01547988, CEC01547989, CEC01547990). The documents included a risk register (CEC01547989) and a Quantified Risk Allowance (CEC01547990), which valued the phase 1A risk at £49m at a P90 level.

7) What was your understanding of these documents?

> The documents provided a view on certain risk exposures

8) To what use, if any, were they put by CEC?

> CEC mainly questioned the risk documents to try and become better informed of the risk profile.

9) To what extent did you consider them adequate for CEC to assess risk?

> inadequate

10) What was your understanding of their treatment, and quantification, of risks associated with (a) utility diversions, and (b) design delay?

> Despite lots of questioning from CEC, I don't think we ever got satisfactory answers from tie on these areas.

CEC obtained a report from the OGC Readiness Review Team on 15 October 2007 (CEC01496784). The report set out, inter alia, to identify risk that remained with the public sector, to quantify that risk and to provide a reasoned explanation of the adequacy or otherwise of the available financial headroom.

It endorsed the assessment of risk at £49m, and 21 days of delay, at a 90% confidence level.

It appears that CEC had originally intended to appoint Turner & Townsend to assess these matters, and that the task was given to the OGC following an intervention by tie. In relation to that decision, Rebecca Andrew expressed concerns

> *"that the OGC review may be at too high a level and that our need to have comfort over the detail of the risks will not be met" (CEC01567757, CEC01567758).*

11) What was your understanding of the circumstances in which the OGC report had been commissioned?

> I can't recall the decision to change from T&T to OGC. I agree that T&T would have given a more forensic review of the project.

12) Why had CEC wanted to instruct Turner & Townsend, and why did they not do so?

> I cannot comment other than T&T are experts in light rail projects and would have provide good assurance.

13) What were your views on the OGC report's conclusions?

> The conclusions were too high level but did point to some concerns around the ability of tie to manage the contract effectively.

14) What were your views on Ms Andrew's concerns about the report?

> I agree with Ms Andrew's concerns on the report

15) Were they addressed and, if so, how?

> I do not believe they were.

16) How, if at all, did the report influence CEC's approach to risk?

> I do not think the report did influence the approach greatly.

In an email dated 22 October 2007 (CEC01399641), you referred to a conversation between Donald McGougan and Andrew Holmes about "tie's current lack of contract management skills" which you described as "very dismissive". You expressed the opinion that the operating agreement between CEC and tie must have something in it for tie to establish a contract management team that CEC officers were happy with.

In an email dated 31 October 2007 (CEC01383843), you referred to concerns raised by the OGC team that "they do not feel that tie have either the team or strategy in place to adequately manage the contract".

17) Please explain this issue.

CEC were concerned about the skills tie had to manage the contract.

18) How were the concerns about tie's contract management skills addressed, if at all?

I do not believe they were.

19) What steps (if any) did CEC take to satisfy themselves about tie's contract management team?

I do not believe despite B team questions that this was ever addressed.

The emails from Rebecca Andrew and Duncan Fraser (19 October 2007, CEC01399642, attached to CEC01399641) referred to a number of concerns, including (a) MUDFA works being behind programme with potential time and cost impact on Infraco, (b) the high risk of change after financial close and (c) risks not having been raised in tie's risk registers.

20) What was your understanding of these issues?

My understanding was that delayed MUDFA works could delay infraco resulting in additional costs to the project and that future design changes would have a similar impact.

21) What steps did CEC take to address them?

I believe many questions were raised by CEC officers but ultimately tie had the information, not all of which CEC had access to.

CEC appear to have maintained a register of risks relating to the Tram Project (see, e.g., CEC01383739, CEC01383740, October 2007). It noted a range of risks associated with delay in utility works and designs, and their impact on MUDFA and Infraco works (e.g., 12, 13, 14, 15, 20, 21, 23, 26, 55, 57).

22) What was your role in relation to CEC's risk register?

A contributor to the process

23) Who maintained it and how was it prepared?

This was maintained by the CEC internal tram team. I cannot recall how this was prepared.

24) How were the risks quantified?

I cannot recall how it was quantified

25) What was its purpose, and how was it used?

CEC were at risk of in relation to issues such as third party agreements. The documents would have been used to assist in management of these areas.

26) How did it relate to the risk registers maintained by tie?

I do not believe it did.

27) To what extent did CEC understand the risks associated with delay in design and utility works, and their potential to impact on the time and cost of the project?

I do not believe that CEC fully understood these risks and the impacts thereof.

Minutes of the property and legal meeting on 20 November 2007 (CEC01397445; you gave your apologies) noted:

• "£498m is negotiated figure but this is expected to rise by end of contract – contingency provision" (page 2);
• that Duncan Fraser was to email Mark Hamill about how the QRA risk register took account of tie entering into a fixed price contract without having any approved designs with the Council (page 2);
• that there was concern that the "final closure price" would increase from £498m for a range of reasons including a lack of agreed technical and prior approvals and a mismatch between the current designs and BBS assumptions;
• "Consequently the concern is that any variation to a fixed price contract results in increased scope of works and delay or disruption claims, and this may prejudice to provide a best value outcome" [sic.]
• "Pricing by BBS based on 60% detailed design approved which is unapproved; consequently there should be a risk premium of £25m to take account of unapproved design. £498m + Risk ... DMF to email tie to close off this issue". [sic.]

28) What was your understanding of these issues?

My understanding was that there could be elements of design change that could impact on the final cost of the project and that this would result in a drawdown of risk

29) What steps were taken to address them?

I cannot recall what steps were taken.

On 3 December 2007, in response to your question about the reasons for the risk allowance dropping from £49m to £34m at contract close, Mark Hamill of tie sent you a Quantified Risk Assessment dated 8 December 2007 (CEC01500301, CEC01500302, CEC01500303. It stated a phase 1a risk allocation (at a P90 level) of £47m. See also CEC01500313.

30) What was your understanding of the justification for the reduction in the risk allowance from £49m to £34m?

I do not believe CEC were given adequate justification for the change.

31) How could it be determined at that stage what risks would remain at financial close?

I do not believe it could be determined.

32) What was your understanding of the documents sent to you by Mark Hamill?

The documents did not explain in anyway the change in the allowance.

33) In what way, if any, did they assist you?

They did not

On 7 December 2007, Colin Mackenzie sent a briefing note to Gill Lindsay, which he described as having been "put together with our colleagues in finance" (CEC01400190, CEC01400191). He said it "reflects our very real concerns about the Council report, and indeed whether there should be a report on 20th December". You had previously sent it, or at least an earlier version, to Donald McGougan and Andrew Holmes (3 December 2007, CEC01397538, CEC01397539). The note sought guidance on the treatment of issues impacting on the report to Council on 20 December. The Briefing Note was discussed at a meeting of the Chief Executive's Internal Planning Group on 11 December 2007 (and formed Appendix 3 of the Highlight Report to the IPG (CEC01398245) (pages 7 and 90)) (see, also, the Action Note (CEC01391159)).

34) What were your views on the matters set out in the Briefing Note?

These were a number of legitimate concerns from the team that needed raised.

35) What discussion of those matters was there at the meeting of the IPG on 11 December 2007 and what was the outcome?

I cannot recall the discussion.

36) What views were expressed on the extent to which, if at all, Council members should be advised of the concerns in the Briefing Note and whether it was appropriate for there to be a report to Council on 20 December 2007?

I cannot recall the views expressed at this time.

37) The concerns were being expressed by officials below the top tier of officials. What was your view of the way the senior officials reacted to the concerns?

I think senior officials listened but did not react strongly enough with tie to get the comfort required.

For background to the paper's production, see also CEC01397521, CEC01400081 and CEC01394872.

The minutes of a CEC Legal and Property meeting you attended on 4 December 2007 (CEC01398349) record that a QRA update was required to reflect changing risks, including late design delivery post financial close. You were to check "risks re SDS".

The minutes of the meeting on 11 December 2007 (CEC01397823) recorded: "Council is not clear on Scope of Works and it is not clear tie is clear on Scope of Works. Needs to be a fuller understanding of this position to enter into a fixed price contact." They also noted that Donald McGougan was keen to have control over the contract with a sensible price instead of a compressed price.

38) What was your understanding of these matters?

There was potential additional cost as a result of design changes and also that Donald McGougan wanted to understand the extent of additional costs the design risk could bring rather than having the headline price pushed down.

Rebecca Andrew sent an email to Geoff Gilbert, 12 December 2007, (CEC01384238) identifying matters on which CEC wanted comfort before signing off on its report. They included the contract price, details of the split between firm prices and estimates, and justification that the risk allowance was sufficient. Mr Gilbert sent an agenda for a meeting on 13 December.

39) Did that meeting take place? If so, who attended it?

I cannot recall

40) What was discussed?

I cannot recall

41) Were you, and other CEC officials, satisfied with the information you received?

I cannot recall

CEC01494866 is a slideshow on risk, bearing to be for a presentation to CEC on 13 December 2007.

42) Do you recognise this slideshow?

No

43) If so, to what extent did it help you understand the risks to be borne by tie/CEC?

Duncan Fraser emailed Geoff Gilbert on 14 December 2007 (CEC01494864), and noted that

"The QRA does not provide adequate funds for extensions of time ... The scope of works is not clear to CEC and specifically the quality and quantity and status of designs on which BBS have based their price. Also none of the designs are approved ... hence the scope is likely to change, hence provision for this should be made. Can you advise the Council if tie propose to amend the QRA to take account of the above comments?"

Mr Gilbert replied: CEC01397774.

44) Were you satisfied with his answer?

I do not believe the answer gives the comfort Duncan Fraser sought.

A letter from DLA to the CEC Council Solicitor dated 17 December 2007 (CEC01473264), noted that tie had instructed them

"that a full presentation has been made by tie to Council Finance officers based on tie's Master Project Risk Matrix and that no issues of concern arose".

45) Do you agree? Please explain your answer.

I cannot recall so cannot comment other than any information CEC were provided was not of adequate quality or depth to get a full understanding on the risk exposure.

A Property & Legal meeting which you attended on 18 December 2007 considered a "critical issues" paper (CEC01398015, CEC01398016). These issues included the price agreement (including value engineering and design development), and the revised base cost and risk allowance figures, which were said to have been discussed with Donald McGougan "and accepted?".

46) What was your understanding of these matters at the time?

That there was movement in the base cost due to reallocation of risk relating to design matters

47) To what extent had your concerns (and those of other CEC officials) about risk and its quantification been addressed by this stage? If so, how?

As previously, the risk allowance did not seem adequate for the extent of the works.

Council meeting of 20 December 2007

On 20 December 2007 Donald McGougan and Andrew Holmes presented a joint report to Council (CEC02083448) seeking members' approval on the Final Business Case, version 2 (which was granted: minutes, CEC02083446_18).

48) What was the process by which this report was drafted? For example, which individuals, from which organisations, were involved in drafting it? Were there issues of contention?

The initial drafts would be completed by CEC officers then the reports would be sent to tie for comment and heavilty redrafted and generally a number of issues CEC officers originally included were removed. Tie representatives such as Steven Bell, Stewart McGarrity and Graeme Bisset would make considerable drafting changes.

49) What views, if any, do you have about the way in which the report was drafted?

I think it was inappropriate that tie had so much influence in drafting a Council report as a number of CEC officers concerns were edited.

See, for example, CEC01383999, CEC01384000, CEC01384035, CEC01384036, CEC01397621, CEC01397622, CEC01500905, CEC01397706, CEC01397707, CEC01397719, CEC01397720, CEC01397750, CEC01397751

An earlier draft of the report had included reference to an additional contingency of .

£25m for design change, and a detailed section (and appendix) on risk. These had been the subject of comment by Stewart McGarrity and Miriam Thorne of tie (CEC01383999, CEC01384000, 29 November 2007; paragraphs 3.3, 4.3 and 4.16 onwards, and appendix 3). The paragraphs on a contingency for design change appear to have been deleted in a draft circulated by Duncan Fraser on 30 November 2007 (CEC01384035, CEC01384036). The final version of the report included no reference to an additional contingency for design change, and replaced the detailed discussion of risk and the appendix with a reference to the Final Business Case (CEC02083448, paragraph 8.13). An email dated 14

December 2007 from Gill Lindsay to you (CEC01397758) noted, "the version of [the] Report I had been working on was much more explicit re risks current and those to be contained. Has all this text been removed and if so why please"".

50) What was your understanding of, and view on, these matters?

> The original drafting looked to provide a better view to members of the finances and risks around the project. Tie would argue that including this information would weaken their commercial position with BBS which I did not believe to be accurate. As would often be the case tie would insist on changing the drafting to provide less detail and argue the point with senior officers.

51) Were you content that the final version of the report (CEC02083448) gave members a sufficiently informed, and accurate, basis for approving the FBC v 2 and authorising entry into the contracts? Please explain your answer.

> No as a number of key points had been removed from the drafting.

52) What were your views on whether or not the final version of the report should have retained (a) the references to an additional contingency for design change, and (b) the more detailed provisions on risk?

> I believe the final version of the report should have included for matters (a) and (b).

Wiesbaden agreement

A meeting took place between representatives of tie and BBS at Wiesbaden, Germany, on 13 and 14 December 2007. This led to the signing of an agreement on the contract price for phase 1a of the Edinburgh Tram Network on 20 and 21 December 2007 (CEC02085660). A summary of it was included in papers for the Tram Project Board meeting on 19 December 2007 (CEC01526422_10 and _11).

1) What was your understanding of the effect of this agreement on (a) the price and (b) the risk allocation under the Infraco contract (especially in relation to completion of the design)? (See, e.g., a Tram Briefing you circulated on 17 January 2008, CEC01398234, at 4.9.)

> My understanding of the effect on (a) price and (b) risk was that there was an increase in the price of the contract due to a reallocation of risk to BBS

2) When did you first become aware of the Wiesbaden agreement?

> I cannot recall exactly but it may have been in the lead up to Christmas of that year.

3) To what extent, if at all, were you in involved in, or consulted about, the drafting of its terms?

I was not involved or consulted.

4) To what extent, if at all, did the report to Council dated 20 December 2007 take account of the Wiesbaden agreement? If it did not, to what extent (and when and how) were members informed about it?

I do not believe that the Council report of 20 December 2007 took account of the Weisbaden agreement.

January 2008 -

On 1 February 2008, Susan Clark of tie supplied you with a draft risk management report, risk register outputs and a programme report (CEC01397843, CEC01397846, CEC01397845, CEC01397844). The risk management report (CEC01397846) includes (as an embedded file) the QRA report dated 8 December

2007, valuing the phase 1A risks, at a P90 level, at £47m.

1) What were your views on this information from tie, especially on its treatment of risk associated with design, consents and utility diversions?

I did not feel that the information provided by tie provided adequately for these risks.

On 5 February 2008, you expressed disappointment with information supplied by tie on Black Flag risks (CEC01398481, CEC01398482).

2) Can you explain your concern and if (and if so, how) it was addressed?

My view was that black flag risks were not being considered appropriately by tie. These concerns were never addressed.

Rutland Square Agreement

On or about 7 February 2008, tie and BBS entered into the "Rutland Square" Agreement (CEC01284179).

3) What was your understanding of the need for, and purpose of, that agreement?

I was not informed of the purpose of the agreement.

The Agreement noted a construction price of £222,062,426, subject to certain exclusions, provisional sums, assumptions and conditions.

4) What was your understanding of the extent to which the price in the agreement was fixed and firm (and the extent to which that price was subject to exclusions, provisional sums, assumptions and conditions)?

> Tie always reported that the price of the contract was 95% fixed. Though clearly the financial impact of the remaining 5% when taking into account exclusions, provisional sums, assumptions and the design related issues could be material.

On 7 February 2008, you, Colin MacKenzie and Andy Conway exchanged emails (CEC01400803) about risks associated with consents. Mr Conway said:

"we will be expecting tie to identify this within the QRA (which the project may, or may not be able to afford)".

Mr MacKenzie said:

"I think it has long been accepted within the Council that it could ultimately come down to a balancing act between on the one hand the inflationary cost of delaying project award and on the other hand the quantification of risk such as discussed below."

You said

"As long as the figures to make a judgement on this balancing act are forthcoming!"

Nick Smith had articulated some of the risks associated with consents on 23 and 24 January 2008 (CEC00481318).

On 8 February, Colin MacKenzie expressed the view that tie's response to his questions about quantifying risk associated with consents were "not very helpful" (CEC01398594).

5) What was your understanding of these issues, and what were your views on them?

> My understanding was that there was significant concern that CEC would be at risk of additional time and cost given the extent of outstanding consents and the concerns CEC had around the completeness of the design

You also noted that tie's risk manager had been unable to calculate black flag risks.

6) What were your concerns in that regard?

> As previously that CEC had no view on the potential cost impact of these risks

On 12 February 2008, Colin MacKenzie noted that the FBC v2 had not mentioned or quantified the cost of SDS design risk; that the risk matrix "skirts over the issue too" and that

"[m]aybe somewhere in the QRA, which we are consistently denied sight of, there is an element for the cost of design risk. On balance, I suspect not, since this is a matter only negotiated by tie earlier this month" (CEC01401419).

7) What was your understanding of, and view on, this matter?

My understanding is that Colin MacKenzie was concerned that the extent of design risk was not fully understood by CEC and that tie had not provided an adequate allowance for design risk in the QRA. This is a view that I shared.

8) Can you explain Mr MacKenzie's remark about being 'consistently denied' sight of the QRA (when, e.g., it appears to have been supplied on 1 February (embedded in CEC01397846, attached to CEC01397843)?

Tie continually fed CEC piecemeal information and even then somewhat reluctantly. Mr MacKenzie's view may have been that there were elements of the QRA that were not being shared with the Council.

BBS design due diligence report

On 18 February 2008, BBS produced a design due diligence summary report, based on design information they had received by 14 December 2007 (CEC01449100). The document raised various concerns about design, including that "more than 40% of the detailed design information" had not been issued to BBS.

9) Did you see, or were you aware of, that document?

I do not recall being aware of the document

10) Were you aware of the extent to which the design was incomplete?

I had a suspicion that it was incomplete but did not know that the design was incomplete.

11) How did you understand incomplete design to be dealt with in the Infraco price and in the risk allowance?

I understood that 95% of the price was fixed/firm and that an element of the remaining percentage could have been related to incomplete design.

On 25 February 2008, you summarised a meeting that evening between tie and CEC (CEC01400986). Your comments included:

"Unsuprisingly, the biggest issue is novating the BBS contract with the SDS design. The real problem is on the BB side (Civils) and this could impact on price. Also BBS having previously agreed a 3 month extension at the end of the programme have now come back and asked for more money. Graeme stated there is around £10m in potential costs bringing us up to £508m, although he did state there are a number of variables within this. He also confirmed a legitamate re-run of the QRA is less that before, we will get this asap, although it will need re-run at contract award. [sic.]"

12) What was your understanding of these issues?

As with previous iterations of the price, the issue of design risk looked to be adding costs to the project and BBS seemed to be seeking additional payments for design related costs.

A meeting took place on 28 February 2008 between tie and Donald McGougan, Andrew Holmes, Gill Lindsay, and you (referred to in an e-mail of that date by Graeme Bissett (CEC01546728)).

13) What was discussed at that meeting (especially in relation to risk and price)?

I cannot recall the discussions.

14) What was your understanding of the matters listed by Mr Bissett in his e-mail in the four bullet points under "budget", including, in the last bullet point, the statement that "overall we believe that the existing £498m budget remains within reach if it is accepted that the balance between calculated cost and risk contingency will change and that some areas will be controlled post-Close rather than negotiated into the ground now"?

My understanding of this is that there may be an increase in the base cost of the project and a reduction in the risk allowance but overall that this could be managed within the £498m.

On 28 and 29 February 2008 (CEC01400987), Colin Mackenzie expressed the view that, in light of what he considered to be material changes from the position reported in the Final Business Case v2, rather than approve tie's entry into the Infraco contract under his delegated authority, the chief executive of CEC should seek fresh authority from Council members. His main concern appears to have been about the SDS novation. He noted:

"It is highly improbable that the figure of £498 million can be held against the changes arising from SDS novation, the continuing delay to reach financial close, inflation and other factors."

He also noted that CEC were still to receive the first revised QRA since late the previous year.

Gill Lindsay in reply noted, inter alia, that CEC finance staff were to receive a presentation on the Monday from tie on QRA. She said:

"My concerns are around the robustness of risk and contingency as although I accept there are movements from risk to price and closing of of some risks, I believe that the residual risk re SDS may be very significant and I understand we still have no figures to assess this. (my comments to Graeme Bissett on SDS paper refer). The previous level of around £3m is appearing to me grossly undervalued depending on final position. I agree fully with Donald that we need the best contract and if more money is required for the contract sum that is more easily dealt with as it is a defined figure."

15) What was your understanding of, and view on, these matters?

My view is that Mr MacKenzie was concerned that there had been material changes

To the price and allocation of risk which meant that the Chief Executive would be prudent to have his delegated authority refreshed. Also that the design risk was a material issue that seemed to be under provided for in the risk allowance.

In his email of 29 February 2008, Mr Mackenzie noted that Rebecca Andrew had been very clear that Transport Scotland were insisting financial close take place before 31 March 2008.

16) What was your understanding of that?

I cannot recall this matter

17) What impact, if any, did it have on events?

I cannot recall this matter

You circulated a draft report to CEC (for 13 March 2008) on 29 February 2008 to Rebecca Andrew (CEC01398910). It was to notify the Council about the notice to award the Infraco contract to BBS. It noted that negotiations with BBS had covered project scope, price and risk. It addressed in some detail the risks to the

Council arising from delays in design.

Ms Andrew's reply (CEC01398912) stated that:

"The latest at the IPG is that we are to prepare a two pager saying that everything is fine and notification to award is about to be made. If things are not resolved and delays persist, then there will be no report!"

18) What was your understanding of, and view on, these matters?

My view is that the contract price was increasing due to certain provisional elements being included in the price. I cannot take a view on the point on the two pager as there were still a number of concerns that CEC officers had in relation to the design risk.

19) In particular, what did you understand by the instruction to prepare "a two pager saying everything is fine"?

CEC officers still had a number of concerns particularly around the extent of design completeness. This seems counter intuitive.

20) Were the project risks being sufficiently reported to council members at this time, in your view?

I think CEC officers were concerned about a number of risks so, no.

On 10 March 2008, Colin MacKenzie emailed you to say that recently supplied facts and figures "actually reinforce[d his] view that the Chief Executive should report to Council again on the various material changes", and that he would not support a letter advising the chief executive that changes from the Final Business Case were within tolerable limits (CEC01399016).

21) To what extent did you share his view?

I could see Mr MacKenzie's viewpoint.

On 10 March 2008, Stewart McGarrity emailed Rebecca Andrew, copied to you and others (CEC01506128), answering various questions about the QRA. The exchange included the following points:

• That the best estimate of the cost of closing the project before contract close was £129m;

• That Ms Andrew had asked for a "note on the risks of delaying contract signature versus the risks of signing the contracts if any of the items in the matrix are not resolved". Mr McGarrity's response was that, assuming the SDS novation was agreed and the Network Rail agreement signed up

> "then the only significant additional public sector risk compared to December is the delay in post close SDS design delivery. This would only go away if we waited for the design to complete which would in say September [sic.]. Six months inflation on the programme would cost £15m to £20m alone. More likely is that either BBS or the TS funding or both would walk away and we'd have no project."

• That Ms Andrew had noted that

> "we were reassured by your statement that the current level of the risk allowance (approximately £30m) as determined by QRA was sufficient, based on your knowledge of the project and considerable experience of other major projects."

Mr McGarrity noted that some items had been added to the QRA to arrive at

the final risk allowance of £32m.

22) What was your understanding, and view, on these matters?

My view was that CEC required to know what the costs of cancelling the project would be at that time.

23) To what extent was the decision to recommend proceeding with the project in May 2008 influenced by:

a) The estimated cost of closing the project prior to financial close (£129m); or

b) The estimated cost arising from delaying financial close to allow completion of the design;

I do not have a view on the influence this information had on the decision to proceed with the project other than to provide an estimate of the costs should the decision had been to stop the project.

c) Mr McGarrity's predictions that delay would lead to BBS or TS "walking away" from the project?

I cannot comment on how relevant this was to CEC decision to proceed.

24) Had CEC received and reviewed the QRA which had come out at £30m by this time?

I cannot recall whether this had been undertaken.

Financial analysis spreadsheet

On 11 March 2008, Stewart McGarrity sent you a spreadsheet (apparently dated February) for circulation inside CEC which showed various figures, such as the control budget for the project (CEC01399044, CEC01399045). It included:

• A summary breakdown of the control budget (£508m) and the risk allowance (£33.4m) (tab 1)
• A breakdown of the Infraco budget (now £243m) (tab 2)
• A "Phase 1a budget at financial close", showing a budget of £498m and a risk allowance of £30.3m (tab 3)
• The risk allowance QRA (tab 5), which showed a risk allowance of £47m at a P90 level for phase 1a
• The P10 summary (tab 9), showing a predicted control budget of £498m and a risk element of £36.4m. This includes the following comment (cell DM166) "Must identify what elements of MUDFA / Utilities budget our £3m saving will come from – URGENT"

25) Please explain in overview what this document shows.

The document shows the evolution of the project costs/budget from Final Business Case to the most recent view taking account of changes in the intervening period.

26) What use was made of it within CEC?

To gain understanding of the overall project budget and the component parts.

27) Why is the risk allowance variously stated and different places? What did you understand it to be?

I understood the risk allowance to be £33.4m as this was the amount contained in the most recent iteration of the budget.

28) Can you explain the comment above about a £3m saving from the MUDFA budget?

No

29) To what extent were you satisfied that the breakdown of the risk allowance, and the provisions made in particular for design, MUDFA and programme delay, were adequate (e.g., tab 1)?

I would say I was not satisfied as I don't believe the risks were fully articulated.

30) What was that based on?

I cannot comment

By emails on 11 March 2008:

• Colin MacKenzie responded to the latest drafts of the close report and DLA report and noted that CEC legal were not yet in a position to advise entry into the main project contracts. He listed crucial points outstanding, including price and value engineering; SDS novation; and a final run of the QRA. (CEC01393838)
• You gave an update on negotiations following a briefing with TIE. You noted that "Novation – This is still ongoing. TIE are meeting with SDS this evening. TIE are more upbeat than yesterday and have said that nothing will change re price or risk allocation presented to us. If it does, they'll come back to us before ITA" (CEC01407769).
• You advised TIE that in order for CEC to approve the Intention to Award (ITA), CEC would require a letter from Willie Gallagher on certain matters, including that "the level of risk allowance, as determined by the QRA is appropriate ... and that the price is now fixed (excluding know (sic) estimated costs)" (CEC01490289).
• Duncan Fraser advised TIE that CEC required a statement confirming the elements of the SDS designs that were being re-designed by BBS, if any, the working assumption to date having been that all of the SDS designs were to be adopted by BBS (CEC01544518).
• In a reply, Graeme Bissett stated "the information you want is embedded in the Infraco proposal ... As I think we discussed today, the liability would sit with BBS/SDS in relation to any redesign".

31) What was your understanding of the above matters, especially as they affected risk and price?

I think CEC wanted commitment from tie on the appropriateness of the risk allowance and there position on design in order to understand the view of cost.

Intention to Award Infraco contract

On 12 March 2008 Willie Gallagher sent a letter to Tom Aitchison confirming tie's view that it was now appropriate to issue the Intention to Award letters (CEC01399076).

Mr Gallagher's letter did not, however, state that the Infraco price was fixed or address the other matters in your e-mail dated 11 March (CEC01490289).

32) Having regard to the state of fixity of the price, and the extent to which the risk allowance had been quantified, were you of the view that it was appropriate to issue an intention to award letter in respect of Infraco contract?

I think that there were key elements of risk that were not fully understood at this time that would have could have had an impact on cost, therefore until these issues were assessed then it was not appropriate to issue the letter at that point.

On Friday 14 March 2008 an e-mail was sent to you (CEC01386275) attaching a Note that had been approved by Gill Lindsay (CEC01386276). The Note, to be signed by Donald McGougan, Andrew Holmes and Ms Lindsay confirmed that it was appropriate for the CEC chief executive to authorise tie to immediately issue a Notice of Intention to award the Infraco contract to BBS.

33) Who drafted that document? For example, did anyone from tie or DLA have input into the drafting?

I cannot recall who drafted the document.

34) What was your understanding of the state of agreement (if any) at that stage between tie and BBS on the allocation of risk arising from incomplete design, approvals and consents; and how that was to be expressed in the Infraco contract?

It was unclear as to what the impact of this agreement would have.

35) What was your understanding at that time of the additional risk in relation to design (referred to in the Note) being passed to the public sector?

My understanding was that CEC were at risk of SDS failing to get the required consents in order to sign off the design.

36) What was your understanding of the statement that: "In essence, the contractor BBS will accept the design risk for delay by SDS to a high financial ceiling, whereas the Council and TIE must remain financially liable for delay by SDS in relation to the provision by them of information for a range of consents and approvals"

This statement does not make a lot of sense as there is no definition of the financial ceiling BBS would accept. On the consents point, see answer to Q35.

The agenda and minutes for the full meeting of the Council on 13 March 2008 (CEC02083387, CEC02083388) suggest that members were not given any update on the tram project.

37) Why was that?

> I cannot recall why.

38) Was it appropriate in the circumstances for tie to be given authority to issue the Notice of Intention to award the Infraco contract to BBS, without members having been notified of developments?

> I cannot comment on whether members had been briefed by senior CEC officials. There may not have been a requirement to report back to Council in order to issue the notice to award if this was already enshrined in the Chief Executives delegated authority.

March 2008 to May 2008 (financial close)

1) What was your role in relation to preparation for CEC's approval of tie's entry into the main project contracts at financial close? (See, e.g., your email of 17 March 2008 circulating the Contract Approvals Sheet: CEC01399109, CEC01399110)

> Administration of the final document set for CEC.

CEC01244182 is entitled "Edinburgh Tram Supporting Documents for Financial Close 1 May 2008", but includes later documents, e.g. the close report dated 12 May 2008.

2) Can you confirm whether this bundle contains the final versions of the documents relied upon by CEC at financial close?

> I cannot confirm if this bundle contains all the documents that CEC relied on as there may have been documents that I was unaware of that may have been provided for other officers.

Document 2 in that bundle is a version of a spreadsheet entitled "Critical Contractual Decisions to enable Chief Executive to use delegated powers to approve tie to sign the contract with BBS", dated 21 July 2008.

3) Please explain the purpose of this document.

> This tracker relates to a number of documents the Chief Executive required wanted to be in place prior to using his delegated powers.

4) To what extent (and how) were CEC officers satisfied in relation to the matters listed in the spreadsheet, and in particular:

a) 1.7: tie to provide a list of exclusions from the Infraco contract, with a financial value against each

I do not think that CEC officers were satisfied that this provided the requisite comfort.

b) 2.3: a statement on the allowance within the QRA for slippage in relation to MUDFA (stated to be £8.6m)

I do not think Council officers were satisfied that this allowance was adequate.

c) 5: risk

I do not think CEC officers were satisfied with the information provided.

d) 7: pricing and funding, in particular: the percentage of costs that were fixed; what changes had taken since the design version priced by BBS; and the cost per week of not signing the contract on time.

I do not think Council officers were comfortable with the amount of fixity. The cost of not signing the contract on time seemed to be reasonable.

4) An earlier version of that spreadsheet (appendix 1 to the Highlight Report to the IPG on 16 April 2008) had noted that the MUDFA risk element in the QRA had been £11.4m. As noted above, it was then reduced to £8.6m. What was your understanding of the reason for the reduction?

I cannot recall the reason for the reduction.

For many of these matters, the spreadsheet cites as supporting documentation a file entitled "Financial Analysis Spreadsheet (100408).xls".

5) Is Document 20 (page 458) in the bundle (CEC01244182) that document?

I cannot be certain if document 20 is the Financial Analysis Spreadsheet

On 18 March 2008, Colin MacKenzie circulated DLA's Infraco risk allocation matrix (CEC01399118), and said

"I have never been a big fan of this document: it is a bit too abstract and one would really have to read the entire contract suite to put it in context and gain a full understanding".

7) What was your view?

I agree with Mr MacKenzie's view.

An amendment to the minutes for the Internal Planning Group meeting on 19 March 2008 (CEC01228374; see CEC01391254 for the March minutes themselves) noted, in relation to the risk report,

> "the IPG analysed the risk register presented in the Highlight report, discussed and noted and agreed the appropriate treatment of these risks"

(see CEC01228374, item 2).

8) What was the nature of the analysis, discussion and agreement to which this referred?

I cannot recall

The minutes of the CEC/tie Legal Affairs Group meeting on 7 April 2008 (CEC01487917) record that you were to feed back comments to Graeme Bissett "relating to bridging the differences in the contract suite and the business case".

9) What was involved in that?

This was a reconciliation of the changes in the cost of the project to the latest version of the estimated cost given the changes to the contract price in that intervening time.

On 10/11 April 2008, an issue was discussed concerning the Russell Road Bridge (CEC01393933). Tie were seeking permission to proceed with piling work before prior approval had been obtained. There was concern about whether the provision for delay in the QRA was sufficient for issues of this type. You expressed concern about the Council taking risks such as this "when we have received bugger all information". You asked "how many more of these things are going to come out of the woodwork?"

9) What was your understanding of the matters raised in that e-mail thread?

My understanding was that there could be a delay to construction resulting from a change in design.

10) What were your concerns?

That this would result in additional cost to the project/CEC and that CEC were given very little by way of explanation of the issue or the potential impact.

11) What, if anything, was done to address those concerns?

I cannot comment but I was not aware of any action to address the concerns.

12) Is it correct that the risk allowance was not adjusted in response?

I cannot recall if that was the case.

13) Was any consideration given to delaying signing the Infraco contract until these concerns were resolved?

Not that I am aware of.

On 14 and 15 April 2008, you exchanged emails with Colin MacKenzie, agreeing with his view that, in light of developments since the council had approved the Final Business Case on 20 December 2007, it was not appropriate for the chief executive to exercise his delegated authority for tie to proceed to financial close, and that full Council approval should be obtained (CEC01399489).

14) Please explain your view.

I agreed with Mr MacKenzie's comments in the email and noted his concerns.

15) What matters, in particular in relation to risk, did you consider required to be reported to members?

The concerns related to the extent of change to the price/contract/risk profile in recent months.

On 15 April 2008, Stewart McGarrity of tie sent you (a) a cost analysis spreadsheet (with the filename "Financial Analysis Spreadsheet (100408)") and (b) part 4 of the schedule of Infraco contract dealing with pricing (CEC01353025, CEC01353026, CEC01353027). You circulated them to members of the CEC legal team (including Gill Lindsay, Colin MacKenzie and Nick Smith) (CEC01245223).

16) To what extent did you consider these documents?

Further information to help understanding of the cost and the make up thereof.

17) When did you first become aware of schedule part 4?

I cannot recall that at that time

18) What, if any, discussion was there within CEC about the meaning and effect of schedule part 4?

I cannot recall that at that time

19) To what extent, if any, was there discussion by tie or DLA with CEC about its meaning and effect?

I cannot recall that at that time

20) What was your understanding of its purpose and effect, especially the pricing assumptions?

I understand that this was an additional schedule added to the contract suite that dealt with provisional sums and pricing assumptions.

21) Is the spreadsheet attached to Mr McGarrity's email of 15 April 2008 (CEC01353027) the same one cited in the "Critical Decisions" spreadsheet (CEC01244182, document 2, pages 5-10) as a supporting document?

This appears to be the same spreadsheet

22) Is it the final version of this spreadsheet CEC received prior to Financial Close?

I cannot recall if there were further versions

23) Please describe in overview what is shown in the spreadsheet (CEC01353027), and the use that was made of it within CEC. Please address, in particular:

a) Any matters which CEC considered especially important to the decision to proceed with financial close;

b) The AFC for phase 1a of £508m and risk allowance of £32.3m (made up of £27.9m QRA, and £4.4m of other items) (tab 1);

c) The changes in the elements of the budget (including the risk allowance) between Final Business Case and Financial Close (tab 2);

d) The QRA output for phase 1a of £27.9m (apparently now at a P80 level) (tab 5).

On 16 April 2008, you received an email from Andy Conway **(CEC01245274).** He had asked Susan Clark of tie whether tie had determined the extent and cost of changes that would be needed in relation to development of the design from 25 November 2007. Ms Clark's reply was that

> "BBS are contractually obliged to construct to the designs that SDS produce and get consented. We have been identifying significant changes as design has progressed to ensure that we have made financial provision – eg Burnside Road. Normal design development is a BBS risk as described in Schedule 4 of the Infraco contract."

24) What was your understanding of the "financial provision" made by tie in relation to "significant changes" in design?

25) In particular, where was it in the "Financial Analysis" spreadsheet?

There were entries in the spreadsheet that related to Burnside Road

26) What was your understanding of Ms Clark's comment that "normal design development" was a BBS risk?

> I cannot recall any definition of "normal design development" v's design change.

A report to the IPG on 16 April 2008 (CEC01246992) noted concerns raised by the planning and roads departments of CEC with tie, about the quality of submissions for approvals and consents, and slippage in the programme for obtaining them. It was noted (page 4) that "There is potential for the approvals to cause a delay to the construction programme." The letters from the planning and roads departments are CEC01493318 and CEC01493639. Difficulties in concluding an agreement with the SRU were also noted.

27) Did these matters cause you concern and, if so, what was done about them?

> Insofar as the potential impact on cost. I cannot recall any action to address these matters.

28) What was your understanding of the way in which these issues with approvals and third parties (such as the SRU) could affect the programme and cost of the Infraco contract?

> Consents were required from third parties to enable works to take place on or close to third parties land. Therefore failure to obtain consent would mean that the works could not progress.

29) What was your understanding of the way in which these issues were addressed in (a) the Infraco price, and (b) the Infraco risk allowance?

> The cost of the works would have been included in the infraco price.

30) Was the risk allowance increased to address them?

> Not that I can recall.

On 30 April 2008, Nick Smith and Colin Mackenzie emailed you and Andy Conway with their views on letters from DLA (CEC01246045; the DLA letters are CEC01312366, CEC01312365, CEC01312368). They noted that they had "from the outset expressed reservations about the ability of DLA to effectively review their own work" and that their preferred route had been for the Council to seek independent legal advice. They noted that DLA's most recent letter, of 28 April,

> "does little to remove doubts and uncertainties. Specifically, that letter appears to give no comfort on the risk profile and acceptability in relation to

the market norm. The lengthy letter also narrates matters which appear to us to be risky for the Council and are not fully covered by the QRA."

31) What was your understanding of, and view on, this matter?

I agreed with Mr MacKenzie's view that the letters did not provide the appropriate comfort that the risks were covered.

32) What if anything was done in response?

I cannot recall any response.

Paragraph 11.3 of DLA's letter of 28 April noted that schedule part 4 of Infraco had been extensively discussed and was now settled; and that "tie has assessed the likely financial impact of the assumptions not holding true and triggering changes".

33) What was your understanding of that assessment? Where was it provided for in the risk allowance?

The statement does not make a lot of sense and provides no comfort.

Report to Council, 1 May 2008

A Report to Council by the chief executive on 1 May 2008 (CEC00906940) sought refreshment of the delegated powers previously given to him to authorise tie to enter the contracts with the Infraco and Tramco bidders. The report noted:

• the cost of the project had increased from £498m to £508m (comprising a base cost of £476m and a revised QRA of £32m), which increase was noted to be largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the "crystallisation of the risk transfer to the private sector as described in the FBC" (para 3.5).
• 95% of the combined Tramco and Infraco costs were fixed with the remainder being provisional sums which tie had confirmed to be adequate (para 3.4);
• "As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. TIE Ltd advise that the outcome is the best deal that is currently available to themselves and the Council. Both TIE Ltd and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms" (para 3.10).

34) What did you understand to be the reasons for the price increase to £508m? In particular, what prices did you understand to have become fixed, and what did you understand by the "crystallisation of the risk transfer to the private sector"?

The reasons for the price increase appeared to be the firming up of some provisional items into a fixed cost and an element of financial settlement

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

> My understanding was that the overlap of design and construction could result in additional cost resulting from design changes and the potential for delay as a result of design potentially not having been approved.
>
> I cannot recall the outcome arrived at or the steps taken.

36) What did you understand to justify the reduction in the risk allowance from £49m to £32m (see paragraphs 3.9 to 3.11, and compare paragraph 3.7 of an earlier draft, (CEC01246992_14)?

> Reduction in procurement risk resulting from closing the contracts, a movement of risk items into the base cost and an additional sum added in for tie for management of risks during construction.

Paragraph 3.11 notes that tie had supplied a written statement that they were satisfied that £32m was an adequate level of risk allowance.

37) Were you, and CEC officials generally, satisfied with the level of risk allowance?

> CEC officers were never confident of satisfied that this allowance would provide adequate.

38) To what extent did you and CEC officials generally rely on tie's statement that the risk allowance was adequate, and to what extent did you form your own view?

> Council officers did not have access to or the skill set at that time to form a view other than we were not confident in tie's approach.

This version of the report did not specify the nature of the new risk. An earlier draft of the report had done so. CEC01228336, a draft of the report circulated by you on 22 April 2008 (CEC01228335) had said:

> "A risk which has been passed on to the Public Sector relates to delay by SDS in gaining approvals. This has been a very difficult point for tie Ltd to negotiate and they have provided for the best deal which they advise us is currently available to themselves and the Council. In essence, BBS will accept the design risk for SDS to a high financial ceiling, whereas the Council and tie Ltd will remain financially liable for delay by SDS in relation to the provision by them of information for a range of consents and approvals. Both tie Ltd and the Council have worked diligently to examine and reduce this risk in practical

> terms and tie Ltd advise that the new risk contingency contains suitable adjustment for this residual risk."

39) Why was the explicit nature of the risk removed from the final report?

> I cannot recall but would speculate that tie were not happy with such a matter being highlighted.

On 18 April, you had noted that you did not agree with comments made by Graeme Bissett on your draft of the report (CEC01245400; for GB's comments, see CEC01242043, CEC01242044). In response, Gill Lindsay said:

"The issue for Tie is that they are trying, understandably, to keep the legal authority flowing from the 20 December Report and not introduce another to avoid the governance issues and certifications of Minutes and the like, particularly on the plan to close on 2 May. On current plan I think this is difficult..."

40) Can you comment?

> GB's comments must have been in the form of an attachment. I cannot see these from the information provided so cannot comment.

The report provided no explanation of the pricing provisions in Infraco schedule part 4, despite this Schedule having been provided to CEC on 15 April.

41) Was the purpose and likely effect of Schedule 4 ever fully explained to members (and, if so, when and how)? If not, why not?

> I cannot recall if this was ever explained.

42) Were members ever addressed on the risk or likelihood of notified departures and the effect of that on cost and budget? Do you consider that the report to the Council presented an accurate picture to members?

> I cannot recall if members ever were addressed on notified departures. I think the report to Council in its original form prior to tie mark-up provided the best view CEC had from the information provided.

The report also notes (CEC00906940, paragraph 3.6) that:

> "tie Ltd continues, through its appointed contractor, to execute the work under the contract for utility diversion along the tram route on behalf of the Council and reports that this work, which is part of the authorised works under the statutory authority granted to Council under the Edinburgh Tram Acts, is progressing to programme and budget"

43) On what evidence or reports was the statement based that the utility diversion work was proceeding on programme?

I cannot recall what information this assessment was based upon.

44) To what extent had you considered the adequacy of the provision in the risk allowance for delay in utility works affecting the Infraco works?

The adequacy of the risk provision for utility works was a concern for CEC officers.

On 6 May 2008, Rebecca Andrew noted, in relation to a draft of the close report (CEC01222041),

> "QRA provides insufficient cover for design risks (we are reliant on tie's project and risk management expertise to set an allowance at an appropriate level). We can take comfort from the fact that the OGC said the £50m at FBC stage was "about right" and would have expected this number to come down at final deal."

On 16 April 2008, you had noted, in the context of a reduction in the QRA (CEC01245272):

> "Only thing I would say was that the OGC gateway review 3 guys had said the previous level of circa £50m would have been in line with industry norm, and given the procurement risks which reduce the figure will be closed at Financial Close I guess it makes sense."

See also CEC01247809

45) Can you comment on Ms Andrew's concern that the QRA provided insufficient cover for design risks?

This was a continual concern for CEC officers.

46) How if at all was that addressed?

I do not believe it was.

47) Was it raised with senior CEC officials, tie, or CEC members?

It was raised with senior officers and tie. I cannot recall any discussions with members as CEC officers would escalate to seniors.

48) Can you explain the reliance apparently being placed by you and Ms Andrew on the views of the OGC on the risk allowance? Was that a reference to their report from October 2007 (CEC01496784)?

Yes they endorsed the level of public sector risk in the report

49) Was that an adequate basis for taking "comfort" at this stage in the project?

> There was not many other basis to form a view on this that CEC has available to them at that time.

Financial Close

On 12 May 2008 (at 18.49 hours) Graeme Bissett sent an e-mail to you and others attaching a final set of TIE's internal approval documents (CEC01338846).

The document entitled "Financial Close Process and Record of Recent Events", 12 May 2008 (clean copy, CEC01338847; tracked changes, CEC01338848) reported on the Infraco negotiations, including in response to a late demand by BBS for an increase of £12m in the Infraco contract price. The outcome is described at page 6:

> "Taking all these matters together, the net result is that tie has negotiated a cash and contingent price amendment in favour of exposure elimination which substantially offsets the majority of the price amendment. tie would recommend that the budget be increased to accommodate the agreed cash amendment of £4.8m ; and that the risk contingency be reduced by a total of £1.8m reflecting a conservative portion of the improved specific risk positions, then augmented by an increased general provision of £1.0m resulting in a net increase to the headline budget of £4.0m. This will result in the overall budget moving from £508m to £512.0m. The underlying base cost is now £480.8m and the risk contingency is £31.2m. Although a case could be made for further reduction in the risk contingency, it would be tie's recommendation that the balance be retained."

50) What was your understanding of that matter, in particular what benefits tie negotiated in return for the increased price, and the modifications to the risk allowance?

> The understanding was that in exchange for an increase to the base costs there had been a transfer of risk to the private sector.

The report noted (page 9) that, whilst there were alternatives to proceeding with BSC, they were "highly risky in programme and cost terms" (page 7).

51) What was your view of the strength of tie's negotiating position at this time?

> Very weak.

Why was that the case?

> A re-procurement exercise would have increased cost significantly and delayed the project. There was no under bidder ready to step in which meant BBS were the only "show in town".

The paper noted that "the last minute demand by BBS was the worst form of unprofessional negotiating conduct" (page 6); that there were concerns about "the suitability of BBS as a contract partner in view of their behaviour during the negotiations", and, in its conclusion, that "The process to reach Financial Close has been tortuous and a partnerial approach from BBS has been notable by its absence" (page 11).

52) What was your view on these matters?

At that time I had never met any of the BBS team so could not comment

53) To what extent did BBS's conduct and attitude represent a new emerging risk?

I cannot recall

54) Was there any provision for that in the risk allowance? If not, why not?

Not that I can recall. I cannot comment.

This email was sent the evening before the meeting of the Policy and Strategy Committee on 13 May 2008 at which members' final approval was sought to enter the contracts.

55) To what extent did senior CEC officials (including you) and the members of this committee have sufficient time to consider these late developments before the committee approved award of the contracts?

I would not have categorised myself as a senior CEC official at the time. However, CEC officers were left with very little time to consider these late developments.

The Report on Terms of Financial Close ("the Close Report") (CEC01338853) noted _page 4):

• there had been an increase in the base cost of Infraco of £17.8m compared to the Final Business Case, which increase was as a result of "substantially achieving the level of risk transfer to the private sector anticipated by the procurement strategy".

• the increase of £17.8m approximated closely to "the allowance which was made in the FBC for procurement stage risks i.e. the increase in Base Costs which might have been expected to achieve the level of price certainty and risk transfer which has been achieved".

56) What was your understanding of these matters at the time?

I cannot recall

57) To what extent were these passages consistent with your understanding at the time of the risks and liabilities retained by the public sector in respect of outstanding and incomplete design, approvals and consents?

I cannot recall.

The Close Report (CEC01338853) gave the following breakdown of the Infraco price (at 8.2, under the heading "Price Certainty Achieved"). The figures in square brackets are from the equivalent passage in the draft of the Close Report from 21 January 2008 (appended to the IPG report of 29 February 2008, CEC01246993):

> "The Infraco price of £233.5m [£216.3m] comprises
>
> - £227m [£219.9m] of firm costs
>
> - less £12.9m [£13.8m] of Value Engineering initiatives taken into the price with the agreement of BBS but with qualifications attached
>
> - plus £19.4m [£10.2m] of items which remain provisional at Financial Close.
>
> ...
>
> Provisional items comprise a defined list of 22 [13] Items each with a clear process for and programme for resolution. The estimate for each item has been reviewed by tie's technical consultants and by BBS and the risk of understatement is considered to be low" (pages 30, 31).

This suggests that between January and May 2008, both the firm costs and the provisional costs in the Infraco contract had increased.

51) Was that your understanding? Why had the provisional costs increased?

I cannot recall the reason for provisional costs increasing.

52) To what extent did the provisional costs prove to be adequate, and to what extent were they exceeded?

> I cannot recall the extent to which provisional sums were adequate.

The Close Report (CEC01338853) included a section (section 8, from _24, on Risk).

58) To what extent were you satisfied that this was a full and accurate assessment of the risks associated with the Infraco contract?

> Not wholly satisfied.

At 8.3, it notes that the Infraco price

> "includes for normal design development (through to the completion of the consents and approvals process ...) meaning the evolution of design to construction stage and excluding changes if [sic.] design principle shape form and outline specification as per the Employers Requirements."

59) What did you understand this to mean, and what provision did you understand to have been made for it in the risk allowance?

> This issue was a bone of contention. As far as I was aware there was no exact definition of design development. £3.3m was included in risk allowance for SDS delay.

At 8.4, there is discussion of the treatment of risk in relation to consents and approvals. It was noted that there was £3.3m in the risk allowance for design delays and £6.7m for general programme delay.

60) It appears that tie were taking more risk in relation to delayed consents and approvals than had previously been the case. Do you agree? It would appear so. What was your understanding of the extra risk tie were taking? Infraco were no longer taking the risk of providing information in a timely and sufficient manner and now had changed to the design quality and constructability of consented/approved design.

• Compare, for example, the final version of the close report (CEC01338853) at 8.4 with the draft from 21 January 2008 (appended to the IPG report of 29 February 2008, (CEC01246993_40), under the heading "Responsibility for consents and appr

The provisions for delay in the risk allowance appear to have changed between the Final Business Case and Financial Close (see, e.g., the Financial Analysis spreadsheet, CEC01353027, tab 2 "Summary P12", which shows the "design and consents" delay provision having reduced from £4.3m to £3.4m, and the "general programme delay" provision having increased from £3.1m to £6.6m).

61) Why had they changed?

> I cannot specifically recall but as stated by tie there was an increase in the base price which transferred elements of risk.

62) Why had the provision for design and consents delay been reduced if tie were taking on greater risk in respect of it?

> I cannot recall.

63) What was your view on the adequacy of the risk allowance provisions for delay? What was that based upon?

> The provision for delay seemed low when compared to the overall cost of the infraco contract and the suggested burn rate.

64) What views, if any, did you have of tie's ability to perform its role (described in para 8.4 of the Close Report) as being "to carefully manage the programme of delivery and take mitigating action as necessary to avoid any cost or programme implications from slippage"?

I had concerns about tie's ability to do this.

65) What did you understand to be meant by the comment (para 8.4 of the Close Report) that "The risk allowance does not provide for the cost or programme consequences associated with a wholesale failure of this process"?

That should the design process not be managed effectively that there was potential for additional costs over and above the current budget.

At 8.6, it was noted that the risk allowance did not provide for "significant changes in scope from that defined in the Employer's Requirements", whether emerging from the consents and approvals process or otherwise; or for "significant delays to the programme as a result of the consenting or approving authorities failing to adhere to the agreed programme".

66) What was your understanding of this exclusion?

If CEC made a wholesale change to the design e.g. solution changed from bridge to underpass that CEC would be liable for the change.

67) What was your view on whether it was appropriate to exclude it, rather than provide for it in the risk allowance?

I cannot recall.

At 9.4, there is a discussion of the integration of the MUDFA and Infraco programmes. It was noted that there was some overlap, but that regular reviews would "ensure no conflict with Infraco works". It was also stated that progress of the utilities works had been good in terms of adherence to budget and programme. At page 6 it was noted that "The BBS programme is based on V6 of MUDFA. Continual reviews of MUDFA programme have been implemented to avoid conflicts with Infraco undertaken by tie. This evaluation has been consistently evaluated & updated in the QRA". The "Financial Analysis" spreadsheet (CEC01353027, tab 2) suggests the provision in the risk allowance for MUDFA delay was £8.6m, having reduced from £11.4m at the Final Business Case

68) What was your view of the risk posed by MUDFA works to the Infraco programme, and the adequacy of the provision in the risk allowance for it?

The risk was one of delay to infraco by being unable to access the site as MUDFA works may have still been progressing. I was unsure of the adequacy of the risk provision.

69) Why had it reduced since the Final Business Case?

I cannot recall.

Paragraph 8.3 of the Close Report (CEC01338853) lists items excluded from the Infraco price.

70) To the extent that these works were carried out, what did they cost, how were they funded and where are they accounted for?

> I cannot recall the full extent that these works were carried out. There were works carried out in these areas though and were funded in some areas by the CEC roads budget where there was betterment to the asset from the tram works and also certain elements of work were to be funded by third parties.

The documents circulated by Graeme Bissett on 12 May 2008 (CEC01312358) included a "Report on the Infraco Contract Suite" (CEC01338851). The Report noted:

12 May 2008 should be 28 April 2008

• Price, "A number of core pricing and programming assumptions have been agreed as the basis for the Contract Price. If these do not hold, Infraco is entitled to a price and programme variation known as "Notified Departure" (p4).
• Programme, "Following contract signature, it is expected that BBS will seek a Notified Departure on Programme due to SDS delay in design production. ... The exposure has been assessed in detail by TIE and confirmed as acceptably within the risk contingency" (p4).

71) What was your understanding of the provisions noted above?

> That tie had assessed the programme risk and that there was adequate allowance within the risk allowance and that BBS and SDS would be able to mitigate the extent of the departure through the obligations contained in their contracts.

72) At this time, what Notified Departures did you expect following contract signature? How numerous did you expect them to be?

> I was not aware of any notified departures other than this.

73) At this time, what did you understand to be the likely cost and time implications of these Notified Departures?

> No.

74) How did you understand that to have been provided for in the risk allowance?

> There was a line for SDS delay.

75) What was your understanding of, and what were your views on, the "bonus pot of £1,000,000" made available to the SDS provider (Parsons Brinckerhoff) (see page 8) to incentivise production of design?

> I cannot recall my views at the time.

76) Were elected members advised in detail on these matters in advance of the contract close?

I do not know if the members had been briefed on this matter.

77) Was clarification of any of these issues sought by CEC officials?

I cannot recall.

78) Do you have any other comments or concerns about the contract close documents?

I had concerns that CEC were not party to all the information it needed to get comfortable with the risks that were being taken. It always seemed that tie would supply piecemeal information that never presented the full context of the project and the contractual arrangements. Information was provided almost reluctantly by tie

It is my view that CEC should have undertaken a full independent review of the contracts themselves in order to fully understand the liability they were signing up to.

On 13 May 2008 (at 0749 hours) Gill Lindsay sent Donald McGougan and David Anderson an e-mail CEC01222437) attaching a short draft report (CEC01222438) for all three to sign to provide comfort to the Chief Executive as he closed the deal following the Policy and Strategy Committee. The report was signed that day (CEC01244245).

79) Who drafted that report?

I cannot be certain but I think it was the Chief Executive.

80) Do you consider that the report adequately identified the relevant risks for the chief executive to be properly informed to approve financial close?

I cannot recall the contents of the report. I am sure this report was a "B" agenda report that was not made publically available.

81) If not, were the risks fully set out in any other document that was available to the Chief Executive at that time?

As per Q80

The report notes that the incentivisation payments to BSC would be reflected in a £1.8m reduction in the QRA.

82) To what did this relate?

I cannot recall.

A subsequent e-mail from you dated 21 May 2008 stated, in relation to the report, "You will notice the heavily caveated drafting from Gill!" (CEC01246394).

83) Please explain your comment.

There was very little advice given from the Council Solicitor's view on the information provided by DLA , which was less than definitive.

On 13 May 2008 the Council's Policy and Strategy Committee considered a report by the Council's Chief Executive seeking to refresh the delegated powers given to him to instruct tie to enter into the Infraco and Tramco contracts (report and minutes: USB00000357, CEC01891564).

The report advised that the estimated capital cost for phase 1a was now £512 million, with a further £3.2m due if phase 1b was not built. The report stated that "Offsetting the increase in cost is a range of negotiated improvements in favour of TIE and the Council in order to reduce the risk of programme delays and minimise exposure to additional cost pressures, as well as better contractual positions" (2.7).

84) Why was approval sought from that committee rather than a full meeting of the Council? Did you consider that to be appropriate?

I cannot comment fully but this could have been a timing issue given the requirement to execute the contract. My view is that a decision of this magnitude should have been reserved for Council.

85) Did you attend the meeting of the committee? If so, what discussion took place about the Tram Project? Approximately how long did that discussion last?

No I didn't attend.

86) We understand at the beginning of the meeting, a new convenor of the committee was appointed. What was your understanding of why that was done?

I cannot recall.

87) To what extent were you involved in drafting the report to Committee?

I cannot recall being involved in the drafting.

88) What did you understand by the statement quoted above? Do you agree with it? If so, what do you consider to have been the "improvements" and "better contractual positions" that reduced the risk of programme delays and minimised exposure to additional costs? (See also paragraph 2.10 of the report to the Tram Subcommittee of 16 June 2008, TRS00017180.)

I think it is difficult to understand what this actually means from the drafting.

The report noted that all of the alternatives to the price increase would have extended the time period for financial close by at least three months, with any potential commercial advantage being more than offset by inflation, additional procurement costs and tie's own running costs (2.12).

89) What was your understanding of that?

The running costs of the project were clearly significant. So any delay would have overall increased costs as would have any re-procurement activity.

90) Do you consider that members of the Policy and Strategy Committee at their meeting on 13 May had sufficient time to consider whether approval should be given for the contracts to be entered into?

No.

A further £3.2m would fall due if phase 1b were not built. It was recognised (for example, in the Final Business Case, CEC01395434, from 10.47) that CEC could not commit to build phase 1b within the available funding.

91) What was your view, having regard to the funding constraints affecting phase 1b, on the appropriateness of committing to pay £3.2m if phase 1b were not built?

I could not see the rationale for linking the phase 1a contract to phase 1b. any costs of the extension should have been dealt with separately.

As noted above, the paper entitled "Financial Close Process and Record of Recent Events", circulated by Graeme Bissett on 12 May 2008 (CEC01338847), had noted that "the last minute demand by BBS was the worst form of unprofessional negotiating conduct" (page 6); that there were concerns about "the suitability of BBS as a contract partner in view of their behaviour during the negotiations", and, in its conclusion, that "The process to reach Financial Close has been tortuous and a partnerial approach from BBS has been notable by its absence" (page 11).

92) To what extent were elected members informed about these remarks, or consulted about whether in light of them they wished to proceed with a contract with BBS? (There is no reference to them in the committee report.)

I cannot recall the extent to which members were provided this information or indeed how accurate this position actually was.

Infraco contract close took place on 14 and 15 May 2008, as part of which a number of contracts were signed, including the Infraco contract (CEC00036952) and a novation of the SDS contract to BSC.

By way of overview, what was your understanding of the following matters at contract close:

93) The difficulties that had been experienced with design, the extent to which these difficulties had been resolved, the extent to which detailed design was complete (and all necessary statutory approvals and consents had been obtained), the extent to which these matters were outstanding and when the detailed design would be completed (and all approvals and consents obtained)?

> I was aware that progress on the design was problematic and that there had been delays in getting the design consents in place.

94) The difficulties that had been experienced with the utilities works, the extent to which these difficulties had been resolved, the extent to which utilities diversions were complete and the extent to which these works were outstanding and when these works would be completed?

> I understood there were difficulties in completion of the utilities works. However, tie were of the view that these could be mitigated by working with the infraco contractor to mitigate.

95) The likely effect on the Infraco works and contract (and the cost of the tram project) if the outstanding design (and approvals and consents) and outstanding utilities diversion works were not completed within the anticipated timescale?

> At the time of close, I understood the risk of consents to be with CEC (e.g. any delay in consenting would be to CEC's account), however, if the information wasn't provided by SDS in time and to the required quality SDS/BBS were responsible for the delay.

96) The provision made in the risk allowance for the above matters?

> Insufficient.

97) To what extent were CEC advised upon these matters by tie and/or DLA?

> Almost wholly.

Infraco schedule part 4

The pricing provisions of the Infraco contract were set out in Schedule 4 (USB00000032).

1) What was your understanding of the extent to which the Construction Works Price of £238,607,664 was a fixed price?

> 95% fixed was tie's explanation to CEC.

2) What did you understand to be the main exclusions, provisional sums, assumptions and conditions?

Ground conditions, Picardy Place, utility diversions, oublic realm works.

3) In what circumstances did you consider that the price was likely to change?

Where there was a departure from the employers requirements or

if CEC wished to add in any addition works for items such as public realm.

In relation to the Value Engineering deductions shown in Appendix A of Schedule 4 of the Infraco contract (USB00000032):

4) What was your understanding of what would happen if the VE savings were not achieved?

The bottom line cost of the project could increase.

5) What were your views as to whether the VE savings were likely to be achieved?

I cannot recall.

6) In the event, were these Value Engineering savings achieved (and, if not, why not)?

I cannot recall these savings being made. I am unsure as the how achievable these savings actually were.

Schedule 4 of the Infraco contract (USB00000032) contained a number of Pricing Assumptions.

At the time of Infraco contract close:

7) What did you understand to be the purpose and effect of the Pricing Assumptions in Schedule 4?

I did not fully understand with purpose and effect of the assumptions on S4.

8) What did you consider were the main Pricing Assumptions that were likely to change and result in Notified Departures and why?

I cannot recall.

9) Approximately how many Notified Departures did you consider were likely to arise?

I do not know.

10) What did you consider to be the likely time and cost implications of the Notified Departures?

> I did not know the full extent but know that ND's could increase both time and cost.

11) Do you consider that you had a good understanding of these matters (and if not, why not)?

> No, CEC were never fully informed as to the impact of schedule part 4 and at the time, I would not have had the skills to inform myself of such matters. CEC required to have independent legal/commercial advice to be fully informed.

Pricing Assumption 3.4 of Schedule 4 [USB00000032] dealt with design development.

12) What was your understanding of the meaning of that Pricing Assumption, including which party bore the risk that development, or change, of design from the base date of 25 November 2007 would result in a contract change/Notified Departure?

> My understanding was the SDS/BBS were liable for normal design development and that CEC were liable for wholesale changes to the shape or form of design which would result in a notified departure.

Schedule 4 defined the "Base Date Design Information" as "the design information drawings issued to Infraco up to and including 25th November 2007 listed in Appendix H to this Schedule Part 4".

Appendix H of Schedule 4, however, did not list any drawings and, instead, simply stated that the BDDI was "All of the Drawings available to Infraco up to and including 25th November 2007".

13) Are you aware why Appendix H of Schedule 4 did not list the drawings comprising the BDDI?

> No.

14) Did that cause any problems at a later stage (and, if so, what problems arose and how were they resolved)?

> I believe so as there was not a full understanding of what constituted the extent of design completion.

Post-financial close: May 2008 onwards

An email from Richard Jeffrey (then of Babcock & Brown) dated 2 June 2008 (CEC01236963) proposed, inter alia, the purchase of the phase 1a tram infrastructure and the construction of other phases (or funding for it).

1) What was your understanding of this proposal? What, if anything, was done in response?

> The proposal was a finance lease agreement where B&B funding the project in return for an annual payment from CEC. I am unaware with what discussions followed on from this.

2) How would you describe the initial implementation of the Infraco works? Were there any problems? If so, what were they and what was the cause?

There were immediate concerns as some of the initial works never happened such as the demolition of the Caley Ale House.

2) How did Infraco's mobilisation proceed?

> It seemed very slowly.

4) Did you at any stage become concerned by the lack of progress? If so, when and what triggered your concern?

> Yes I was concerned as a number of the BBS works that were initially planned didn't happen.

We understand that a mobilisation payment of £45.2 million was made at an early stage by tie to BSC.

5) What is your understanding of this payment, why it was made and what it was for?

> My understanding was that the payment was for advance purchase of price sensitive materials such as rails, tram parts as well as forward hedging costs and payment for for mobilisation of supply chains.

See, e.g.: CEC01505393 and its attachments, CEC01505394, CEC01505395, CEC01505396, CEC01384397, CEC00111699.

> It is clear that shortly after the contract got underway, the design, consents and MUDFA works were all affected by delay.

6) What was your understanding of these matters?

> It was becoming clear that the reason BBS could not mobilise quickly enough was due to conflict with MUDFA works and there was already a claim for delay I changes to the SDS programme.

Following contract close, a major dispute arose between tie and BSC in relation to the interpretation and application of the Infraco contract and Schedule 4. By way of overview:

7) When (and how) did you first become aware of the dispute?

> I cannot recall

8) What was your understanding of the main matters in dispute and the main causes of the dispute?

> My understanding was conflict between design change and what could be deemed (by tie) as normal design development.

9) Did you have any concerns, at that stage, that the capital cost of phase 1a might exceed the available funding £545m?

> Yes.

10) When, and why, did you first become concerned that the cost of the project might exceed the budget?

> I cannot recall exactly but would estimate that I late 2008 I became concerned this could be the case.

In total, approximately 738 Infraco Notices of tie Change (INTCs) were notified by BSC between Infraco contract close and the mediation at Mar Hall in March 2011. By way of overview:

11) Were you surprised by the number of INTCs?

> Not by the time the project reached mediation

12) What do you consider were the most significant INTCs in terms of value and importance?

> Programme delay related to MUDFA works and design change.

You sent a Tram Project Briefing report to John Ramsay of Transport Scotland on 17 October 2008 (CEC01083773, CEC01083772). This noted:

• slow progress with MUDFA works (3.3);

• slow mobilisation of Infraco (4.1);

• BSC allegations that design delays were causing work delays at 25 locations (4.2); and

• that the four prime Infraco risks identified by tie were:

  - MUDFA works not completed in advance of Infraco;

- a lack of visibility of design change between November 2007 and May 2008;
- lack of effective engagement by BSC with tie and third parties such as Forth Ports, Network Rail and BAA; and
- BSC's failure to resource the project.

13) What was your understanding at the time of the main factors inhibiting progress of the Infraco works at this stage?

- MUDFA delay.

14) Did your understanding change at any time?

> Overtime the extent of the MUDFA works being delayed and the design related delays became more obvious. Also tie's arguments on BBS obligations to mitigate delay became less credible.

Report to Council, 18 December 2008

A report to Council dated 18 December 2008 gave an update on phase 1b (CEC02083421). It noted that BSC had supplied an indicative price of £87m for phase 1b during earlier negotiations. The report referred to the economic downturn and a dramatic slowdown in development across the city (especially in Granton, the development of which had formed part of the business case for phase

1b). The report was downbeat on funding for phase 1b, citing uncertainties over the likelihood of spare phase 1a funding being available for phase 1b, the low prospect of additional Scottish Government funding for phase 1b; and the possible impact of economic conditions on further prudential borrowing.

15) Does this report accurately report thinking on phase 1b at the time?

> Yes, I think it does.

16) What indications had you received, if any, by this stage about the final price likely to be quoted by BSC's for phase 1b?

> I cannot recall if any further information on the cost of phase 1b had been forthcoming at this time.

In an email dated 26 February 2009, you noted clauses in the Transport Scotland grant letter which could lead to CEC having to repay the grant, for example if CEC threatened to cancel the project (CEC00902215, CEC00902217).

17) To what extent, if at all, did concerns such as these affect tie/CEC's response to the disputes with BSC?

> I do not think these matters influenced the disputes with BSC.

Princes Street dispute

A dispute arose between tie and BBS prior to the planned commencement of works on Princes Street in February 2009.

By e-mail dated 26 February 2009 (CEC00858138) you attached a short note (CEC00858139) of some points to "set the scene" for a discussion on the Council's requirements from tie relating to the contractual dispute. You said CEC should seek a report from tie explaining "the actual root of the contractual dispute", and that there was currently a "vacuum of knowledge" from the Council's perspective.

The dispute was resolved by parties entering into the Princes Street Supplemental Agreement (CEC00302099). (We understand that an initial draft of the agreement was agreed on 20 March 2009, to allow work to start on 23 March, and that the final version of the agreement was signed on 30 May 2009.)

18) Please expand on your remark that there was a "vacuum of knowledge".

CEC were not given full awareness from tie as to the cause for dispute with BSC. Tie would continually paint BSC as the villain and that they were being unreasonable. CEC I do not believe had the full facts at hamd to be able to assess matters fully.

19) What was your understanding of the nature of the dispute in relation to the works at Princes Street, including the "root cause" of the dispute?

I cannot recall fully but I understand the issue was related to the extent of ground condition risk.

20) What were your views on the Princes Street Agreement?

I was concerned about the need for the agreement and the cost that it may bring.

On 4 March 2009, Steven Bell sent to David Mackay and others a peer review report by Malcolm Hutchison and others dated 2 July 2008 (CEC00902657, CEC00902658). In forwarding it to you (CEC00902656), Marshall Poulton said "It's funny these documents appear out of the woodwork just before the Peer Review."

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

I cannot recall.

The report made various points, including:

• That the review team were unclear where the risk lay for design development, with BBS and tie in interview each considering the risk lay with the other (page 6)

That the bespoke nature of the contract introduced uncertainty (page 6)
• That it was clear the project programme was three months behind schedule (page 7), with significant programme risk arising from: delay in design development, a failure to complete CEC approvals in line with the programme, and the MUDFA contract not being complete by the time the main contract works started (page 8)

• Its recommendation that the MUDFA works packages be prioritised as soon as possible to minimise the impact on the Infraco programme (recommendation 5, page 6)

• Its recommendation that tie management consider whether it had sufficient legal skills to understand and execute the contract on a daily basis (page 8, recommendation 7)

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

> CEC had already pointed to concerns of tie's PM capability as part of the OGC review. I think that the awareness pre contract close was not clear but over time the issues around design, MUDFA and contract management capability became much greater concerns.

23) What was done to address these points?

> I do not think anything was done to address tie's capability. On the other points I think the CEC started to question more issues as it became clear that the project was not progressing appropriately.

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

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

24) Can you explain that comment?

> Tie always resisted providing CEC with all the information we should have, and where entitled to have. Given where the state of the project at this time, I thought that the Council should do its own independent diligence.

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

I do not think that CEC had undertaken a full review of all parts of the infraco contract suite.

On 12 March 2009, you sent Donald McGougan an amended version of a report to update senior CEC management on the strategic options put forward by tie (CEC00864044, CEC00864045). It appears to have formed the basis for the report to the IPG on 25 March 2009 (CEC00892626). It noted that three of the five options presented to the TPB were considered sub-optimal:

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

The two remaining options were:

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

The paper also noted that, taking account of the costs now quoted by tie for the two preferred options, "we are now in the territory of potentially de-scoping the project to maintain affordability".

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

I think termination of the contract was extreme; tie did not have the ability to perform the civil works; removal of BB seemed unlikely as they were the principal

Contractor. In my view settlement seemed the most sensible but tie were continuing to push that BSC were being wholly unreasonable to justify the DRP route.

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

27) Do you agree?

That was the view held at the time.

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

I do not think this was an accurate view. I worked closely with BSC after mediation and found them which commercially minded to be on the whole, fair.

On 25 March 2009, Stewart McGarrity of tie sent you notes produced by PwC following a two day review of tie's strategy, describing them as "an endorsement of the approach we are taking" in relation to the

Infraco disputes (CEC00903037, CEC00903038).

41) What were your views on that strategy at the time?

It did not seem to be yielding results.

On 30 March 2009, Colin Mackenzie referred to a discussion about whether or not CEC was "obliged to be wholly transparent with Transport Scotland/ScottishMinisters about the true financial position on the project" (CEC00900337).

29) Can you explain this matter?

I think Mr MacKenzie was concerned that Transport Scotland had all the Information they needed. I think that TS were given as much information as CEC had from tie.

On 9 April 2009, Colin Mackenzie circulated a report that he and Nick Smith had prepared a meeting with tie and DLA (CEC00900404, CEC00900405). His email noted, in relation to the dispute with BSC:

> "The contract terms were developed and concluded effectively without reference to the Council; no independent validation of the contract was undertaken to vouch for the Council's interest. As I have recently pointed out to the Chief Executive, Council officers do not know if the Infraco contract is sound and in all respects in the Council's best interests as client and funder. This contract may not be robust enough to deal with a claims oriented approach by BSC, which could then impact upon affordability for the Council."
>
> "The subject matter of the contentious points comes as no surprise. The BTeam clearly stated what it believed to be risky areas for the project before a premature Financial Close; some of these matters are now heading towards DRP."

The attached note, of a CEC/tie/DLA meeting on 3 April 2009, noted that:

> "The main problem here stems from the fact that design was not complete at Financial Close. We understand from TIE that the design part of the contract therefore had to be based on a number of agreed assumptions, and accordingly, we have assumed that where BSC can argue that the design differs from the agreed assumptions (however small the change), it is possible that any such changes will be for TIE's account. The reality appears to be that such assumptions were based on the hope that the parties would agree matters commercially. However, it further appears that if BSC seeks to stick to the contract terms absolutely, this will likely not favour TIE."

30) What were your views on these matters?

I would agree with the note.

On 28 April 2009, you asked Stewart McGarrity about work on the QRA; noted CEC's desire for confidence levels on the cost estimates; and an indication of how the numbers would be affected over time, for example as MUDFA works and design were completed (CEC00892971; attachments CEC00892972, CEC00892973). Mr McGarrity provided you with a range of cost estimates: £533.3m (including a risk allowance of £39.3m) to £572.5m (including a risk allowance of £72.6m). The worst case scenario was based on the assumption tie lost "all the principal commercial disagreements hands down".

31) What was your reaction to these estimates?

I found these estimates alarming as the funding was clearly under threat and CEC didn't have confidence in tie's exposure.

32) What was your understanding of the way in which the estimates, and risk allowances, had been calculated?

I understood that tie had provided a range against each of the risks based on their view of the commercial exposure to come up with a range of estimates.

33) What degree of confidence did you have, at that stage, in the accuracy of the estimates?

I did not have a large degree of confidence.

Report to Council dated 30 April 2009

A report to Council dated 30 April 2009 provided an update on the tram project (CEC02083772).

The report noted the Princes Street Supplemental Agreement (CEC00302099). It noted that the agreement provided for works to be carried out on Princes Street on a demonstrable cost basis, should unforeseen ground conditions be discovered, and that "This represents no further transfer of risk to the public sector" (3.3).

In an email to Gill Lindsay on 25 March 2009 (CEC00900262), you had noted that "on the face of it ... it should not cost us anymore than Princes St would have anyway as tie were always atrisk of unforeseen ground conditions".

34) What involvement, if any, did you or other senior CEC officers have in the negotiation and conclusion of the Princes Street Supplemental Agreement?

CEC did not have a role in the negotiation of conclusion of the agreement.

35) To what extent were elected members consulted on the decision to enter the Princes Street agreement before the agreement was signed?

I was not aware that they were.

36) What was your understanding at the time of the commercial agreement struck by the PSSA?

I cannot recall fully at this time.

37) Did your understanding in that regard change at any time (and, if so, when and why)?

My understanding did change when the full costs of the agreement began

to exceed the estimate tie had allowed.

38) Do you consider that tie were open and transparent when reporting to the Council on the Princes Street dispute and, in general, in relation to the dispute with BSC?

No.

The report (CEC02083722) also noted (3.35) that BSC's estimated cost for phase 1b was "significantly in excess of the previous cost estimate" of £87m. It cited the economic downturn, the consequent delay in development at Granton, the unlikelihood of Scottish Government funding for phase 1a and the uncertainties over the cost of phase 1a before noting that "there appears to be no commercial case to progressing with the extension at this time" (3.39). The report recommended that the Council postpone the development of phase 1b (which the Council decided to do: minutes,CEC01891440_8).

39) The report does not state what BSC's cost estimate was for phase 1b. Why not?

I cannot recall why the sum was not included.

40) How much was it? (CEC00680268, a letter from Steven Bell of tie to Martin Foerder of BSC states that it was £134.043m: was that your understanding?)

I cannot be certain by my impression was that the cost had roughly doubled to circa £180m.

41) What was your understanding of the reasons why that estimate was significantly in excess of the previous estimate of £87m? (See, e.g., Stewart McGarrity's report to the Tram Project Board on 2 July 2008 (USB00000005_25 at _27 that "It is unlikely there will be a material change in the total estimated cost of £87m as reported in the FBC.")

42) Did you have any concerns about the discrepancy between the original estimate and the updated one?

I could not believe the justification for such an increase. Though on reflection BBS may have quoted a higher number based on experiences from Phase 1a.

43) The letter from Mr Bell states that the phase 1b bid price was £49.7m. How did you understand that bid to relate to the cost estimate of £87m?

I am not sure of the reason for the difference.

You sent a draft funding options paper to Donald McGougan on 16 Junes 2009 (CEC00859853, CEC00859854), identifying alternative funding sources in case the project costs exceeded the £545m available funding, or there was a shortfall in contributions from developers or receipts from land sales. The options included prudential borrowing with borrowing costs paid out of the CEC revenue budget or TEL income streams; redirecting funding from other capital spending projects (such as asset maintenance, schools and flood prevention); and the sale of assets to the private sector.

44) Please briefly explain these options.

The explanation is covered in the attachment outlined above. These options were presented for consideration for the Finance Director in the event that more funding was required for the project.

At a Quarterly Review meeting with TS on 18 June 2009 (CEC00703382, attached to CEC00703381), CEC are recorded as being of the view

"that quoting another AFC figure at this juncture isn't going to be helpful ... tie are currently estimating that they are liable for circa 33% of the current disputed quantum with BSC another 33% and the remainder open for decision"

45) Why did CEC consider another AFC figure was unlikely to be helpful?

CEC did not want to speculate and wanted to wait until there was clarity around what the actual exposure could be.

46) What was the estimate of liability for disputed sums based upon? What were your views?

I cannot recall, but would suggest this was based on tie's view of the total quantum in dispute.

In an email dated 23 July 2009 (CEC00666481), Dave Anderson expressed concerns about the reliability of the information CEC were getting from tie. In your reply, you noted, in the context of further delay to MUDFA works, that

"The information on MUDFA seems to change continually…".

47) Can you comment on the quality and reliability of reporting from tie to CEC generally on the project, and in particular at this time?

> The quality of the reporting was poor. It was inconsistent, patchy and the
>
> Explanations seemed to change on a regular basis.

An email you sent on 23 July 2009 to Dave Anderson (CEC00703239) noted, in the context of a report to Council

"we have to be mindful that tie's best case scenario indicates 560 [sic.] there are clearly further risks beyond this number it would seem to me that we cannot loosen our resolve to get to the bottom of these issues".

A summary of revised cost estimates you prepared for Donald McGougan (CEC00679488, 23 July 2009) also noted that the best case scenario was £560m, the base case was £580m and the worst case in excess of £600m.

48) How was your understanding of the likely project costs evolving at that time?

> The exposure under claims seemed to be growing and whilst I did not have total confidence in the information being provided by tie I was able to put the various parts of the jigsaw together to come up with a view of the overall costs, albeit without all the information available.

A paper on critical issues for the IPG on 27 July 2009 (CEC00679486, attached to CEC00679485) noted (page 2) that the top end of the cost range was not certain, but "likely to be well north of £600m according to tie" and (page 3) that "on their own admission tie admit that 40-80% of changes and delay are down to them, not BSC".

49) What was your understanding of these remarks? On what were they based?

> The base costs plus the admission of 80% of change and delay being to tie's account provided that view.

Another attachment to the same email (CEC00679487, a spreadsheet entitled "Phase 1a June 2009 Estimated Cost Update" set out a revised cost estimate, including a breakdown of the risk allowance which had been increased to £77.7m.

50) Please explain in overview the increases in the various elements of the risk allowance since financial close, and the basis on which they had been made.

There were significant increases in the amount providing for extension of time and the impact of design change, which tie seemed to now be accepting as their liability.

51) What was your view at this time about the risk allowance which had been set at financial close?

It was completely inadequate.

52) Can you explain the increase (almost double) from the provision for that issue in the risk allowance shown in CEC00679487, which had been circulated only a week before?

Richard Jeffrey circulated an email to members of the TPB and others on 13 August 2009 (CEC00679723) advising that BSC were not willing to start work on Shandwick Place without tie's agreement to a cost plus arrangement, having rejected both the option of proceeding under the existing contract, or under a revised version of the Princes Street Supplemental Agreement. Mr Jeffrey was strongly resistant to a cost plus arrangement, and considered there was likely to be a stand-off.

53) What was your understanding of that matter?

I cannot fully recall the issue at the time though I would suspect BSC

54) What was your view of it?

I cannot recall.

There appears to have been resistance to paying the £3.2m fee to BSC following the decision not to build phase 1b. (See, e.g., your email dated 9 September 2009, CEC00680326; the email from Stewart McGarrity to Donald McGougan dated 27 August 2009, CEC00680267, and one of its attachments, CEC00680268; and TIE00888917, an email from Colin Mackenzie reporting on a meeting of the Finance, Commercial and Legal committee, 4 August 2009, which noted the consensus was that tie should refuse to pay for the time being but that payment would ultimately have to be made.)

55) What was your understanding of the issue, and how it was resolved?

The payment was to fall due under the terms of the contract and the payment was made.

By e-mail dated 25 September 2009 (CEC00680446), you noted that the quality of tie's submission (CEC00680447) on curtailment of the scope of the tram project left a lot to be desired and was no more detailed than a report received in March.

56) What was your view, at that time, about the quality and reliability of the information being provided by tie about costs and the options open to CEC?

I did not think that the information provided was comprehensive enough or covered all the various eventualities.

An email from Gill Lindsay dated 1 October 2009 (CEC00688154) refers to her having met you to review outcomes of the Finance, Commercial and Legal Committee since August. She continued:

"we are actively taking steps to secure a more active strategic discussion at future FCLs on high level outcomes and projections in addition to receiving the detailed individual technical info now that various initial DRPs have been lodged".

57) What was your understanding of this? Was there a change in approach at the FCL committee, and if so, why?

I cannot specifically recall but presumably the intent was to look at the strategic options for the project given the position the project was in rather than looking at very narrow DRP related issues.

A paper circulated by Nick Smith, CEC00690509, noted:

"A full cost ranging document requires to be produced by tie and regularly updated. Whilst CEC appreciate that it is impossible for tie to give concrete figures at present, the onefigure which can be provided is a worst case scenario. ie what the cost outturn would be were tie to follow the longest current project timetable and lose all know arguments 100%, with an appropriate risk allowance added for unknown costs/disputes. Whilst tie did previously produce a rough estimate of this, a further clearer version is now required which can be regularly updated. This will allow CEC to plan for cost overruns over the £545m. On the basis that it is unlikelythat tie would lose all the arguments, this worst case estimate should also help to defray any costs from disputes/claims which are as yet unknown to us."

58) To what extent, and in what ways, was uncertainty affecting planning and decision-making?

I think strategic planning was being affected as there was not clear enough information on the various outcomes and tie at this juncture seemed to be lost in their overall strategic approach.

Your update following the Finance, Commercial and Legal Committee meeting on 3 November 2009 (CEC00703163) noted that "there has certainly been a positive shift in engagement by both tie and BSC. Thebig issue remains agreement on a commercially agreed programme.

" The note included the following points:

• BSC's Extension of Time 1 claim had been settled at £3.5m;
• Tie had granted a 9-month extension of time and 6 months costs for BSC's Extension of Time 2 claim

• Progress had been made on the supplemental agreement for the remaining on-street sections
• Richard Jeffrey had hinted that a commercially agreed programme might be in place by early January.

59) What was your understanding of these matters?

> It seemed that the recent change in leadership in BSC had brought about more constructive discussions which meant a number of commercial matters were being resolved.

On 5 November 2009, you circulated an email (CEC00703275) about the estimated financial impact of the Princes Street Supplemental Agreement, and 'worst case scenario' figures on cost exposure should the Princes Street experience be played out across the remaining on street section.

60) Can you please explain what the attachment (CEC00703276) shows, and the basis on which it was calculated?

> My recollection of this spreadsheet was one that I assembledfor the CEC Finance Director resulting from various elements of information I had or conversations that I had with tie commercial people about the commercial exposure on the project. This enabled me to put together this schedule to show what these issues could mean in terms of a final outturn.

61) In particular, please explain the three total cost estimates shown on tab 1. The three totals showed the base view with issues and opportunities then added.

62) Please explain your view at this stage of the costs incurred under the PSSA when compared with the costs which would have been incurred for the same work under the Infraco contract; and what the cost implications would have been if that approach had been taken to all of the on-street areas.

> The estimated cost under the PSSA was £8.3m compared to £3.7m as the original sum in the contract.The cost implications were calculated taking the length of the route and calculating this against the costs incurred for the various additional items under the PSSA to give a view of the potential cost.

At a quarterly review meeting with Transport Scotland on 13 November 2009 (TRS00005121), tie are recorded as having indicated that "£545m is very difficult with £600 - £620m most realistic", with CEC recorded as stating that "£545m has continuing relevance for politicians". CEC said it could manage the probable funding gap up to £600m, mostly through prudential borrowing.

63) What did you understand by the remark that £545m had continuing relevance for politicians, if the most realistic outturn cost was £600m to £620m?

Because at this time the approved funding for the project remained at £545m.

DLA appear to have been in favour of challenging the adjudictor's decisions in the Gogarburn Bridge and Carrick Knowe bridge adjudications (e.g., CEC00479381, 26 November 2009, CEC00479430). (The adjudication decisions are at CEC00479432 and CEC00479431.)

64) What was your understanding of these decisions?

My understanding was that tie had lost the adjudications clearly and were liable for the claims associated.

65) To what extent, if any, had the parties intended to treat these adjudications as establishing principles of wider application, or guidance, on other matters in dispute?

I cannot recall.

66) What impact, if any, did they have on CEC/tie's approach to the Infraco contract generally and the strategy for dealing with the disputes? I think CEC were of the view that tie's approach was now flawed.

67) What was your view on whether or not they should be challenged?

I did not see what value there was in challenging as it seemed that the lost disputes related t similar elements of change and therefore set the tone.

68) Why were they not in fact challenged?

I cannot recall.

Nick Smith raised concerns about OSSAs in an email dated 10 December 2009 (CEC00473732).

69) What were your views on his concerns?

I would agree with Mr Smith's concerns.

70) Why were OSSAs not, in the event, entered into?

I cannot recall.

An email from Stewart McGarrity on 4 December 2009 (CEC00472522, spreadsheet CEC00472523) notes:

"CEC officers quite rightly want to see an updated view of our cost estimates. I have Alan Coyle here from Monday morning to go through everything line by line and there is a meeting scheduled with Donald McGougan next Friday at 10am to review the outputs and consequences thereof."

He attached a spreadsheet relating to the cost estimates.

71) Can you explain what the spreadsheet shows?

The spreadsheet shows the evolution of the project cost estimate taking into account tie's view on commercial exposure as time progresses.

72) What were the main changes from previous estimates?

Primarily the admission on the liability for claims relating to design change and extension of time.

73) What were your views?

Only through the piecing together of the various elements of cost exposure on the project did this schedule come to light. It was, at this time, the most transparent estimate of costs the Council had received.

On 10 December 2009, Stewart McGarrity sent you an email (CEC00490560, attachment CEC00490561) about a £19.2m increase in project costs since the budget had been set at financial close.

74) What was your understanding of, and view on, this?

The cost associated with this element of the project had grown significantly and CEC wanted to understand the reasons why.

The minutes of the Tram Project Board on 16 December 2009 (CEC00473005) noted (p6, para 2.1) that the Board instructed the CEO to investigate withdrawal of the offer for an interim award of 9 months relief and 6 months costs.

75) What was your understanding of, and view on, this?

I cannot recall the reasons for this withdrawal.

An e-mail dated 22 December 2009 (TIE00281255) included in the thread an e-mail dated 21 December 2009 from John Ramsay of Transport Scotland which noted that TS had already advised Ministers of a circa £600m outturn based on tie and CEC's advice and further noted

"However Richard Jeffrey has made it clear to Bill [Reeve] that it clear [sic] would be 'substantially more'".

See also David Anderson's e-mail dated 21 December 2009 (CEC00583506) setting out his recollection of what had been discussed.

76) What was your understanding at that time as to the likely total cost of the tram project, including whether it was likely to be "substantially more" than £600m?
I am unsure of the context of the communication Mr Jeffrey Made, however, my view was that there were still risks around the £600m figure that we didn't yet have a full view of.

77) Can you comment on Mr Jeffrey's remarks, critical of John Ramsay (see also, CEC00474925)?

No comment.

In emails dated 24 December 2009 and 5 January 2010 (CEC00451089), you and Nick Smith discussed the strategic options. Mr Smith said "If ever there was a case of rock and hard place...".

78) What were your views?

None of the outcomes at this points were going to be Straight forward in achieving a satisfactory conclusion.

There appeared to be recognition that terminating the contract on the basis of BSC breach would not be easy.

79) What were your views at this stage on the extent to which the project's problems were attributable to breach by BSC? If they were not attributable to breach by BSC, to what (in your view) were they attributable?

At that time it was unclear as to whether BSC had breached the contract. Also tie had always portrayed BSC as the bad guy but to my awareness had never pursued breach.

On 8 January 2010, Nick Smith sent Alastair Maclean a briefing note which he said you agreed was a fair summary (CEC00473789, CEC00473790). Mr Smith said that

"dissemination of the actual history here could cause serious problems and we definitely don't want to set hares running ... be very careful what info you impart to thepoliticians as the Directors and tie have kept them on a restricted info flow. Given current sensitivities it is critical that this remain in place."

80) What do you understand Mr Smith to have meant when he referred to the "actual history" and his concern that disseminating it could cause serious problems?

I think the document gives a very high level and summarised view on the history of the project.

81) What do you understand by Mr Smith's warning aboutimparting information to politicians, and the reference to them having been given a restricted information flow?

I cannot comment.

82) Whilst the note states that it is "at an unbelievably high level and the history is far more complex", do you accept it as an accurate summary? Please identify and explain anything you do not accept.

I think it is fairly accurate.

83) The note records that members "only have a small knowledge of the above so the info should be treated with caution". What is your understanding of that matter, and why was it the case?

I cannot comment if this was the case.

In an email to Stewart McGarrity dated 14 January 2010, you noted that, following the Gogarburn and Carrick Knowe adjudications the BDDI-IFC numbers had been increased, and asked whether the more favourable interpretation of the contract by the adjudicator inthe Russell Road adjudication merited a reduction in the BDDI-IFC figures.

Mr McGarrity's reply appeared to be that a reduction was not merited, although the matter was to be considered as part of the Pitchfork workstreams (CEC00491071, attachment CEC00491072)). The attachment appeared to show a deterioration of £4m in the "QS view" of tie's liability under the BDDI to IFC issue.

84) What was your understanding of these matters?

Only that additional items had been added to the DRP list, therefore additional allowances had been added to the numbers.

85) What were your views?

I cannot recall.

By e-mail dated 22 January 2010 (CEC00473835) you noted that Donald McGougan and David Anderson had endorsed the intention to seek an independent legal view of the "contractual outs" within the contract and noted a need for CEC to be more proactive, "where the Council are doing their own thinking rather than rather than waiting for a briefing from TIE".

86) Why did CEC seek an independent legal view of the Infraco contract at that stage?

I cannot comment for sure on why now but I think matters had reached a point where CEC had to act. Also there was a new Head of Legal in place with a different approach.

87) Please explain your view quoted above.

This was a welcome change to see CEC take greater control.

You were involved in discussions about tax planning (e.g., CEC00475660 and attachments, February 2010, referring to a long funding lease).

88) Please explain in overview the point under consideration, why it was being considered, and the outcome.

> As the project costs were escalating, tie were looking. At alternative and additional means of funding the project, this was why this approach was considered. The idea was never pursued.

On 9 February 2010, Stewart McGarrity sent you slides for the forthcoming meeting of the Tram Project Board (CEC00554925, CEC00554926). These noted (_4) that:

• An increase was being sought in the risk allowance;
• The risk allowance had been spent on changes for which no specific allowance, or an inadequate allowance, had been made; and
• "The increased budget still does not make provision for potential costs items which are subject to the uncertainties of the current contractual engagement ('X')".

89) What was your understanding of these issues?

> There were a number of areas of commercial exposure that remained to be settled that would impact the budget further.

90) Were you concerned by the way in which the risk allowance had been used?

> I was concerned overall about the cost position on the project.

91) Why did the budget not provide for items which were subject to uncertainties? In those circumstances, did reporting on the budget accurately reflect the reality of the situation?

> The budget did not reflect the commercial reality of where the project was.

A highlight report to the Chief Executive's Internal Planning Group dated 17 February 2010 (TIE00896564) noted:

• That the following three strategic options were under review, with a view to a recommendation being made to the TPB in March 2010:

o terminate Infraco (the most undesirable option),
o negotiate Bilfinger's removal from the consortium (the most desirable option) and
o grind it out (considered undesirable given BB's current behaviour).

• That tie had embarked on a strategy of building a case to demonstrate BSC's failure to comply with core obligations under the Infraco contract, and were undertaking audits in various areas, including BSC'smanagement of design and programme.
• That Richard Jeffrey would be meeting weekly with you and other CEC officers to update CEC on progress; and that you would be meeting weekly with Stewart McGarrity to discuss the emerging financial position so that CEC had a full understanding of the financial implications of each of the options being evaluated.

• That a post-completion analysis had shown that full depth road reconstruction was undertaken the full length of Princes Street; that such work did not form part of the original contract price; and that the design life of the road was now significantly more than would otherwise have been the case. The possibility was noted that betterment of roads across the on-street section might be funded from the roads programme.

92) What was your view of the various strategic options under consideration at this time?

> At this point the overall cost consideration to CEC was the most important, so as much certainty as to the potential cost for each potential outcomes was paramount.

93) Why was a negotiated agreement, under which Bilfinger would continue as the civil engineering contract, not favoured at this time?

> Relationships between tie and Bilfinger were at a complete impasse.

94) What was your understanding of the outcome of tie's attempts to build a case against BSC for failure to comply with the Infraco contract?

> My understanding was that tie wanted to build a case so that they could exit them from the contract.

95) What was discussed at the weekly meetings referred to? Were you satisfied with the information supplied by tie at those meetings?

> The various cost outcomes for each of the options were discussed. The information and ranging of costs that tie were now preparing were giving CEC a better view of the numbers and the meetings allowed CEC to interrogate the information more effectively than had previously been the case.

96) What impact did these meetings have (if any) on the quality of decision-making about the project?

> Whilst not completely effective I think it allowed CEC to get a much better feel for the potential outcomes.

97) What was your understanding of the reasons for, and cost implications of, the work on Princes Street having gone beyond what had been priced originally?

> My view was that the original price did not account for the extent of reconstruction that subsequently took place.

98) To what extent (if at all) was the tram project funded out of CEC's roads budget (whether justified on the grounds of betterment or otherwise)?

> There was an element of recharge to CEC's roads budget for certain works.

In an exchange of emails you had with Stewart McGarrity on 2 March 2010 (CEC00474670), there was discussion about whether an optimism bias adjustment should be made to the various cost forecasts.

99) What was your view on this, given in particular that tie had stated from the Draft Final Business Case in December 2006 (CEC01821403_136, paragraph 9.12) that there was no need for an optimism bias adjustment in addition to its risk allowance in its project cost estimates?

December 2006 should be November 2006

From a CEC perspective we wanted to see how optimistic/pessimistic tie were of the cost estimates.

Mr McGarrity asked you whether you were satisfied you were getting an open and honest briefing from him, and you agreed that you were.

100) Why did that exchange take place?

I cannot recall.

At a quarterly meeting of Transport Scotland, CEC officials and Richard Jeffrey of tie on 4 March 2010 (CEC00253987), Richard Jeffrey is noted as having said that "tie believed that the biggest sanction remaining was to get BSC to finish the job". The notes also record him saying that the costs of the various strategic options could not be estimated at this stage, but that "the AFC would still be in range of £610m onwards". TS's summary was:

"It appeared that while BSC believed it couldn't deliver for the Financial Close fixed price, tie couldn't afford the apparent increased price that the contractor now demanded" (page 3), and asked whether

"tie thought it was necessary to move to a mutually acceptable fixed price contract – a new contract that worked" (page 4). Richard Jeffrey advised that the problem with fixing a new fixed price was that as yet there was no fixed scope.

101) Was tie's preferred strategy ("get BSC to finish the job") add odds with CEC's (cf. the highlight report to the Chief Executive's Internal Planning Group dated 17 February 2010 (TIE00896564), which had noted that this was considered undesirable)?

Tie's strategy kept changing. Previously they had wanted to exit BB.

102) Was TS's summary, quoted above, fair?

Yes.

103) To what extent, in your view, ought the divergence between the price BSC wanted and the price tie could afford to have been identified prior to financial close?

This should have been identified as early as possible.

104) What was your view on the fact that, almost two years after financial close, the scope was still not sufficiently fixed for a price to be fixed?

I think there were still a number of qualifications that prevented this.

By e-mail dated 4 March 2010 (CEC00474750) you sent Donald McGougan and David Anderson a CEC Directors' Briefing Note (CEC00474751) setting out the estimated cost of the three options that formed part of "Operation Pitchfork".

The estimated cost of completing the works appears to have ranged from £644m to £673m (carrying on with an OSSA).

You noted that (page 4)

"There has undoubtedly been a lot of thought given to the numbers produced especially in relation to ... the risks related to prolongation and design development issues."

In relation to OSSA, you said (page 4):

"The OSSA will not be agreed on the terms in BSC's current proposal. There is still a large delta between the tie and BSC view on the credit tie would receive from the original contract", which had reduced from £11m to £8m.

On prolongation, you noted that

"this risk has been increased substantially from the £21m indicated in Dec 09. The £21m covers 9 months Extension of Time. ... The dominant factor in this item is utilities delay."

Overall, you noted:

"it seems, based on the information coming from tie, that we have very little contractual levers to make BSC get on with the work or to force them off the job".

105) What was your view at that time about tie/CEC's options and the estimated cost of each of them?

I think CEC's options were very limited as none of the options at this stage seemed to be in reach. The costs were of deep concern as they were now significantly more than originally envisaged and with no real sign of resolution.

106) How much confidence did you have in the cost estimates?

I think the cost estimates were more realistic than before but continued to rise.

107) Please explain why the OSSA proposal was unacceptable to CEC.

There was a belief that this would open up further risk and cost and at this point confidence was low in BSC's ability to deliver.

108) Please explain your understanding of the increases in the risk allowance.

> The increase in the risk allowance was primarily in relation to delay associated with MUDFA works, BDDI-IFC change.

On 8 March 2010, Richard Walker of BSC wrote to David Anderson, Donald McGougan and others noting, amongst other things,

- The termination by tie of negotiations over an agreement for the on street works along the lines of the PSSA
- That the additional costs under the contract were likely to be in excess of £100m (CEC00548728).

109) What was your understanding of the reasons why negotiations over an OSSA had been terminated?

> I do not know why negotiations were terminated.

110) What was your view of Mr Walker's estimate of the likely additional costs?

How did his view compare to the figures now being discussed by tie and CEC (e.g., in your briefing note, CEC00474750)?

> The costs were not too different to the options tie had under consideration.

The Tram Project Board met on 10 March 2010. The minutes of this meeting (CEC00420346, from page 5) noted (para 2.1) that the Board approved a strategy (summarised at page 8).

111) What was your understanding of the strategy approved by the Board at this meeting? In what way did you understand it to differ from any previous strategy?

> My understanding was that tie would continue to pursue disputed matters through the contract whilst seeking to build relationships with BSC. I did not think this strategy was significantly different than previously.

112) What were your views on the chosen strategy?

> I think that at this point there was little other choice.

On 11 March 2010, Stewart McGarrity circulated a slideshow showing the major movements from the original budget of £512m to an "Option 3C base estimate" of £639.9m (CEC00556759, CEC00556760). The slides included the following information:

- An increase in the risk allowance of £102.9m (slide 2).
- A breakdown of the £127.9m increase in the cost estimate (slide 3) since financial close.
- A breakdown of the £27.1m increase in the cost of the onstreet works (slide 4)
- A breakdown of the c. £20m increase in other project costs (slide 5)

113) How robust did you consider these cost estimates to be?

I still had doubts as to the final position and the achievability of agreeing a commercial position with BSC

114) What was your view of them?

The estimates were based on a number of assumptions that may/may not come to pass.

In his cover email, Mr McGarrity said, in relation to costs incurred:

"The only challenging bit to articulate is the explanation for why we have certified far more as a percentage of the Infraco contract sum than the percentage of the construction complete – the answer is we paid them 20% upfront and they have been getting paid their preliminaries in accordance with the Milestone schedule even as the construction has not been progressing satisfactorily (we now have a cunning plan to effectively stop paying any more prelims for the time being). We are not aware of any circumstance which would prejudice our entitlement to getting cash back from BB and/or S in the event of a termination or change in the consortium were we due it (despite the usual scaremongering from R Walker)."

115) What was your understanding of these matters, being:

a) The extent of, and reason for, the excess of payments over value of work done;

I understood the mobilisation payment. Also BSC were entitled to prelims so I could understand this being the case.

b) The '*cunning plan*' to stop payments of preliminaries; and

c) The entitlement to get back any overpayment on termination of the Infraco contract.

I was not confident in either of these assertions.

On 23 March 2010 (CEC00482827, you said "As far as the gents agreement is concerned, given the individual we're talking about it wouldn't entirely surprise me if Willie G pulled a stunt like that."

116) Can you please explain this remark?

Without seeing the detail of the attachment, I was never trusted the information

CEC received from Mr Gallagher which led me to make this remark.

Adjudication decisions were issued

• on 18 May 2010 (by Mr Hunter, re Tower Bridge) (CEC00373726) and

(CEC00325885),

• on 24 May 2010 (by TG Coutts QC, re Section 7A-Track Drainage) (TIE00231893) and

• on 4 June and 16 July 2010 (by R Howie QC, re Delays Resulting from Incomplete MUDFA Works) (CEC00375600) and (CEC00310163).

117) Were you aware of these decisions?

I can recall these decisions.

118) If so, what was your understanding of their impact on the project?

The adjudication acknowledge there had been a BDDI-IFC change but that the impact was of a negative value compared to the original price.

On the 8 June 2010, David Mackay, as Chairman of TEL formally notified CEC that the funding envelope of £545 million was likely to be exceeded in order to deliver phase 1a (TIE00084642).

119) Why was formal notice given at this time and not earlier (given that it appears to have been known for about one year prior to that that the available funding was likely to be exceeded)?

I do not recall why it took to this time for this to be acknowledged.

120) In your view, ought formal notice to have been given earlier?

Yes.

Report to Council dated 24 June 2010

On 24 June 2010 the Council were given an update on the tram project by means of a joint report by David Anderson and Donald McGougan (CEC00021372). The report stated that the utility works were now substantially complete (i.e. 96%).

The report further stated that

"The essence of the [Infraco] Agreement was that it provided a lump sum, fixed price for an agreed delivery specification and programme, with appropriate mechanisms, to attribute the financial and time impact of any subsequent changes" (para 3.3)

It was further noted that

"Whilst there have been disputes on design-related matters ... it is normal in any large construction project for the scope of the project to change in material ways, for a variety of technical and commercial reasons" (para 3.10) and that

"The outcome of the DRPs, [Dispute Resolution Procedures] in terms of legal principles, remains finely balanced and subject to debate between the parties" (3.12)

The Report stated that it was "prudent" to plan for a contingency of 10% above the approved funding of £545m because of the current lack of clarity on programme and cost (3.40, 3.58), although TEL was not seeking approval for an increased budget at that stage. It was noted that, whilst commercial uncertainty precluded a robust cost estimate for phase 1a, it appeared that it could not be delivered for £545m (6.3). The Council called for a refreshed business case (minutes, CEC02083183_10).

121) What were your views around that time on the extent to which the Infraco contract was for a "lump sum, fixed price"?.

My view was that the contract was for a "lump sum, fixed price" for only the elements that had been included as part of the BDDI and that there were a number of changes that could impact the overall cost.

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

I was not party to briefings members were given but from the publically available information they were not advised of the potential risks.

123) To what extent did you agree with the view that the outcome of the Dispute Resolution Procedures was "finely balanced"?

I think these were complex matters and that there were elements of DRP that were open to interpretation, however on the whole I think the BSC position was the prevailing one.

124) What were your views on whether it was "prudent" to plan for a contingency of 10% above the approved funding of £545m?

I think it was prudent to plan for a contingency, however I think there were clearly risks that 10% would not be enough.

125) Did you consider it likely around that time that a line from the Airport to Newhaven could be built for £600m (i.e. £545m plus the 10% contingency)? What was the basis for that view?

Based on tie's assessment of the potential outcomes at that time, this was unlikely.

126) Ought members to have been advised around that time that there was a significant risk that the actual cost of phase 1a would be much higher? Possibly. However, as the report points out a number of considerations were being made around potential incremental delivery options and that these issues would form subsequent reports. If members were not advised of that, did that affect their ability to take informed decisions in relation to the tram project around that time?

The report did state that there was no clear estimate and significant uncertainty.

On 4 June and 16 July 2010 Robert Howie QC issued his decisions in relation to Delays Resulting from Incomplete MUDFA Works (CEC00375600, CEC00407650 and CEC00310163).

127) Were you aware of these decisions and their impact, if any, on the project?

I cannot recall at what point I was made aware of these decisions.

128) If so, what did you understand their impact to be?

As above.

Project Carlisle 1

By letter dated 29 July 2010 Martin Foerder sent BSC's "Project Carlisle 1" proposal (CEC00183919) to tie. Under the proposal BSC offered to complete the line from the Airport to the east end of Princes Street for a Guaranteed Maximum Price of £433,290,156 and €5,829,805 (less the amounts previously paid), subject to a shortened list of Pricing Assumptions.

BSC's proposal was rejected by TIE by letter dated 24 August 2010 (CEC00221164), in which TIE responded with a counter-proposal of a construction works price, for a line from the Airport to Waverley Bridge, of £216,492,216, £45,893,997 to CAF, the amounts due to SDS and in respect of the PSSA to be determined, and a sum of just under £4,922,418 in respect of Infraco maintenance mobilisation, Tram maintenance mobilisation and Infraco spare parts. There was separate provision for "Construction Works Price Part B" (£22.595m in relation to the sections from Waverley Bridge to Newhaven; and £9.8m for trams)

129) To what extent were you / colleagues in CEC, involved in the Project Carlisle proposals and discussions?

I was not involved in Project Carlisle discussions and I do not believe CEC colleagues were either.

130) What were your views, in general, on the Project Carlisle 1 proposal and why it did not resolve the dispute?

There still remained a number of pricing assumptions in the proposal and it was my view that tie wanted price certainty.

On 7 August 2010 Lord Dervaird issued his adjudication decision in relation to the Murrayfield Underpass Structure including, in particular, whether, under clause 80.13 of the Infraco contract, tie were entitled to instruct BSC to carry out Notified Departures without a price having been agreed in advance (BFB00053462). In a Memorandum dated 11 August 2010 (CEC00013622), David Anderson reported on a meeting with you and others, and said that following the decision on clause 80.13 he was now "deeply concerned" about the project. Richard Jeffrey described the decision as "very disappointing", and you said that "I think this is a big feather in the cap of BSC and places doubt on the quality of the legal advice tie are getting" (CEC00255248).

131) What was your understanding of this adjudication decision, and its impact on the project?

I understood that tie were of the view that they could instruct BSC under clause 80.13 to undertake works without having agreed a price in advance.

Tie saw this as an approach that would get the works underway with the commercials to be agreed subsequently.

By e-mail dated 18 August 2010 (CEC00013665) you noted that you had met with Dennis Murray regarding tie's counter proposal for Project Carlisle.

Mr Murray's "headline numbers" for tie's counter-proposal were reported as £567m for the Airport to York Place and £644m from the Airport to Newhaven.

On 20 August 2010 you and other CEC officials met with tie representatives to consider tie's Project Carlisle Counter Offer. A record of the meeting (CEC00032056) noted a range of costs of between £539m-£588m for the Airport to St Andrew Square and a range of between £75m-£100m for St Andrew Square to Newhaven, giving a total range of costs, from the Airport to Newhaven, of £614m £693m [sic.].

It noted that this reconciled to the original price of £512m as a 'delta' of £102m to £181m. The 'delta' between the BSC offer and tie's counter offer was c. £90m (page 5).

It was noted that this was essentially a re-pricing exercise for the completed design (which was thought to be approximately 90% complete) with the intention of giving tie certainty and that all of the pricing assumptions in schedule 4 of the Infraco contract would no longer exist (page 4). (Your email had noted Dennis Murray's viewthat Carlisle was "a repricing exercise not a GMP".)

It was further noted that BB were likely to be feeling very exposed as a result of "the SDS/BB 'collusion' agreement" (page 4).

132) What were your views on the proposed counter-offer and the reliability of the estimated costs for completing the project?

I was concerned about the £90m difference and why this would be the case.

133) To what extent did you, or other Council officers, have an input into producing, or checking, these figures?

Council officers did not produce the figures or at this point access to the figures.

134) What was your understanding of "the SDS/BB 'collusion' agreement" referred to above?

I cannot recall this.

Your email (CEC0013665, 18 August 2010) refers to "real discomfort" arising from the fact that Dennis Murray of tie was not involved in putting together tie's counterproposal, and was having difficulty reconciling that counter-proposal to his own view. Stewart McGarrity's email (CEC00041958, 16 August 2010) noted that he did not "recognise may of the numbers".

CEC0013665 should be CEC00013665

135) Can you explain these concerns, and whether they were addressed?

The numbers for Project Carlisle were being put together by Mr Rush it seemed in insolation from the tie commercial team and I was concerned about Mr Rush having a full view of the numbers,

136) Who was responsible for assembling tie's counter-proposal, and why were Mr Murray and Mr McGarrity not involved?

Mr Rush. I assume this was for objectivity as Mr Rush had not been involved in the history of the project.

Remediable termination notices, etc.

Between 9 August and 12 October 2010 tie served ten Remediable Termination Notices (RTNs) and three Underperformance Warning Notices (UWNs) on BSC.

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

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

137) What were your views on tie's tactic of serving RTN's?

> I understand why tie issued these notices, though it did seem like slightly desperate tactics to drive action. However it seemed that BSC had solid responses to the RTN's.

Project Carlisle 2

By letter dated 11 September 2010 (TIE00667410), BSC submitted its

"Project Carlisle 2" proposal to tie, in which BSC offered to complete the line from the Airport to Haymarket for a Guaranteed Maximum Price of £405,531,217 plus €5,829,805, subject to the previously suggested shortened list of Pricing Assumptions. By letter dated 24 September 2010 (CEC00129943), tie rejected BSC's proposal. Mr Foerder responded by letter dated 1 October 2010 (CEC00086171).

138) What were your views on that proposal, and why it did not resolve the dispute?

> I cannot recall fully the second proposal other than it seemed BSC were making some concessions. I am not clear on why this did not resolve the dispute other than there were still a number of pricing assumptions and third party agreements that were public sector risks.

On 22 September 2010, you expressed the view that clause 80.20 of the Infraco contract (see CEC00036952) should be tested through DRP

(CEC00012441).

139) Please explain your comment.

It seemed that this clause gave tie the ability to instruct the works while estimates were being agreed.

You and other CEC and tie officials met with Transport Scotland on 24 September 2010 for a "Quarterly Review meeting" (TRS00011378). The minutes of the meeting note that the Council would "provide an improved, overall project completion progress metric that would permit a better appreciation of overall progress against current costs".

140) Please explain this.

The progress update provided by tie was too high level. It is my understanding that TS wished to receive a much more granular breakdown of progress across each element of the project.

141) Why was this necessary and was it ultimately provided?

To provide greater insight of actual progress. I believe this was provided.

In October 2010, John Swinney, the Cabinet Secretary, raised concerns about c. £30m having been paid to BSC in excess of the value of work done. Your explanation was to the effect that the £30m difference was a result of tie paying. Prelims in accordance with the contract milestones "despite the lack of value from BSC" (TIE00105776).

142) What was your understanding of this issue, and why it had arisen?

As I understood it, tie were contractually obliged to pay prelims in accordance with the milestone schedule.

143) What arrangements were in place for repayment of any excess of payments over the value of work done if (as was under consideration) the Infraco contract were to be terminated prior to completion?

I cannot recall.

144) What impact did that matter have on tie/CEC's negotiating position against BSC (e.g., did it make it more difficult for tie/CEC to argue for termination of the Infraco contract, through concern that the overpayments would be lost)?

I cannot recall this affecting CEC's negotiating position.

(See also TIE00353742, an email from Stewart McGarrity dated 17 January 2008, and its attachments.)

By letter dated 13 October 2010 (TIE00301406) BBS wrote directly to Councillors giving their views on the dispute.

145) What were your views on that letter?

> I think BBS felt that they had explored all the potential options with tie and that writing to Councillors was an approach that hadn't been tried in order to find a solution.

Report to Council dated 14 October 2010

A report to Council dated 14 October 2010 (CEC02083124), noted that, despite intensive negotiations, tie and BSC had been unable to reach agreement and that an acceptable settlement seemed unlikely in the short term. The recent demobilisation of BSC's workforce was noted (2.48). It was noted that in the dispute resolution process, BSC's claims had been reduced in value from £21.9m to £9.5m, and that

"The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties" (2.50).

One possible option was termination of the contract (2.52). It noted that

"Due to the current uncertainty of contractual negotiations, it is not possible to provide an update at this time on the ultimate capital costs of the project" (paragraph 3.1).

The report did not give any indication of likely costs, with no reference (for example) to the Project Carlisle offers and counter-offers, or to the detailed work which had been done to estimate likely outturn costs.

We understand that Councillors were unhappy with the level of detail provided and requested a more detailed account of the business case (see the minutes, CEC02083123, the proposed amendments (from page 3) and the decision, page 8 paragraphs 8 and 12).

146) What was your view on the extent to which this report gave members sufficient information about the project?

> The report covered the approach being taken by tie without being explicit on the various commercial discussions.

147) What factors influenced the amount of information reported to the councillors about the project?

> There were concerns over including the commercial aspects of Project Carlisle in the public domain.

148) On what matters did councillors want more information? Were they supplied with it, and if so, when and how? Were they satisfied with it?

A further report to December Council detailing next steps and a more

detailed update on the business case.

149) To what extent was the Council able to balance the need for full and accurate reporting to members with, for example, the need to preserve tie's negotiating position against BSC?

It was a difficult balance but there were briefings between senior officials and members outwith the public domain.

150) Please explain what, if any, risks were perceived by CEC officials to attach to giving fuller information to council members, whether in reports or otherwise.

As stated, senior officials did brief members outwith the public reports.

151) Do you agree with the statement that, at this time, "The overall outcome of the DRPs, in terms of legal principles, remains finely balanced" (emphasis added)? Please explain your answer.

Legal principles are not my area of expertise.

152) To what extent did that reflect legal advice that had been obtained by tie and CEC? Was any such legal advice made available to the members? Were members supplied with the adjudication decisions? If not, to what extent did that affect their ability to make properly informed decisions about the tram project?

I cannot how this statement reflected legal advice tie or CEC had obtained. I cannot recall if legal advice had been made available to members at this time. I also cannot recall if members had seen the adjudication decisions.

Comment [z1]: Is there a word missin ghere

153) Do you agree with the statement that it was not possible at that time to provide an update on the capital costs of the project?

The reports states that the ultimate capital cost could not be provided.

This was accurate at this time.

Stewart McGarrity sent an email on 4 November 2010, in which he noted that tie had been telling CEC that the cost of litigation could be £50m, but that that seemed "very heavy" to him (CEC00043521).

154) What was your understanding of the likely cost of litigation against BSC, and what was that based upon?

I understood the costs to be in the region of £50m which was based on information provided by tie.

155) To what extent did cost estimates such as these influence tie/CEC's decision not to seek a decision from the courts on any of the disputed matters under the Infraco contract?

I do not recall this matter influencing tie or CEC's legal position.

On 8 November 2010, Stewart McGarrity sent you and others an email explaining numbers relating to Project Carlisle (CEC00112862, CEC00112863).

156) Can you explain in overview what these documents show and what, if anything, they were used for?

The documents showed tie's proposal updated for project Carlisle.

These documents were used to provide a view of the potential cost of the project should negotiation be successful under these terms.

In or around November 2010, there was a proposal to second you to tie to take up the post of head of corporate finance and governance (see, e.g., CEC00014231).

157) What was the nature of the arrangement?

The nature of the arrangement was agreed with my Director, Donald McGougan in order for me to get closer to the project Finances with a view of providing him and CEC with a greater levelof transparency and confidence in the numbers.

158) Did it take place? If not, why not?

Yes it took place up to the period of mediation.

159) If it did take place, what was the nature of your work?

Working more closely with tie and their commercial and Engineering team to examine the range of financial impacts on the project and CEC's funding requirement.

The Highlight Report to the CEC chief executive's internal planning group dated 17 November 2010 (CEC00010632) included a range of cost estimates to support decision-making for the next report to Council (page 4). These were said to be in draft form and being fine-tuned. The estimates for completion of the full scheme (i.e., phase 1a) ranged from:

• £639.9m (continuing with a 'silver bullet') to
• £823m (terminating, reprocuring and losing litigation against BSC).
• The Project Carlisle range was from £662.6m (tie) to £817m (BSC).

The report also noted that "[t]he cost estimates as they current [sic.] stand indicate delivery of the project to St Andrew Square could be delivered for between £545m-£600m". That appeared to be based on reprocurement (see table on page 5).

160) Please explain these figures in overview.

> The figures in the table on page 4 were a product of tie's that had been out together in discussion with their engineering and commercial team on the 4 scenario's outlined. With a full project cost ranging from c£640m.
>
> To c£823m depending on the scenario.
>
> The table on page 5 provides an estimate for a curtailed route to St Andrew Square of c£593m.

161) Who prepared them? To what extent did you, or other CEC officials, have a role in producing and/or checking them?

The spreadsheet to back up the numbers was owned by Mr McGarrity and there were inputs from the tie commercial andengineering team. I had a role in scrutinising the numbers and asking questions as to how they were derived.

162) What degree of confidence did you have in their accuracy?

> A number of the scenario's such as reprocurement were Hypothetical. Also no agreement had yet been secured with BBS so the numbers were indicative.

Report to Council dated 16 December 2010

On 16 December 2010, Tom Aitchison presented a paper to the Council with an update on the refreshed business case (CEC01891570). The business case (appended to the report) noted that a line from the airport to St Andrew Square was

"believed to be capable of being delivered within the currently available funding of £545m" (para. 2.6, page 12; para 5.3, page

32). The report noted that BSC at a meeting with CEC officials on 3 December 2010 had confirmed willingness to mediate. At the meeting, an amendment was passed by members requesting a review of the business case by a specialist public transport consultancy that had no previous involvement with the project (minutes, CEC02083128).

163) What role, if any, did you have in drafting the report and/or the refreshed business case?

> I cannot recall having a role in the drafting of this Council report. Wth regard to the refreshed business case I updated the section detailing the position on CEC funding. The remainder of the document was prepared with tie and also with inputs from Lothian Buses.

164) What were your views on the likelihood of a line from the airport to St Andrew Square being delivered for £545m or less?

> My view was it would be difficult to achieve this.

165) What were your views on the likelihood of a line being constructed from the airport to Newhaven for £640m (the refreshed business case having stated that the benefit cost ratio for phase 1a would reduce to 1.37 if cost increased by 25%, and to 1.1 taking account of assumed effects of the downturn in new development)?

> My view is that it would have been difficult to achieve this.

166) What were your views based upon?

> The various scenario's pointed to a full cost that could have been greater than £640m.

167) What was the purpose of the review of the business case by a consultancy without prior involvement in the project. Who was appointed, and what was the outcome?

> I think the members wanted to have a clean and independent view. Atkins were appointed and they subsequently gave anindependent view on the business case.

Preparation for mediation

Mediation talks were arranged for March 2011. In the run up to mediation:

1) What preparations for the mediation were undertaken by CEC? (See e.g. the report to the IPG on 21 January 2011 (CEC01715625) and the Action Note of that meeting (CEC01715621))?

> The preparation for mediation was aided by the work Finance, Legal and Engineering colleagues were undertaking with tie to get an assessment of the options for the project. I had also prepared a briefing note for the new Council Chief Executive on the project late 2010.

2) What part, if any, did you play in these preparations?

Assessing, using the information available from tie, the potential outturn on the various scenarios. I was also involved in a preparation meeting with the new Chief Exec, Sue Bruce on the lead up to mediation.

3) What were the main objectives of the Council going into the mediation? (See e.g. the Project Phoenix Statement dated 24 February 2011 (BFB00053293).)

Ultimately to get agreement with BBS to take the project

Forward and to provide as much cost certainty as possible.

4) What were your expectations, prior to the mediation, about what could be achieved?

I was hopeful that under new leadership with the Council taking control of the project that a way forward could be found.

5) To what extent were tie involved? To the extent that they were not involved, or had a lesser role, why was that?

Tie were involved in the preparation, they had all the information. It was clear though that the CEC Chief Exec was taking control of the process and the interface with the seniors in BBS.

6) To what extent was there consensus in the tie/CEC team prior to, and at, the mediation on:

a) The reasons why the project was in difficulty;

I think there was a general understanding of why the Project was in difficulty. However, I think CEC were more open minded on resolving the issues.

b) The forecast costs of the various options under consideration;

I think CEC and tie understood the range though until mediation, CEC did not have a full understanding of the BBS view.

c) The strategy to take, and outcome to seek, at the mediation?

I think there was a divergence. My view was CEC wanted a deal to progress the project with BBS whereas I think tie would have preferred a deal to terminate.

A highlight report to the Chief Executive's Internal Planning Group dated 21 January 2011 (CEC01715625) noted (page 8) that tie were

"in a weak position legally and tactically, as a result of the successive losses in adjudication and service of remediable termination notices which do not set out valid and specific grounds of termination. It was also clear from the documentation produced at the meeting by Bilfinger Berger that the Infraco was extremely well prepared. ... However, there was a desire commercially and politically to move towards mediation notwithstanding tie ltd's (apparently) relatively weak tactical and legal position. That is likely to have a financial implication with the Infraco as the party in the stronger position fairing rather better out of it than might otherwise have been the case." The report also noted (page 7) that CEC's QC had advised that it appeared probable that, if properly investigated, valid grounds of breach could be articulated effectively in due course, and that he had advised the best option was to seek to enforce the contract until grounds of termination could be established. That would, it was noted, place tie in the strongest position with regard to any negotiated settlement.

7) What was your view on these matters (in particular, the strength or weakness of tie's position, the reasons for that, and the relative preparedness of the parties for mediation)?

> I cannot comment on the strengths of the legal case. Commercially though the contract did not seem in tie's favour and strategically the project had stalled significantly so a fresh approach was needed

8) To what extent did the weakness of tie's position come as a surprise to you and other CEC officials?

> I think this was no a huge surprise given the results of DRP and that tie couldn't find a lever to get BBS to begin work.

9) To what extent had elected members been informed about the weakness of tie's position, and the advice of senior counsel about how it might be strengthened?

> I cannot recall.

10) Why was the preferred option to proceed to mediation despite the weakness of tie's position?

> I cannot recall fully, but my view is that finding a solution with the incumbent contractor would have been less risky from a cost perspective than a re-procurement and would deliver the Project.

The report also noted that work had continued to refine the cost estimates on the range of possible outcomes (page 9). The tie view was that BSC had been paid £33m more than the value of work done, which was attributable to the upfront payment of £45.2m made to them. The new procurement cost estimates had been reduced from previous assessments, largely due to advice from Cyril Sweett. It was noted (page 9) that "the current numbers show that delivery of the project to St Andrew Square can still be achieved for £600m (£633.8m - £33.3m) if BSC are not paid the delta between the cost and value of work done, though this will be subject to the negotiations." A table on page 10, showing a range of cost estimates for settling out of court and reprocuring works showed a range of £692m to £773m for the whole of phase 1a, with a range of £621m to £680m for a line to St Andrew Square.

11) Can you explain the passage quoted above, which stated that delivery to St Andrew Square could still be achieved for £600m?

> The passage above was taking into account assumptions on the value of work done v's the cost. An assessment would have been required to conclude on the commercial outcome of this matter. I think there would have been a number of issues to go the way of tie to enable delivery to St Andrew Square for £600m.

12) How realistic did you consider that statement to be at the time?

> I do not think this was particularly realistic.

13) How was it reconciled to the figures in the table at page 10?

> The "QS view" at the bottom of page 10 of £633.8m less the delta of VOWD v's COWD.

14) What was your understanding of the evolution of the cost estimates by this stage?

> I think the cost estimates were becoming more realistic and that tie were acknowledging much more of the potential liabilities that were to their account.

On 24 February 2011 BSC provided its "Project Phoenix Proposal" to complete the line from the Airport to Haymarket, plus certain enabling works in section 1A and work already done in sections 1B, 1C and 1D, for a total price of £449,166,366, subject to a shortened list of Pricing Assumptions (BFB00053258).

15) What was your understanding of, and what were your views on, that proposal?

> I cannot recall my views on that proposal.

16) How did that proposal compare with the proposals made by BSC in Project Carlisle:

a) "Carlisle 1": £433.29m plus €5.8m for a line between the Airport and Princes Street East, with trams (29 July 2010, CEC00183919) (i.e., was Phoenix both more expensive, and shorter in scope?)

> On the face of it yes.

b) "Carlisle 2": £405m plus €5.4m for a line between the Airport and Haymarket, with trams (11 September 2010, TIE00667410) (i.e., was Phoenix more expensive, but with the same scope?)

17) Is it correct to consider the Project Phoenix proposal as more expensive than the Project Carlisle proposals?

On the face of it, however, careful reading of the pricing assumptions and also the view of extension of time could have contributed to this as time had moved since the Carlisle proposal.

18) If so, why had it become more expensive?

All of the parties in the consortiums costs has increasedBB, c£16m, Siemens c£18m, CAF c£10m. CAF I believe was an EOT that wasn't applicable to Carlisle.

19) What was tie/CEC's attitude to that increase in cost?

I cannot recall fully. The view Mr Roberts puts forwards is quite simplistic and doesn't take account of the delay costs from MUDFA and design delay.

(See, e.g., the initial views of Gregor Roberts of tie that, pro rata, this represented 220% of the original price: Report by GHP CEC02084612 is a draft report by GHP dated 25 February 2011. It says it gives

"a quick opinion on the Project Separation costs as prepared in the 'deckchair' PowerPoint presentation by tie, to identify, in headline terms, any costs or 'premiums' not included, together with any other assessment/overview/comment on the credibility of the figures. We have also been asked to provide an assessment/overview of the costs to complete Airport to Haymarket and from Haymarket to St Andrew Square".

It estimated the cost of an agreed separation from BSC, and reprocurement to complete the line to St Andrews Square, of £765.27m (page 7). Further risks, of up to £30m, were also noted. It assessed a cost of £661m (or £700m with a 5% risk factor) for Project Phoenix (page 10).

Richard Jeffrey's email of 2 March 2011 noted that GHP's report

"gives figures for separation and phoenix which give a markedly different perspective to tie's figures", and attached a reconciliation of tie's figures and GHP's: CEC02084602, TIE00109273, TIE00109274). GHP's estimate for Project Phoenix was c. £100m lower than tie's; and their estimate for Separation was c. £145m higher than tie's.

20) Who are GHP, and who were they advising?

Gordon Harris Partnership were a firm of QS's that were working with Tony Rush.

21) What use was made of their report?

I cannot recall other than giving a further view on what the potential costs could be under the scenarios.

22) Do you have any comments on it?

No

23) What were your views on the differences in tie's and GHP's estimates? Did you understand them, and did you have a view on which were the more reliable?

I think the GHP view was more realistic and less clouded by history.

You circulated an updated version of the "deckchair" spreadsheet ("Financial Comparison of Core Possible Outcomes") on 5 March 2011 (TIE00355077, TIE00355078). It took account of Steven [Bell]'swork on exclusion risk, and you said:

"*In a nutshell the tie view of Phoenix to St Andrew Sq is £682m (low)*

£749m (high) once these risk items are built in ... we can debate on

Monday."

24) Can you explain in overview what the spreadsheet shows on tab 1 "Summary of Options", in particular by reference to: the different columns and the totals shown in them; and the boxes in the bottom right hand corner?

The tab shows a number of scenarios and potential outturns for each of these scenarios. The boxes in the bottom right hand corner show a summary of these outcomes against a number of potential terminal points.

25) In what way did these figures influence tie/CEC's approach at the mediation?

They provided a guide as to the potential scenario's by which to measure any potential agreement with BBS.

26) Can you explain in overview what tab 2 shows ("Latest AFC Rec"), in particular by reference to the final line (721).

I believe this shows the anticipated final cost of the project without the

overall of the outstanding commercial claims.

Steven Bell sent you (and others) an email on 7 March 2011 with "*a further refinement for your back page proposal*" (TIE00687328).

27) Can you explain what was meant by "back page" and what relevance it had to the mediation?

I cannot recall this.

On 8 March 2011, Steven Bell forwarded to you papers supplied by BBS (TIE00355120 and its attachments, TIE00355121 to TIE00355127).

TIE00355121 to TIE00355127 should be TIE00355121 to TIE00355125

28) Broadly, what were these, and what use was made of them at the mediation?

I cannot fully recall but believe these may have been issues that BBS. Wished to bundle into the off street price for settlement of historic issues.

Mediation – March 2011

Mediation talks took place at Mar Hall between 8 and 12 March 2011. Tie prepared a mediation statement (BFB00053300) as did BSC (BFB00053260).

We understand that a document entitled "ETN Mediation – Without Prejudice – Mar Hall Agreed Key Points of Principle" was signed by the parties on 10 March 2011 (CEC02084685) (the principles of which were then incorporated into a Heads of Terms document (CEC02084685, from page 2)).

1) Were you present at the mediation? If so, what role did you play and what advice, if any, did you provide?

I was present at mediation. I attended some of the meetings during the process and tracked the potential outturn figures, working with the Finance Director (CEC) to undertaken some contingency planning around funding.

2) What discussion, and negotiation, took place between the parties during the mediation? Was there, for example, a series of offers and counter-offers?

There were a number of meetings on specific issues, there were a series of offers and counter offers over the period.

3) Were there issues about which there was consensus at the mediation?

If so, what were they? Yes as heads of terms on a way forward were agreed.

4) What issues were the subject of greatest contention at the mediation?

The issue of pricing assumptions especially in relation to the off-street section.

5) To what extent, if at all, did tie/CEC's position change over the course of the mediation?

I cannot recall the exact change but there was a shift.

6) To what extent, if at all, did BSC's position change over the course of the mediation?

The BSC position did change, in particular to, in principal, agreement of a lump sum for the off street section, thereby dropping pricing assumptions for this section.

7) Were there any particularly significant developments or breakthroughs? If so, what were they?

In principal, Agreement on a lump sum price for the off street section and a Commitment to look at an agreed cost of the on street section.

8) Were there any particularly significant concessions made? If so,

what were they?

As above.

9) When were the Heads of Terms agreed i.e. were these terms agreed at the mediation or in the weeks and months following the mediation?

Heads of terms were agreed towards the end of the mediation week.

10) Why was the agreement divided into two parts, the off-street works (in relation to which a price of £362.5m was agreed) and the on-street works (in relation to which a price remained to be agreed)?

It was acknowledges that ground conditions and utilities still presented a significant risk to the on street section.

11) How (if at all) did the settlement agreed at mediation relate to the Project Phoenix offer? For example, did it improve upon it in any material sense and, if so, how?

It improved the offer as a number of the pricing assumptions and

exclusions dropped from the off street section.

12) What were your views (and those of other CEC officers) on the outcome of the mediation?

My view was that it was a very progressive week that the project could

Build on and relationships with the contractor had improved.

13) To what extent did the outcome reflect your expectations prior to the

mediation?

I think the outcome was positive and I hadn't been of the view prior that

A positive outcome would have been achieved that week.

14) Did you (and others at the mediation) consider this to be a good deal? Please explain your answer.

I think it was a decent deal. The settlement and the off street price swept

away historic claims, took away exclusions and a high degree of risk for that section and provided a platform to build from.

15) Were there any matters which, in your view, precluded tie/CEC from doing a better deal? If so, what were they, and how might they have been avoided?

I do not believe so.

16) What did parties envisage would happen after the mediation to give effect to what had been agreed, and within what timescale?

The agreement made at Mar Hall needed to be addressed by the legal

Teams. I cannot recall the timescales.

17) When, and by what means, were members of the Council first advised of the agreement reached at Mar Hall?

I cannot recall.

You are noted on the cover as the joint author, with Colin Smith, of a report dated 27 May 2012, "Edinburgh Tram Project, Review of Progress and Management of the Project, January 2011 to June 2012" (WED00000134).

18) Why was this report prepared, and what was it used for?

The report provided a record of progress on the project and provided an account of key aspects of the project over that time including the governance arrangements for the project.

19) The report includes (at chapter 7, from _233) a

"*Financial Briefing Report*", which includes a summary of the mediation

(especially at 7.2 to 7.7; the appendices referred to are at _243 onwards).

20) Do you accept that as an accurate summary of the matters it reports?

Yes.

21) In particular, can you comment on the following remarks:

a) that the dominant cause of delay was MUDFA utility diversions (7.2);

Based on discussions I held over this period with legal and commercial advisors it became clear the dominant cause of delay on the project was down to the presence of the MUDFA works and BBS inability to access site due to this.

b) that the analysis underlying tie's preferred strategy of settling with Infraco and reprocuring the project was flawed (7.4);

Tie had ignored a number of costs that would have become apparent in a re-procurement activity.

c) that tie's preference went against all of the advice that was given by independent advisers at the time (7.6)?

Advice from GHP as an example.

22) Can you explain what is shown at _248 (in particular, the right hand

column)?

It appears to be an extract from the Project Pitchfork workstream. Sue Bruce's opening statement to the mediation is at CEC02084575. It noted that BBS's overall price had increased by £38m between Project Carlisle to Project Phoenix (page 13).

23) What was your understanding of that price increase?

My understanding was that there was additional costs of delay.

24) To what was the increase attributable?

I cannot recall.

25) How, if at all, was that addressed at the mediation?

To an extent as mediation swept away historic claims. Ms Bruce also noted (page 13) that Siemens' price in Project Phoenix was for £136.5m, "a 100% increase despite virtually no change".

26) What was your understanding of that price increase?

I cannot recall

27) To what was the increase attributable?

As above

28) How, if at all, was that addressed at the mediation?

I cannot recall.

CEC02084577 is a note of Jochen Keysburg and Richard Walker's opening statements at the Mar Hall mediation.

At 5.1, Richard Walker is reported as having said that "*essentially tie are the problem*".

29) To what extent did you, and others on the CEC team, agree with that?

> I think this was a very simplistic view. The problems were more complex that just tie.

At 9, he set out his overview that tie had, on awarding Infraco, decided to accept the risks arising from the incomplete utilities works,design and third party agreements.

30) To what extent did you, and others on the tie and CEC teams at the mediation, accept that view?

> Tie would not accept that view.

At section 21, he is noted as having presented a film on problems between Lothian Road and Haymarket. It is noted as having identified utilities as the key problem, with 368 utility conflicts having been identified as a non-exhaustive list.

31) How does the summary noted there compare with your understanding of the impact of utilities on the on-street works at the time of the mediation?

> Tie advised CEC that most of the utility works had been undertaken. This was proven not to be the case later in the project.

32) Were there other factors which precluded BSC from agreeing a fixed price for the on-street works? If so, what were they?

> Ground conditions.

Tie's mediation statement, and its related exhibits (CEC02084530 to CEC02084561), specified a number of legal arguments in support of its position.

33) Which of these did you consider to have had the greatest significance for the cost and duration of the project?

> Design development and PA 1.

34) How strong did you (and other members of the tie/CEC team) consider the arguments to be?

> Not very strong, otherwise what would tie not have had more success
>
> of proving this through adjudication.

35) To what extent had the investigations and analysis necessary to support a concluded view on the strength of tie's legal position been carried out?

I cannot comment.

36) If a full investigation had not been carried out, how practicable (in terms of the cost and time required) would it have been to do so?

I cannot comment.

37) Tie never tested any of its legal arguments in court. Why was that?

I cannot comment.

38) To what extent were tie/CEC prepared seriously to contemplate litigation as an alternative to a negotiated outcome? To what extent did BSC believe that?

I do not believe CEC wanted a litigation. I cannot comment on the others.

39) To what extent was there discussion (and, if relevant, concession) at the mediation about the various legal disputes which separated the parties?

I cannot recall a discussion to this effect.

40) To what extent did those legal arguments serve to reduce the price which was agreed at and after the mediation?

I cannot recall.

Adjudication decisions

By the time of the Mar Hall mediation, there had been a number of adjudication decisions on the project. BSC considered these to have decided in their favour certain key issues of principle about the various disputes under the contract (see BSC's mediation statement, CEC02084511 at 8.1). Tie emphasised that the adjudication decisions were binding only within their own scope, and had no general application (see tie's mediation statement, BFB00053300 at 4.3 and 4.4).

41) To what extent was there discussion about the adjudication decisions at the mediation?

I cannot recall the extent of the discussion on adjudications.

42) To what extent did tie and/or CEC privately hold the view that the adjudication decisions reflected badly on their prospects of success with their arguments in litigation?

I cannot comment for tie. I think CEC did not view the adjudication results as having a positive impact on any argument for litigation.

43) To what extent did that influence the outcome of the mediation?

I think CEC's preferred option was to find a resolution with infraco.

A letter from the consortium to CEC dated 8 March 2010 (CEC02084513) noted, at page 3, that tie and BSC had discussed using the adjudication decisions as precedents for the resolution of similar disputes, but that tie had failed to acknowledge or accept the rulings. That suggests that at some stage tie had changed their attitude towards the adjudication decisions.

44) Do you agree that they had changed their attitude in that way? Why had that happened?

I cannot recall.

Remediable termination notices and underperformance warning notices

Tie had, prior to the mediation, served 10 Remediable Termination Notices and 3 Underperformance Warning Notices on BSC. BSC's mediation statement noted (7.5) that tie's failure to act on its assertion that it was entitled to terminate the Infraco contract had "seriously compromised the credibility of its position".

45) Do you know why tie had not in fact taken further steps towards terminating the Infraco contract?

I do not.

46) To what extent do you agree with the statement quoted above?

I agree to an extent.

47) To what extent were tie/CEC prepared, by the time of the mediation, seriously to contemplate termination of the Infraco contract as an alternative to a negotiated outcome? To what extent did BSC believe that?

I cannot comment on BSC view. I don't believe CEC thought termination was the best outcome for the city or the project.

48) To what extent was there discussion of that option at the mediation?

Only that tie seemed in favour of that option.

49) To what extent did the existence of that option serve to reduce the price which was agreed at and after the mediation?

I cannot recall.

The Off Street Works Price

The Heads of Terms included an agreed price of £362.5m for the Off Street Works (broadly, the airport to Haymarket, certain enabling works and the Prioritised Works).

50) What was the basis for that figure?

Settlement of historic claims and a lump sum price for the works to go.

51) How (if at all) was it broken down?

There was an breakdown to an extent in the updated phoenix proposal.

52) How was it agreed at the mediation?

Exchange back and forth until agreement was reached.

53) What steps did tie/CEC take to ensure that it represented the best value available?

CEC pushed hard to get agreement on the best deal we thought we

could get taking on board the advice of advisors.

Two versions of a cost summary, which was to be an appendix to a report to the Governance, Risk and Best Value committee dated 6 November 2012, noted features of the Off Street Works Price:

BFB00101644 was circulated by Colin Smith on 2 November 2011. His cover email (BFB00101642; other attachment, BFB00101643) noted his concerns that analysis of the spreadsheet could reveal the value of settlements, the value of exclusions from the original ontract, and that tie had not recognised or reported on these matters. The spreadsheet itself noted:

• (Note 1, line 79) that, "as members are aware from the confidential appendix to the 25 August 2011 Council Report", the c. £360m price was for:

o The off street work

o Settlement of claims in relation to the off street section

o Settlement of claims in relation to the on street section

o Settlement of claims in relation to system wide work; and

o "In order to ascertain an allocation of that figure for the purposes of this summary we have calculated that:

a) £204m relates to off street work;

b) £25m relates to settlement of claims in relation to off street;

c) £82m relates to settlement of claims in relation to on street; and

d) £49m relates to settlement in relation to system wide work"

CEC01952969 was circulated by you on 5 November 2012 (CEC01952968; other attachment, CEC01952970). On Tab 1 ("numbers"), a figure of £130.7m is given for the BBS off-street works element of the budget post-settlement agreement. On Tab 2 ("notes"), note 6 reconciles the £130.7m figure to the off street works price of £362.5m, by deducting from the off street works price:

o £2.44m for Forth Ports 'descoping'

o £82m for Extension of Time claims

o £49m for the MoV 4 mobilisation and materials payments

o £98.35m for "system wide costs from cert 47"

54) Who prepared these notes?

I prepared these notes.

55) Were these notes included in the versions actually made available to the committee? If not, why not?

Because they were my working notes. I was undertaking a number of briefings with members at this time to explain the numbers and take any questions.

56) Can you reconcile the different breakdowns quoted above from the two spreadsheets?

On a COWD basis yes.

57) To what extent do they accurately break down the off-street price?

The provide an accurate view taking into account materiality.

58) To what extent do these spreadsheets accurately (or approximately) record the extent to which the off street works price of £362.5m included payment to settle claims which had accrued under Infraco by the date of the Mar Hall mediation?

They provide an approximation within a scale of materiality.

59) BFB00101644 suggests that the total settlement which CEC/tie agreed to pay in respect of those claims was at least £156m (£25m + £82m +£49m). Do you agree?

60) Is that a net figure, taking account of any claims which tie had accrued under the Infraco contract?

Yes it was the new settlement of claims.

61) If you disagree that the settlement at Mar Hall amounted to tie/CEC accepting £156m as the net value of claims accruing to BSC under the Infraco contract, please explain:

a) What you consider to be the correct figure; and

I do not disagree.

b) Why matters were reported as they were in these cost summaries.

There was an appetite for the politicians to see the numbers presented in a different was under different groupings. That Is why this presentation was produced and used consistently until the end of the project.

62) Can you explain the reference to "system wide costs from cert 47" (quoted above from CEC01952969), and what the £98.35m allocated to that was for?

Prelim costs attributable to the whole line.

63) Was any report given to CEC members giving details of the settlement value of claims under Infraco (such as those noted in the preceding question)? If so, when and how? If not, why not?

The report template includes the settlement assessment and was included in a number of reports to Council.

64) If, as note 1 to BFB00101644 suggests, members were told in the "confidential appendix to the 25 August 2011 council report", about the constituent parts of the £360m off-street price, can you identify the precise document reference?

No I cannot recall.

The On Street Works Target Price

For the On Street Works (i.e., Haymarket to St Andrew Square), the parties agreed a target price of £39m (BFB00053262, clauses 6.1, 6.3).

65) Why was it not possible to agree a fixed sum for those works?

Because of the extent of risk that was becoming apparent In relation to remaining utilities works in the main.

66) What was the basis for the £39m figure?

I cannot recall.

67) How (if at all) was it broken down?

I cannot recall.

68) How was it agreed at the mediation?

The figure was given as an estimated cost of completion that would be required to be agreed through any forthcoming Agreement.

The spreadsheet you circulated on 5 November 2012 (CEC01952969, attached (with CEC01952970) to CEC01952968) suggests that only £9.5m of work had been done on the on street section prior to the settlement agreement, and that all of that work had been done under the PSSA (see tab 1, cell B7, and tab 2, note 1). That suggests no on street work had been successfully completed under the original Infraco contract.

69) Is it correct that no onstreet work had been successfully completed under the original Infraco contract?

That would be correct.

Design and trackwork for line beyond that which has been built

70) To what extent did the price agreed after Mar Hall include payment for the design of and materials for the section from York Place to Newhaven?

It included the design and materials.

71) Was that included in either the on or the off-street works prices?

This was included in the off street works price.

72) If so, is that documented anywhere?

WED00000134

73) To what extent was the design completed for parts of the network beyond that which has been built?

The design was in place. I cannot recall how much of it had consent.

74) How much of the infrastructure does CEC now own for a line beyond that which has been built?

To my knowledge a large amount of the tracks etc which were vested under the MOV.

Reconciling the Mar Hall agreement with the previous proposals (Project Phoenix and Project Carlisle)

75) Can you reconcile the agreement reached at Mar Hall with the various proposals which preceded it (to explain the key differences between them), being:

a) BSC's Project Carlisle proposal dated 29 July 2010 (CEC00183919);

No. the Mar Hall agreement was a holistic settlement and did not Include a number of provisional sums/pricing assumptions for example.

b) BSC's revised Project Carlisle proposal dated 11 September 2010 (TIE00667410);

As above.

c) BSC's Project Phoenix Price Proposal (BFB00053258)?

As above.

One key difference between the Project Phoenix proposal price (£449m) and the Off Street Works price agreed at Mar Hall (£362.5m) is that the former included £65m for the tram supply, but the latter did not.

76) Do you agree?

Yes.

Excluding the cost of the tram supply, the Project Phoenix Proposal price was as follows (see BFB00053258_10):

• Bilfinger - £231.8m

• Siemens - £136.8m

• SDS - £15.1m

• Total - £383.7m

77) Do you agree?

Yes.

78) To what extent is that £383.7m figure directly comparable with the Off Street Works price agreed at Mar Hall (£362.5m)?

I don't think it is given the changes to PA's/exclusions as an example.

79) What accounts for the differences between them?

As above.

80) Are there any documents which reconcile them?

I cannot recall.

81) What are the other key differences apart from price (if any) between the Project Phoenix proposal and the deal done at Mar Hall?

As mentioned, a lump sum price for off street and the exclusions point.

Excluding the cost of the tram supply, the Project Carlisle price proposal of 29 July 2010 was as follows (CEC00183919_1 and _11):

• Bilfinger - £234.3m

• Siemens - £126.9m

• SDS - £16.3m

• Total - £377.5m

82) Do you agree?

Correct.

83) To what extent is that £377.7m figure directly comparable with the

Off Street Works price agreed at Mar Hall (£362.5m) and the £383.7m element from the Project Phoenix proposal discussed above?

As above.

84) What accounts for the differences between them?

As above.

85) Are there any documents which reconcile them?

No.

86) What are the other key differences apart from price (if any) between that Project Carlisle proposal, the Project Phoenix proposal and the deal done at Mar Hall?

As stated, the price fixity for off street, the settlement of historic claims and the point on exclusions.

BSC made a revised Project Carlisle proposal on 11 September 2011 (TIE00667410). The equivalent price elements to the above appear to be as follows:

• Bilfinger - £215.3m

• Siemens - £118.6m

• SDS - £15.8m

• Total - £349.7m

87) Do you agree?

Yes.

88) To what extent is that £349.7m figure directly comparable with the Off Street Works price agreed at Mar Hall (£362.5m), the £383.7m element from the Project Phoenix proposal discussed above and the £377.7m figure from the original Project Carlisle proposal?

As above.

89) What accounts for the differences between them?

As above, plus time.

90) Are there any documents which reconcile them?

No.

91) What are the other key differences apart from price (if any) between this revised Project Carlisle proposal and the others discussed above?

As above.

Minute of Variation 4

On 20 May 2011, tie, Bilfinger, Siemens and CAF entered into Minute of Variation 4 in respect of the prioritised works (CEC01731817). It gave priority to certain works including the depot, the mini-test track, Haymarket Yards and the Princes Street remedial works.

Mobilisation payment of £49m

Clauses 6, 7 and 8 of Minute of Variation 4 provide for the payment by tie to BSC, in instalments, of a sum totalling £49m.

A report by Colin Smith, entitled Report on Progress since Completion of Heads of Terms to 8 April 2011 (7 April 2011, WED00000134 from _6) noted, at 5.2.1 (_19) that there had been discussion at Mar Hall on the cost of remobilising for the project and that at workshops on mobilisation costs a

"difference of view had been clearly expressed ..., with the BBS requirement noted as £49m and tie's opinion at £19m. ... BBS confirmed that they could not mobilise on the basis of a £19m payment. After discussion it was agreed to take a proposal to the Principals."

The proposal was for payment of £49m (part of the off-street price of £362.5m) in instalments (£27m, £9m and three payments totalling £13m).

In an email dated 7 April 2011 (TIE00687649), Richard Jeffrey had expressed concern about the £49m figure, and said the tie team believed a "more reasonable and supportable, but still generous number is £19m".

92) Can you explain this arrangement?

> The MOV was a variation to the infraco contract to deal with the restart of the project, prioritised works and vesting of materials.

93) What was its purpose?

> To restart the project.

94) What were the payments for?

> Incremental vesting of materials, , mobilisation and prioritised works

95) How was the agreement to pay a mobilisation payment reconciled with the fact that, in tie/CEC's view at least, BBS had been overpaid preliminaries prior to the mediation?

> Things has moved on, there were new commercial arrangements in place and also tie at this point were not fully aware of all the discussions.

96) What was your understanding of Richard Jeffrey's concerns, and why were they overridden?

> Richard Jeffrey had not taken account of vesting of materials as an example and was not party to the discussions with BBS.

Automatic termination of MoV 4

MoV 4 (CEC01731817) provided (clause 3.3) that the Infraco contract would terminate automatically on 1 September 2011 if the settlement agreement was not entered into for reasons associated with funding and, in that event, that the parties would enter into discussions on mutually acceptable terms to deal with the consequences of that termination.

In an email about that (24 May 2011, TIE00690857), Colin Smith said:

"*Just to confirm BBS will advise on their view of a separation cost. The Team CEC last night agreed to ensure probity; all number should be subject to a third party QS review of the numbers would suggest three national practices with no previous involvement*" [sic.]

97) Please explain this arrangement.

CEC at this point had not had approval from Council on the new legal, commercial and financial package for the whole project. Therefore it made sense that there was agreement on mutual termination should approval for the full project not come to pass.

98) What figures did BBS supply, and what use was made of them?

The separation figures were included in the options that were presented

to Council.

99) In particular, what influence did they have on CEC's decision to fund the extra cost of building the line to St Andrews Square?

The costs of separation and the premium for reprocurement and were additional uncertainty were significantly greater than the cost of progressing with Infraco. Therefore way a riskier and costlier option.

100) Was a quantity surveying practice engaged to review those figures; if so, which one(s) and what view did they express?

Yes, Faithful and Gould.

101) If they produced a report, where is that to be found?

WED00000134

102) Are there any other matters, relating to the mediation at Mar Hall, which you think are of importance to the inquiry's terms of reference?

Not that I could recall.

103) If so, please explain what they are and why you think they are of importance.

104) Do you consider that any documents material to the mediation at Mar Hall, and the preparation for it, and about which you are aware, have not been made available to you with this note?

No

105) If so, what are they and where are they likely to be found?

Reports to CEC, summer 2011, and the Settlement Agreement

Report to CEC, 16 May 2011

On 16 May 2011, the Council was given an update (CEC01914650; minutes, CEC01891389_2).

1) What were members told at this stage about the Mar Hall agreement?

They would have been briefed by senior officers.

Were they advised of the sum agreed for the off-street works and the

target price for the on-street works (and, if not, why not)?

Yes.

2) Had members been advised of the outcome of Mar Hall before this meeting of Council? If so, when and how? If not, why not?

Yes.

Report to CEC, 30 June 2011

In June 2011,

• McGrigors produced a draft report, "Report on Certain Issues concerning Edinburgh Tram Project – Options to York Place" (USB00000384). (That report, and its various appendices, appear to have been sent to you on 29 June 2011: CEC01942217 to CEC01942225.)

• Atkins produced a report for CEC (CEC02085600). A further report was produced by Atkins in July 2011 (CEC01914308).

3) Why were these reports instructed?

To present an independent view on project liabilities and the business plan.

4) To what extent did these reports inform CEC's decision making as to which option to follow?

This provided some of the numbers that underpinned the scenarios open to CEC.

5) What were your views, in general, on the reports?

I thought they were very helpful and informative.

On 30 June 2011, the Council was given a further report, advising on the options for the tram project (CEC02044271; minutes, CEC02083232_22).

It was recommended that, subject to funding, the Council pursue the line from the Airport to St Andrew Square/York Place, at an estimated cost of between £725m and £773m, depending on the risk allowance (3.42).Due to commercial sensitivity, members were being briefed confidentially (2.2). The funding gap was noted (4.1 onwards).

6) Why had the line from the airport to St Andrew Square/York Place been identified as the best option?

It was the most financially viable from a capex and operating perspective.

7) How was that received by members?

On the whole, positively.

We understand that members received an appendix of confidential information in relation to this meeting (e.g., paragraphs 3.33, 3.37, 3.39, 3.42 of the report).

8) What documents were included in that appendix?

There was a date room that included the breakdown of the capex estimates for each scenario, including the supporting reports and presentations on the business case.

9) When and how did members receive it?

Presentational briefing in the data room with time allocated for them to read the reports that formed the data room and time for questions afterwards.

10) Did it include the McGrigors draft report of 29 June 2011 and its appendices (USB00000384, CEC01942217 to CEC01942225)? Given that report is dated the day before the meeting, did members have sufficient time to read and understand it?

The data room briefings were planned in advance. Yes all the documents were included in the data room.

11) To your knowledge, were any other documents included in the confidential appendix, including the following:

• HG Consulting (Colin Smith) "Settlement Figure Analysis", 22 June

2011, CEC02085602

• Atkins, City of Edinburgh Council, Independent Review, 22 June

2011, CEC02085600

• Spreadsheets entitled "Edinburgh Tram Budget Settlement

Agreement 24-06-11", CEC02085604, CEC02085605

• Table entitled "Edinburgh Tram Project Mar Hall Budget Appraisal

Based on Amounts Certified to Infraco on 6 June 2011"

(e.g., CEC02085613; password, 'marhall')

• "Key terms of revised contractual arrangements" dated 23 June

2011 (CEC02085616)

• CEC02085588 to CEC02085601, CEC02085603, CEC02085608, CEC02085609, CEC02085610, CEC02085614

Yes I believe these documents were included in the data room.

12) Whether or not those documents were included in the confidential appendix for members, please identify (and explain the contents of) any of them you were familiar with and which were pertinent to decision-making on the project.

The documents helped underpin, provide the back up and the third party assurance that the capex estimates were robust and provided a view on the funding and revenue requirement.

The table (CEC02085613) shows proposed cost budgets for each of several options for the project. Our understanding is that, of those budgets, the "settlement agreement" option at £773.4m is (as shown on that table) by far the least expensive of the options which would produce a tram line.

13) Is that understanding correct?

14) Please explain what this document is and what if any influence it had on decision-making.

The document CEC02085613 just provides file data details.

The June report to Council noted (3.72) that the decision to build the line in phases meant that certain reinstatement works would have to be done between Picardy Place and Newhaven. It was said that this would be funded primarily be reprioritising the capital roads maintenance programme. The cost was estimated to be between £2.3m and £3.4m.

15) What were the total costs?

I cannot recall.

16) Did this form part of the total tram project costs of £776m? If not, how was it in fact funded?

No. funded from CEC capex budget.

In relation to the note by HG Consulting, "Settlement Figure Analysis", 22 June 2011,

CEC02085602:

17) What is this, and what was it used for?

> This was used alongside the F&G reports as an assessment of potential settlement with infraco under separation.

18) Please explain the £50m, £100m and £80m settlement figures quoted in the report, and the use that was made of them?

> I do not have the expertise to explain these, it was a QS view.

The McGrigors report (USB00000384, 11.14), the HG Consulting Note (CEC02085602) and the Council Report of 30 June (3.37) all refer to work by Cyril Sweett.

19) Are you able to confirm if TIE00097226, and its attachments (TIE00097227, TIE00097228, TIE00097229) are that work?

20) What was your understanding of the Cyril Sweett report and

what it was used for?

> The Cyril Sweett report in turn founds upon an Extension of Time Risk Assessment by Acutus dated 4 May 2011 (see TIE00097227, paragraph 2.1).

21) Were you familiar with that report? What was your understanding of it?

> The Cyril Sweet report was commissioned by tie and was a reference document for the McGrigors report. Tie had asked for an EOT assessment.

22) To what extent were the cost forecasts available to CEC at the time of the June report to Council calculated or estimated with precision? See, e.g. the various disclaimers:

• The HG Consulting note (CEC02085602), paragraphs 1 and 3.

• The McGrigors report (CEC02085607), 1.5 to 1.7, 2.8 and 2.9; and the spreadsheet (CEC02085606, at the top).

• Atkins Independent Review (CEC02085600): (_4):

"Faithful+Gould has not had access to the contract documents nor had the time to scrutinise at a molecular level the build-up of costs/prices supplied"; (_5): "*At present, given the current development of discussions and presentation by Infraco of* *claims for reimbursement, it does not seem possible to identify a likely level of tie liability."*

• Cyril Sweett, Extension of Time Commercial Report (TIE00097227), 1.0.

• Acutus Extension of Time Risk Assessment dated 4 May 2011, was described by Cyril Sweett thus: "The information provided by Acutus on the potential Extension of Time liability for Tie Ltd was based upon their judgment and general project awareness and not upon a completed or fully detailed analysis" (TIE00097227, 2.1).

23) How robust did you consider these reports and cost estimates to be, as a basis for the decision which CEC had to take? Please explain your answer.

> The information all helped to build a view of the potential cost and allowed McGrigors to build their report, which I considered to be a key document.

24) As far as you know, was any further or more detailed analysis carried out into the costs likely to be incurred under the various options?

> There were a number of meetings between myself and McGrigors questioning the various commercial people to help inform the view.

25) Was any consideration given to doing that? If not, why not?

> As above.

26) What elements of the overall estimates involved the greatest uncertainty (in terms of their impact on cost)?

> MUDFA delay in terms of impact and separation/reprocurement for uncertainty.

27) When forecasting the costs that tie/CEC might face under the different scenarios, to what extent was a prudent approach taken (that is, to err on the side of overestimating the costs rather than underestimating them)?

> A high and low view was taken to create a range. The settlement under MOV5 was significantly lower than any other scenario other than mothballing.

28) Was that less of a feature in the estimate of the cost of the settlement agreement option, which to a large extent was based on a known sum (i.e., the off street price of £362.5m)?

> To a degree. There were other elements of the project that still
>
> required a view to be taken on.

29) Was there a risk that the forecast costs of the other options (being affected by more uncertainty) were more likely to be over-estimates?

> I don't think so, the range was there to address that potential.

30) To what extent, if at all, was that taken into account in deciding whether, compared to the alternatives, the settlement agreement represented a good deal?

As above.

The McGrigors draft report, on the face of it, contains a comprehensive summary of the main disputes which existed under the Infraco contract and which might be expected to arise in the future under the different scenarios (see the version dated 29 June 2011, CEC01942218 (and what appear to be its appendices: CEC01942219, CEC01942220, CEC01942221, CEC01942222, CEC01942223, CEC01942224 and CEC01942225)).

31) As far as you are aware, is there any more up to date or complete analysis of these issues?

No.

32) To what extent, if any, do you take issue with the summary it presents?

I do not take issue with it.

33) To what extent was there consensus, or acceptance, within the tie/CEC team at the time on the views expressed in this report about tie's likely liability under the various options?

CEC and tie had a different view.

The McGrigors report includes discussion about the £45.2m mobilisation payment that tie had paid to BSC early in the project. McGrigors advised that the prudent approach would be to assume that sum would not be recoverable in the event that the Infraco contract was terminated (see CEC01942218, section 12, and appendix (CEC01942220)). They also expressed the view that, if the Infraco works were not completed, tie might not get the value they considered they were entitled to in return for the mobilisation payment.

34) What is your understanding of this issue?

I agreed with McGrigors advice.

35) Whilst Infraco was not terminated, the scope of works was reduced. What work was done to assess the extent to which the mobilisation payment in those circumstances represented an overpayment by tie?

I do not think the two were connected.

36) To what extent (if at all) was tie given credit for any such overpayment in setting the sums to be paid under the settlement agreement?

Any issue relating to this was part of the global settlement.

37) Did tie/CEC get full credit, in the £776m total outturn cost of the project, for the £42.5m payment tie had made?

No.

38) To what extent had the perceived non-recoverability of this sum affected tie/CEC's negotiating position at Mar Hall (e.g., by making termination of the contract comparatively less attractive)?

I do not believe this was a huge factor.

At paragraph 3.42 of the June report to CEC, the total costs of building a line from the airport to St Andrew Square, under the terms negotiated at mediation, were estimated between £725m and £773m, depending on the risk allowance. These figures also appear in CEC02085604, a spreadsheet, the first tab of which is labelled "Post Colin Smith discussion" (see especially the different figures for "Contingency and Specified Risk"). (The password is 'marhall'.)39) Does the spreadsheet show the breakdown of the figures referred to in paragraph 3.42 of the report?

Yes

40) Paragraph 3.42 refers to an on-street price having been agreed. What was that price? (For example, CEC02085604 notes a figure of £22.5m for the onstreet works. How does that relate to the on-street works target price agreed at Mar Hall, of £39m (BFB00053262, clause 6.3)?)

This estimate had been firmed up in the subsequent months through engagement with Infraco and their sub contractors.

41) Please explain the difference between the two risk assessment figures in CEC02085604 (with reference to the second tab of the spreadsheet, if appropriate).

The difference was the additional contingency for 6 month delay.

42) What figure(s) (if any) were reported to the councillors at that stage about the likely costs of the other options, being (a) separation, and (b) continuing under the Infraco contract?

This information was provided as part of the briefing process.

Under MoV 4 (CEC01731817, dated 20 May 2011), clause 3.3 and 3.4, a deadline of 1 July 2011 was set for the parties to enter into the settlement agreement (referred to there as MoV 5) and for CEC's funding to be confirmed.

43) To what extent did this place the Council members under time pressure to reach their decision on 30 June 2011?

The Council meeting was planned in as a milestone in achieving 1 July.

44) How long had they had to consider matters, including the information in the confidential appendix, by the date of that meeting?

> I cannot recall when the briefings and data rooms were held but it was well in advance of the meeting.

45) Why was the date for the meeting fixed so late, relative to the deadline in MoV 4?

> I cannot recall

46) Are you able to comment on the extent to which this time pressure affected the members' decision-making?

> I do not believe it did.

You emailed Dennis Murray of tie on 8 July 2011 (TIE00688914), referring to a

"£14m add on Siemens would like to build into the on street price ... It doesn't sound like something I'd like to pay".

47) What was your understanding of this issue?

> I cannot fully recall.

48) How was it resolved?

> I do not believe this was paid.

49) Were elected members consulted?

> I cannot recall.

In an email dated 21 August 2011 (CEC01733343), you expressed the view that:

"Historically the delay to design was not solely infraco's but a symptom of tie's role in the design approval process (where they had no locus) and frankly CEC' failure to delivered a joined up approvals process."

50) Can you explain this comment, and what it was based on?

> Tie tried to control the approvals process but have no locus in the process. CEC were also not working efficiently prior to mediation on consents. This changed post mediation.

On 24 August 2011, the parties entered into a Memorandum of Understanding (MoU 1 – BFB00097699). It noted in the preamble that whilst the parties had proposed to enter into a settlement agreement on or before 30 June 2011, they had been unable to do so; and had entered into this Memorandum of Understanding to extend the time for doing so until 31 August 2011. (Bilfinger and Siemens had signed an earlier draft on 30 June 2011 (BFB00097076).)

51) Why had it not been possible to conclude negotiations by then?

> I think the time it was taking to agree matters and taking into account CEC's approval process.

The memorandum noted (schedule Part 4) that BBS had provided CEC with:

• a Target On Street Works Price of £52,608,034 (BBUK: £33,322,586; Siemens: £19,285,448)

• Termination amounts payable if funding was not arranged before the termination date (BBUK £27,761,517 and Siemens £38,488,963).

52) What was the basis for the Target on Street Works Price quoted in this agreement?

> I cannot recall.

53) What was your view, and what were the views of others about it?

> I cannot recall.

54) What was done in response?

> I cannot recall.

55) What was the purpose of the proposed termination payments?

> I cannot recall.

56) On what basis had they been calculated?

> I do not know.

57) What was your view, and what were the views of others, about them?

> I cannot recall.

58) What was done in response? (See, e.g., schedule part 4 to MoU 2, 2 September 2011, TIE00899947, which suggests they had by that date been finally agreed.)

> I cannot recall.

Report to CEC, 25 August 2011

On 25 August 2011, the Council was given a further update by way of a report (TRS00011725). The report noted that a detailed review of the key project risks had been carried out, validated by Faithful & Gould (2.3, 3.5). A summary of the Faithful & Gould review and of key legal risks was to be shared on a confidential basis with members (3.7, 3.16). The total budget requirement was now £776m (being a revised base budget of £742m and a quantified risk allowance of £34m), the change from the June budget largely being a move from the risk allowance into the base budget resulting from greater certainty on the cost of on-street works, greater knowledge of utility issues and further completion of the design. The new budget was £231m above the hitherto approved budget of £545m (3.13, 3.16, 4.1), which it was proposed should be funded by prudential borrowing. It was noted that, in the event of project cancellation, there would be a one year revenue impact of over £180m, which assumed the Transport Scotland grant would not have to be repaid (4.6).

The Council rejected the funding proposals set out in the report for the line to St Andrew Square/York Place, decided that option had not been sufficiently de-risked, and decided that the proposal with the least risk was to build a line from the airport to Haymarket (minutes, CEC02083194_4).

59) Can you explain the £180m revenue impact which it was said would arise if the project was cancelled?

> The asset would not have been constructed, therefore the cost could not have been capitalised, hence written off to revenue.

60) Please explain your understanding of the change in the budget and the basis on which the level of the risk allowance had been changed. There was a movement in the risk allowance for Factors that had now been included in the cost estimates from Infraco for the on street works.

61) What was the greater certainty on the cost of the on-street works, and where had it come from?

> Movement into the base budget from contingency built into the previous numbers. (The figures are not reported in the August report itself.)

62) What documents were supplied to members in relation to their confidential briefing referred to in the report?

> The members would have been provided all the supporting documents in the data room.

The Council report refers to a confidential summary of a report dated 19 August 2011 by Faithful and Gould (TRS00011725, 3.16). See CEC02083979 for the report

itself.

63) Is F&G's recommendation of a budget of £742.9m (paragraph 2.1 of their report) the basis for the budget in the CEC August report (paragraph 3.13)? the build of the budget was done by CEC and includingassistance with F&G.

a) The "Budget Summary & Risk Model" at Appendix A of the Faithful & Gould report states a grand total of £753.54m, which does not tie in with the recommended budget of £742.9m.

Can you explain that discrepancy?

I cannot recall.

- (We note that a spreadsheet you sent to Gary Easton on 28 September 2011 (CEC01726998, CEC01726999, password "marhall"), in response to his request for the "final F&G report and build up to the £776m" (at tab "High Level Budget"), appears very similar to Appendix A, but comes out at the figures for the recommended budget (a grand total of £742.92m, and a risk figure of £34.5m).
- To the extent relevant, please explain in overview what this document is and what it shows?

A breakdown of the updated budget.

b) Can you explain the budget changes shown on tab 2 (CEC01726999, "Summary"), especially the increase in the estimate for the cost of the on street works and project management costs?

On street included in cell E14. PM cell E28.

64) Was the F&G report made available to council members, so far as you know? (See, e.g., paragraph 3.16 of the CEC August report: "...A confidential schedule summarising of [sic.] the findings of Faithful and Gould Review has been prepared andwill be shared on a confidential basis with Elected Members", suggesting the report itself was not given to them.)

Included in data room sessions

65) Do you agree that the F&G report did not scrutinise the off street works price (£362.5m) (see paragraph 3.3 of the F&G report)? How (if at all) was that figure scrutinised?

I agree. The figure was settled.

66) What did you understand by the qualifications in the F&G report, e.g. at paragraphs 1.3 and 2.1, and their impact on the value of F&G's opinion?

F&G tested a number of inputs as part of theAssessment. I was comfortable with this.

• 1.3: "due to time constraints ... the review relied on previously quantified items and project data"

• 2.1: "This figure [i.e. the £742.9m budget] is made up of various budgets from various sources and Faithful & Gould are relying on these budgets being correct as time does not permit the final checking of these budgets".

67) In light of these qualifications, how robust a basis, in your view, was the F&G report for setting a budget?

I was fine with this as there was a lot of work had gone Into the preparation of a number of the inputs.

68) F&G made comments to the effect that Bilfinger and Siemens were in a strong negotiating position and had submitted grossly inflated prices for the on-street works (totalling £53.4m) (see especially paragraphs 2.3, 2.6 – 2.8 and 4.2).

a) Can you comment on this?

I think they were risk averse prices but these did reduce by £10m in the more recent version sent to Gary Easton.

b) Do you agree with these observations?

As above

c) Were members made aware of them? If so, when and how?

The final number changed.

69) The Target Price for the on-street works was, in the end, £47.38m (see Settlement Agreement, appendix A to schedule part 45 (CEC02085627_11; the main body of the Settlement Agreement is at CEC02085622) but had increased from the £39m target price referred to in the post-mediation Heads of Terms.

Can you explain the movement in the price?

I cannot recall.

70) To what extent, in your view, was the final cost of the on-street works inflated? Please explain your answer.

I cannot recall.

The report noted that further utilities investigations had been carried out which had identified approximately 550potential utility conflicts (3.9).

71) Why had these investigations not been carried out, and these potential utility conflicts identified, at a much earlier stage? Ought they to have been?

I cannot recall.

Paragraph 3.20 of the August report to Council noted an agreement at mediation that each consortium member would prepare a sealed envelope estimate of their costs for walking away from the project; and that further discussions now indicated that the cost of this would be £80m less than the cost of unilateral separation previously reported.

72) Can you explain this in more detail?

I cannot comment on this.

Council meeting 2 September 2011

Following the Council's decision on 25 August 2011 not to pursue a line to St Andrew Square / York Place, but instead to stop the line at Haymarket, Transport Scotland wrote to Sue Bruce (letter dated 30 August 2011, CEC01891495_11) threatening to withdraw grant funding support.

Ms Bruce's report to the Council dated 2 September 2011 (CEC01891495) noted the implications of that loss of funding, and included an Appendix summarising steps taken following the Council's decision of 25 August. These included meeting with BBS on 29 August 2011. The Appendix noted that, as a result of the decision of 25 August, additional costs would be incurred (demobilisation, prolongation and lost profit; the possibility of a new switch at Haymarket; and revision of the Employer's Requirements).

The Council agreed to pursue the option to build the line to St Andrew Square/York Place as set out in the report of 30 June 2011 and to the funding options set out in the report of 25 August 2011 (minutes, CEC02083154).

By a Memorandum of Understanding "MoU 2"; TIE00899947), the parties (in response to the council decision of 25 August 2011 had):

• Recorded that "Infraco has an entitlement to additional costs and time as a result", which the parties would agree and record in the settlement agreement (clause 3.1).

• Extended the funding satisfaction date to 2 September 2011 and the timescale for concluding negotiations to 14 September 2011.

• Made other changes to MoV 4 (clauses 3.2 and 3.3).

73) To what extent were you involved in, or aware of, these events?

I was aware of the events and was involved in some of

The meetings.

74) What was discussed at the meeting of 29 August?

I do not know as I wasn't in attendance.

75) What information did CEC have about the extent of the likely cost implications described in the report?

I cannot recall.

76) What information, if any, was given to Councillors about it?

I cannot recall.

77) What were the full cost and time consequences of the Council's decision of 25 August 2011?

I cannot recall.

78) What was your understanding of the effect of the changes specified in clauses 3.2 and 3.3?

Updating the previous document to take account of the Council decision.

79) To what extent were the Council members under time pressure to reach their decision on 2 September 2011?

I cannot recall.

80) How long had they had to consider matters, including Sue Bruce's report, by the date of that meeting?

Most of what was contained in the 25 August report stood but for the additional costs of delay. There was also several briefings in that time period.

81) Are you able to comment on the extent to which any such time pressure affected the members' decision-making?

I do not believe this was an issue.

Settlement agreement, 15 September 2011

On 15 September 2011, the parties executed a Settlement Agreement (BFB00005464, or CEC02085622). It was (except in respect of specified exceptions) in full and final settlement of all claims arising out of or in connection with the Infraco Contract and Infraco Works, arising out of events occurringprior to 15 September 2011. The exceptions included claims relating to the Prioritised Works; entitlements listed in schedule part E (CEC02085641 – essentially ones which were included in the On Street Price, or where pricing was not possible due to lack of detailed design and scope information); and BBS's claim for payment (agreed in principle, but not on quantum) arising from the prolongation of the Infraco works between revisions 3A and 4 of the programme.

Compromise of claims (clause 3 of the Settlement Agreement)

82) To what extent had an attempt been made to value all of the claims (by Infraco against tie, and tie against Infraco) which were being settled by this agreement?

This had been taken account of in the McGrigors report.

83) What element of the price agreed in this agreement represented the claims which were being settled?

There was an assessment of this in the spreadsheet CEC01952969

84) Are those matters documented anywhere?

As above.

85) What was the combined value of the claims which were excluded from the settlement? Can you explain why, in broad terms, they were so excluded?

C£2m. I cannot recall why they were excluded.

Pricing provisions following Settlement Agreement

The Settlement Agreement introduced a new, revised schedule part 45 into the Infraco contract, which dealt with the price of the on street works (CEC02085627 and CEC02085628). It also introduced a new, revised schedule part 4 into the Infraco contract, which dealt generally with pricing (CEC02085642). It provided that the Contract Price was £413,102,911, including the Off Street Works Price of £362.5m and the On Street Works Contract Price of £47,384,510.

The On Street Works Contract Price was subject to variation under the terms of schedule part 45 (Appendix A, CEC02085627_11).

It is apparent from comparing the new schedule part 4 of Infraco, introduced by the Settlement Agreement (CEC02085642), with the original version that all of the pricing assumptions have been removed. Thus, they no longer applied to the off street works; schedule part 45 introduced new pricing assumptions which applied to the on street works.

Schedule Part 45 includes the concept of the On Street Works Trigger Date, which occurred if Infraco's claims for payment or extensions of time exceeded (by specified margins) what had been certified.

86) Can you briefly explain this revised treatment of the pricing assumptions, and the importance it had in resolving the parties' dispute?

I cannot recall.

87) Can you explain the 'trigger date' arrangement, why it had been agreed, whether it was in fact triggered and if so, how it operated in practice?

I cannot recall.

Negotiation of on-street price

88) Can you explain how the target sum of £47.3m for the on-street works stated in the Settlement Agreement came to be agreed?

In various meetings between the parties.

89) What steps did tie/CEC take to ensure that the price represented the best value available?

There was an exercise to compare against market rates.

See, for example, the following (to which reference should be made insofar as relevant):

• The target price of £39m stated in the post-Mar Hall Heads of Terms (BFB00053262)

• The figure of £22.5m stated in the Mar Hall Budget Appraisal which (appears to have) formed part of the confidential appendix to the June 2011 report to CEC

(CEC02085608)

• The figure of £52.6m quoted in schedule part 4 of the First Memorandum of Understanding as having been supplied by BBS to CEC (being made up of

£33,322,586 for Bilfinger and £19,285,448 for Siemens) (BFB00097076, 30 June 2011)

• TIE00688781, 8 July 2011: Dennis Murray's email explaining Siemens' quote of £20m for their part of the on-street works, only £4m of which represented the cost of the work. The explanation appeared to involve Siemens recouping a price deduction they had agreed at Mar Hall – their view being that "the reduction [agreed at Mar Hall] was on the understanding that the cost of any programme shortfall was to be picked up in the onstreet Target Sum price".

• TIE00688781, 11 July 2011: Steven Bell's reply: *"I don't believe for a minute that the principals agreed that Siemens merely move £14m of their original "claim" to* *the Target Sum portion to enable a fixed price to be agreed for Airport to Haymarket."*

• TIE00691220, 15 July 2011, Steven Bell: *"basically they are just at it in our view. I hope to get Dave to hold firm but do not know what Colin may have promised. He was very quiet and a little uncomfortable when this was discussed in general forum with Siemens and Bilfinger"*

• TIE00688885, Vic Emery (draft), 21 July 2011 *"The Target cost [for the on-street works] is generally agreed to be £14 - £18 million too high and is driven*

primarily by Siemens who have admitted that they are trying to recover their pre-Mar Hall position for Airport to Haymarket and they see the only way to do this is to load the on-street price…".

• TIE00688914, Sue Bruce, 24 July 2011: *"We need to dig in on this one. It is a contradiction with the overt agreement."*

• TIE00100987 (and attachments, TIE00100988, TIE00100989), Alfred Brandenburger, 2 August 2011:revised Siemens on street works price of £14.48m

• TIE00100990, Fiona Dunn, 3 August 2011: *"the original submission was £20,160k it is now £14,480k – tie's expectation is that the value should be approx. £9,500k"*

• TIE00691348, 8 August 2011: exchange between Dennis Murray of tie and Axel Eickhorn of Siemens

• TIE00691423, 17 August 2011, Steven Bell: *"Suggest there is still a £10 - £15m over statement of contract price but client should hold some/much of that as contingency."*

TIE00691424, 16 August 2011, Steven Bell email attaching report by Dennis Murray (TIE00691425, TIE00691426) to *help "fully inform the debate on how to best conclude a fair on street price…". The DM report noted the latest price proposal to be c. £47.7m. It included observations that the price was still too high, but concluded that at a commercial meeting on 10 August Infraco confirmed that "the price was the price and if we did not like it then we could find another contractor".*

• The discussion about the on-street works price in the Faithful & Gould report dated 19 August 2011 and discussed in the report to CEC in August 2011 (CEC01727000), in particular:

o The £53.4m figure quoted at 4.2.2.1

o The £41m figure proposed by F&G at 4.2.4.1

o The budget at Appendix 1, which at _24 notes (in relation to the on-street price) "Discussion on Pricing: CS to go back to contractor; view to be taken on holding contingency"

CEC02084577 is a note of Richard Walker's opening statement at the Mar Hall mediation. At section 20, he discusses the on street works, and referred to the "*OSSA*" (i.e, the On Street Supplementary Agreement). He is noted as having said *that "the on street works could have been commenced a year ago, however there was still the possibility that the previous arrangement could be looked at, tweaked slightly and used as a bolt on to the Project Phoenix proposal"*.

90) What did you understand him to mean by this?

I do not know.

91) Do you agree with the point he is making?

I do not.

92) Why were the on-street works not carried out under OSSA?

I cannot comment.

93) What delay and/ or cost implications resulted from that?

There were significant delays due to a number of reasons.

94) What benefits, if any, did tie/CEC derive from that delay?

None.

95) To what extent was the agreement ultimately reached on the on-street works similar to, or different from, the OSSA?

Operation of the project after the Settlement Agreement

1) In broad overview, how did the project progress after the Mar Hall mediation, with particular regard to:

a) Design – its completion, and the obtaining of all relevant approvals and consents; co locating the CEC team on site with Infraco focussing item by item was significant.

b) Change: the extent of it, the reasons for it, the contractual change procedure, and its impact on time and cost;

c) Utility conflicts: their existence, the parties' reaction to them, and their impact on time and cost;

d) Differences and disagreements between the parties: the extent to which these arose, how they were addressed and how they were resolved; and their impact on time and cost.

2) What, in your view, explained any improvement?

Strong governance, weekly control meetings on the key issues highlighted above, close working relationships, co-location, trust and the role of the independent certifier.

• See, e.g., the minutes of the Joint Project Forum on 30 May 2012 (CEC01891023), at 10: "*Dr Keysberg highlighted the good progress and the high quality of work on the Project over the previous three months. This Project had been one of the worst projects for co-operation but within the short period since the settlement agreement it had become an example of one of BB's best projects for cooperation. Dr Schneppendahl agreed with Dr Keysberg and stated that the Project's progress had been astonishing since the settlement agreement.*"

Cost of programme change from revision 3A to revision 4

In December 2011, the Independent Certifier issued his opinion on the change between revision 3A and revision 4 of the project programme (CEC02031937). He decided that the contract sum should be increased by £4,541,161.

3) What was the cause of this programme change?

The Council decision on 25 August.

4) How was the extra cost funded (e.g., out of the contingency, or through

reductions in scope)?

Contingency, however, value engineering savings were always jointly assessed.

22 week programme saving

We understand that potential savings were identified in cost engineering workshops, and that the largest (£12.9m and 22 weeks on the completion date) was derived from removing embargoes and introducing revised traffic management arrangements. We also understand that saving to have been made, but then used up to accommodate extra utility diversion works; and that there was then a disagreement with BBS over whether they were entitled in those circumstances to an incentive payment.

5) What is your understanding of this matter, and how it was resolved?

I cannot recall any misunderstanding. Essentially CEC had bought 22 weeks of delay at 50% as a result of this initiative and BBS were entitled to c£6.5m.

See, e.g.:

• Joint Project Forum on 25 January 2012 (minutes, BFB00099215 at 5.1; report at CEC01890999_11; title "Edinburgh Trams Contract, Baseline Project Instructions 2012"; with BBS's valuation of their entitlement from _24

• Joint Project Forum Minutes, 22 February 2012, CEC01942252 at 5.1

• Joint Project Forum 21 March 2012, CEC01942260, at 5

• Joint Project Forum 25 April 2012, CEC01891022 at 4.4

• Joint Project Forum, 30 June 2012, CEC01891032 at 4.4

30 June 2012 should be 20 June 2012

• Joint Project Forum, 20 August 2013, CEC02043793 at 3

• Turner & Townsend Report No 29, January 2014, CEC02072604_8: CEC had confirmed that £6.45m should be paid in full in respect of the 22 weeks cost engineering

Utilities

6) To what extent did the need to divert utilities Delay the infrastructure works and increase costs during the post-Mar Hall period? (In answering this, please take account of the cost to CEC of the 22-week time-bank and the cost of its erosion.)

It caused delay but the time balanced it out.

7) To what extent (if any) did the cost and delay in connection with utilities works in the period after Mar Hall derive from poor work under the MUDFA contract?

Significantly in Haymarket and Shandwick Place where there was significant re work.

See, e.g., the executive summary in the Turner & Townsend Progress Report (30 January 2012, CEC01889907)

•Joint Project Forum minutes, 31 October 2012 (CEC01891068, paragraph 3.4):

8) What investigations and/or remedies were pursued in respect of that?

McGrigors did a legal analysis and I can recall Carillion being pursued.

9) What was their outcome?

I cannot recall.

See, e.g.,

• your email exchange with Brandon Nolan in February 2012 (CEC01942045)

• The note of a meeting with McGrigors and Faithful & Gould on 19 April 2012 (CEC01942089)

Miscellaneous

In an email to you dated 24 October 2012 (CEC01933582), Gary Easton discussed the valuation of de-scoped work and said "there is possibly £4m in the overall price which we have no visibility on."

10) Can you explain this issue, and what (if any) impact it had on the overall cost of the project?

I cannot recall this issue.

An email to Gary Easton from you (CEC) dated 15 August 2013 (CEC01944047) refers to him having, in 2012, "declared a potential saving on prelims (if Infraco played ball) of c. £11m from memory".

11) Can you explain this point, and (if relevant) the attachment Gary Easton sent in reply (CEC01944048)?

I cannot fully recall but this may relate to potential early completion and hand back of prelims.

Total project costs

A report by Sue Bruce, CEC Chief Executive, to CEC dated 25 September 2014 (CEC02083198_36) noted, at 3.10.4:

"In 2011 the largest single contract, Infraco, was subject to a new initiative, the creation by the Council and Infraco of a "notional final account" agreement. This allowed full transparency of costs and the creation of a "rolling" actual and forecast value of works since 2011. The purpose of this initiative was to ensure early settlement of the Infraco final account and to create greater accuracy of final account forecasting."

3.10.5 notes:

"...in August 2014 agreement was reached on the Infraco settlement in the sum of £427,238,356.15."

1) Please explain in overview the process of preparing the final account.

This was primarily done with T&T and the Independent Certifier.

2) What was meant by the 'notional' final account?

Agreement on the parts of the account at that time, which was used to track subsequent change.

The report listed the main settled costs in Appendix 1 (_39), totalling £776m. It also noted (CEC02083198, at 3.10.2) that land and property costs, Scottish Water costs and Network Rail costs were in the final stages of financial settlement.

3) What documents exist showing ***in definitive and final form*** the total costs of the project, broken down?

4) To what extent were you involved in preparing them?

I cannot recall the documents that showed this information.

The report notes (_37) that "The financial implications of this report will be reported in full to elected members in the form of a confidential data room."

5) What were the financial implications?

From recollection it was the status of the notional final account.

6) What material was contained in the data room?

The report also notes that "there were no bonus or acceleration payments made to the Contractors for early finish ahead of the revised programme" (3.10.6).

7) Is that consistent with BBS having been paid £6.45m for the 22-week programme saving (or 'time bank')?

Yes this, the time bank payment was effectively a 50% discount on delay costs.

We understand that Turner & Townsend supplied CEC with monthly progress reports, which included detailed cost summaries, e.g. WED00000092, dated 21 June 2014, which we understand to be their final project cost report.

8) In overview, what use was made of these reports by CEC?

These reports were reviewed monthly with T&T on the status of the Project.

9) Were reports such as this generally accepted as accurate summaries of the matters which fall within their scope?

In general yes. Although there were always points of debate.

It is apparent from page 1 that the budget managed by T&T was c. £500m (see column A).

10) What elements of the £776m budget fell outside T&T's remit, and who managed them?

The budget T&T managed was from a point in time and did not include the costs prior to their involvement in the project. There were also aspects of the project relating to operation, CEC costs and third party costs they didn't control.

11) Is WED00000092 the basis for the figures reported in the report to Council of 25 September 2014, referred to above? If not, what is?

That's correct.

The Infraco final account statement supplied by Turner & Townsend, dated 16 September 2014 (WED00000101), states a total final account for the BSC consortium of £427,206,309.52.

12) How does that reconcile with the figure of £427,238,356.15 reported to Council of 25 September 2014?

I cannot recall what the marginal difference was.

With reference to _1 and _3 of Turner & Townsend's final Infraco cost report dated 21 June 2014 (WED00000092) (the "Project Summary" and "Infraco Cost Report Commercial Summary"):

13) Please explain in overview what these show?

They show the summary for the project costs T&T reported on and the summary for infraco only.

14) What was the basis for the 'original budget' listed in column A, and when and by whom was it fixed?

I cannot recall fully though this would have been derived from the CEC budget papers.

15) What, in broad terms, is the explanation for the increases between the budget incolumn A and the figures in column K ('anticipated final cost')?

In the main, change.

16) Please explain in general terms the third party contributions which are deducted in column L?.

There were a number of third parties that had work done on their behalf by the project, which we would recoup the funding for.

17) Please explain in overview what is shown in the tables relating to change (_4 to _24). Do these feed into the tables at _61 and _62, and if so, how?

These tables summed to the summary tables.

18) Please explain in overview what is shown in the table at _25 ("Opportunities").

These were a number of cost recoveries from other projects, parties of savings.

19) Please explain in overview what is shown in the table at _27 ("Credits and Contributions")?

Mainly third party contributions.

20) Please explain what is shown in the "change summary" (_29).

This is a summary of change from the infraco cost report.

21) Briefly, please explain the Tramco tables (_35 onwards).

This is a summary of the main cost elements of the tramco Contract.

WED00000100 is a Turner & Townsend's change control register dated 16 September 2014.

22) Do you accept this as the final and definitive register of changes under the Infraco contract dating from the period after the Mar Hall? If not, can you supply (or direct us to) the final and definitive one?

Yes, accepted.

23) Can you explain the relationship between this register and the change tables in the cost report (at _4 to _24)?

The change register would feed through to the change sections of the cost report.

24) Please explain the distinction between changes under clause 80 and changes under schedule 45 (see the eighth column).

I cannot recall.

25) By reference to the column headed "reason for change", can you please explain your understanding of the main reasons for change in the post-mediation period?

Primarily design related change or utilities related.

The Project Summary in the cost report (WED00000092_1) appears to show (in column B) the way in which the risk allowance of £32.7m was spent (or overspent, at£36.1m) with, for example:

- An increase of £11.2m in the cost of the off-street works, attributable to approved contract change;
- An increase of £4.2m in the cost of the on-street works, attributable to approved contract change
- An increase of £16.8m in the cost of utility works, post-mediation.

The Commercial summary (_3) appears to show a breakdown in those figures (e.g., columns B and E).

26) Is our understanding correct?

Correct

27) In overview, what caused these cost increases?

Design change, 22 week time bank, delay in signing and direct costs of utility diversions.

28) What observation, if any, do you have about that?

None.

A cost summary prepared as appendix 2 for the April 2014 report to the CEC Governance Risk and Best Value Committee (CEC02074619) presents the figures in a different way.

For example,

• The total off street costs are reported as £132m (cf. £366m in the Turner & Townsend report), but there are large figures for "Settlement of claims and contractde-risk" (£131m) and "System wide" (£98.35m).

29) Can you explain the difference in presentation?

The T&T off street section included historic claims that were not off street. This was broken out for the GRBV reports.

30) What is signified by the entries for "Settlement of claims and contract de-risk" (£131m) and "System wide" (£98.35m)?

This is an assessment of the pre mediation claims for a number of issues, EOT, design, MUDFA delay etc.

The notes to the spreadsheet provide the detail.

The outturn cost of £776m (as reported to the Council on 25 September 2014 (CEC02083198, Appendix 1)) is precisely the budget which had been proposed to the Council in the August 2011 report (CEC01914650). Thus, the base budget of £742m and the quantified risk allowance of £34m had, in their entirety, been spent.

31) Can you comment, with particular reference to the likelihood of a contingency, once set, being spent.

I think in the end the project outturned around £1m under the £776m. it is not uncommon for a project to spend the contingency, especially one so complex.

32) Is there a document which reconciles the total final expenditure to the budgets set

a) at financial close in May 2008 and

b) following the Mar Hall mediation, at the Council meeting in September 2011?

> I cannot recall.

Costs and Funding

Capital cost estimates – Final Business Case

The estimated capital cost of phase 1a (Airport to Newhaven) in the December 2007 Final Business Case was £498m.

1) By whom, and how, had that estimate been arrived at?

> I do not know how this had been arrived at. Tie produced this.

2) What input, if any, did you or other Council officers have in arriving at, or checking, that estimate?

> I was not involved in the project at the time the FBC numbers Were arrived at.

Scottish Government funding

The majority of the funds for the Edinburgh Tram Project were provided by the Scottish Government.

3) How was the funding from the Scottish Government paid to the Council and, in turn, to tie? E.g., what triggered these payments and how were they accounted for?

> There was a draw down of funding from CEC on a monthly basis in the form of a letter backed up by the monthly report. This sum, plus the CEC contribution was then invoiced by tie to CEC and the funds paid.

CEC01246681 (30 May 2008) is an example of a payment application from CEC addressed to Transport Scotland.

4) Please explain in overview what role these played in the processing of funding from Transport Scotland.

> Transport Scotland would review the application then approve the funds being paid to CEC.

5) Please explain in overview what information they contained and the source of that information.

A split of cost of work done against each of the project budget lines. The source of the information was primarily tie's ledger.

Compliance with grant terms

6) Did the various problems with the project result in the Council being in breach of any conditions of the grant and, if so, how were any breaches dealt with? See, e.g.,your e-mail to Donald McGougan dated 27 July 2010 (CEC00247434).

There were no breaches.

CEC's contribution of £45m – funding arrangements

The Final Business Case envisaged that the Council would contribute £45m towards phase 1a.

7) How was it originally envisaged that the Council's contribution of £45m would be funded?

A mix of developers s75 contributions, capital receipts,Gifting of CEC land and the CEC capital investment programme.

8) Did that change over time and, if so, in what way?

Due to the economic slowdown a number of theDevelopers contributions did not materialise. CEC's contribution of £45m - developer contributions

We understand that approximately £25m of CEC's £45m contribution was originally to be funded by developer contributions paid under conditions attached to planning permission; and that around £18m of that was expected to come from development in the Forth Ports area. See, e.g.

• Highlight Report to the CEC Chief Executive's Interna Planning Group, CEC01246990_11, 11 June 2008;

• Your report to the Tram Project Board, 19 November 2008,

CEC01053731_21.

9) What was the impact on this source of funding of the decision to end the line at York Place (e.g., in relation to CEC's ability to charge such contributions, or to retain contributions already made)?

The developers contribution frameworks allowed the council to collect the funds over a 20 year time Horizon. Therefore the funds could still be collected if the line was built out in that horizon. The bigger issue was that the economic slowdown in 2008changed the development plans and put this funding at risk.

10) What additional costs have been incurred as a result, e.g. through extra prudential borrowing?

I cannot recall the total additional sum that was required to fund any shortfall.

See also, e.g.:

• Paper on CEC's funding contribution dated 1 July 2010, CEC00267453, CEC00267454

• Refreshed Business Case, August 2010 (CEC01891570, 5.21)

• Email from David Cooper (2012, CEC01938990, CEC01938991) which refers to CEC "*struggling to continue to apply the tram policy down Leith Walk due to the fact that the current contract only delivers tram to York Place (we have already lost one appeal decision*". The email attaches a paper which notes that the new developer for the Caltongate development was not willing to pay the £583,431 tram contribution which the original developer had undertaken to pay.

• Email to you dated 29 January 2013, referring to possible repayment of tram-related planning contributions (CEC01938834)

• A [draft] report to the CEC planning committee on 16 May 2013 (CEC02025729, CEC02025728).

CEC's contribution of £231m – funding

In the event, the Council required to make an additional contribution of approximately £231m.

11) How was (and is) the Council's additional contribution funded? What is its cost, both in total and on an annual basis?

> This was funded through prudential borrowing with an annual cost of £2m on the capex of £231m.

12) How are the capital and interest costs of the Council's total borrowing for the tram project reflected in the Council's annual budget and accounts?

> The cost of investment would be reflected in the annual capex budget and the interest costs reflected in the revenue budget.

13) What are the consequences of the additional funding required by the Council, including the effect on the Council's budget and the sums available to spend on other projects and services (both in the past, and on an ongoing basis)?

> The additional cost would in effect be an opportunityCost of investment in another project.

14) What alternatives have been considered?

See, e.g.,

• CEC00380150, CEC00380151, a paper you sent to Stewart McGarrity on 23 April 2010, and CEC00245574, the email from Hugh Dunn which sets the context

• The report to CEC dated 30 June 2011, paragraph 3.48 onwards, and section 4 (CEC02044271)

• The report to CEC dated 25 August 2011, paragraphs 3.22 to 3.44 and 4.2 (TRS00011725). NB especially 3.30, which notes that, applying a discount rate, the cumulative revenue cost of the additional funding over the 30 year loan term would be reduced from £459m to £291m.

Other options around sale and leaseback and bank funding were considered but were not as cheap as what was available to CEC under the PWLB framework.

15) Aside from the impact of increased borrowing on CEC's budgets, what effects (if any) do you consider the cost overrun of the project to have had?

Reputational damage and economic damage to some of Edinburgh's businesses.VAT

16) In overview, can you explain the treatment of VAT on tram project costs?

17) To what extent does the £776m final cost figure reported to Council include VAT? It didn't include VAT.

18) To what extent were tie/CEC able to recover input VAT on the project costs? How was this achieved given the use of tie as a conduit for payments to contractors?

CEC paid all the payments to contractors and were able to recover input VAT.

Surplus trams

We understand that, given the truncation of the line to York Place, a number of trams became surplus to requirements (see, e.g., the tram update report to Council, 16 May 2011 (CEC01914650).

19) What was your understanding of this issue?

I agree that there was a surplus number of trams approx. 7-10 trams.

20) To what extent were you involved in the attempts to realise value from the surplus trams, whether by sale, lease or otherwise?

There were a number of attempts to sell or lease the surplus rolling stock without success.

21) So far as you are aware, what attempts were made and what was the outcome?

There were attempts in the UK, Scandinavia, Australia and also in working with CAF.

See, e.g.:

• Paras 3.41 onwards of the CEC report dated 25 August 2011 (TRS00011725)

• Joint Project Forum on 25 January 2012 (CEC01890999_55, "Response from Jacobs re Tram Re-deployment")

• Minutes of the Joint Project Forum, 27 February 2013, CEC01891088, paragraph 9.

Truncation of line to York Place – implications for revenue

22) To what extent has shortening the line (i.e., terminating it at York Place instead of Newhaven) had on revenue (and profit) generated by tram operations?

Leith Walk was a significant trip generator for tram especially at the foot of Leith walk as a major public transport interchange. I cannot recall the full revenue Impact but would approximate £4m p/a.

Tram-related costs not included in tram budget

23) To what extent did CEC incur costs (whether expenditure to third parties or the use of internal resources) associated with the tram project which are not accounted for in the total tram project costs reported to Council (i.e., the £776m figure)?

There were internal staff costs associated with the project that were relatively small. There was also reinstatement works in the Forth ports area that would have been in the region of c£3.4m.

24) Can you supply a full statement of any such costs?

See, e.g.,: • External adviser costs and increasing CEC internal costs referred to in your paper of 1 June 2011 (CEC01928035)

• The cost of reinstatement between York Place and Newhaven (e.g., June 2011 report to CEC, CEC02044271, paragraph 3.72)

• Lost parking revenue from George Street as a result of Princes Street remedial works (e.g., August 2011 report to CEC, TRS00011725, paragraph 4.4)

• Lost parking revenue from gifting land to the project for construction (CEC01053743_2, CEC01053744, CEC01053745)

I cannot supply a full statement of such costs.

Parliamentary costs

The cost of promoting the Parliamentary Bills appears to have been c. £17m (see CEC00373384).

25) What were the total costs incurred by CEC and/or tie in relation to the Parliamentary process for the two tram acts?

> I believe it was c£17m though this pre dates my time on the project.

26) Was that funded out of the £500m Transport Scotland funding (see Rebecca Andrew's email, (CEC01541278), 18 October 2007, paragraph 6)? If not, how was it funded?

> This was funded under a separate grant award.

27) Was it included in the total cost of the tram project reported to Council (£776m)?

> No.

Cancellation of EARL

A paper discussed at the Finance, Commercial and Legal subcommittee on 8 February 2011 about increased project management staff costs (TIE00109242, TIE00109243) noted that the cancellation of the EARL project meant that certain costs previously split between the EARL and tram budgets had to be borne by the tram budget.

25) What impact did the cancellation of EARL have on the costs of the tram project?

> There would have been split of overhead across 2 projects rather than one. I do not know what the total financial implications were.

CEC staff costs

We understand that Council staff worked on the tram project: (i) while remaining employed by CEC, (ii) while seconded to TIE and (iii) while employed by TIE.

A Discussion Paper, "*CEC Resources and Funding*", *(CEC01053743; attached to email dated 21 November 2008, CEC01053741) noted (page 2), "Normal practice for CEC staff working on any Capital project would result in their time being recharged to the project, an exception has been made in relation to tram".*

See also, e.g., your paper to the TPB dated 9 January 2008 (CEC01363703_9).

26) Who ultimately bore the costs for CEC staff, throughout the project, in each of the different situations noted above?

There was a core team (Tram Co-ordination team) that were initially wholly funded by the project. c£450k. there were also Council officers working on roads, structures and planning consents as well asTRO's that were funded. C£630k.

27) Were the costs in each of these different situations "recharged" in full to tie?

Yes they were.

28) Were the costs of CEC staff in each of these different situations included in the total cost of the tram project reported to Council (£776m)? What is the amount of any such costs not included?

They were covered in the costs prior to mediation. There was a policy change post mediation that CEC would absorb these costs.

An email you sent to Mark Turley on 16 January 2013 (CEC01930306) refers to a view that *"CEC/TS and LB should no longer charge the tram project with people costs".*

29) Can you explain this proposal?

As above. The Chief Exec made a policy decision that CEC would absorb these costs.

30) What was its outcome?

They were no longer funded by the project.

31) Did it lead to tram-related staff costs no longer being charged to the tram budget?

Correct.

Costs of winding down tie

32) What were the total costs of winding down tie (including, for example, redundancy payments and the financing of any pension deficit)?

C£2.7m.

33) Did these costs form part of the total tram cost reported to council (£776m)? What is the amount of any such costs not included?

Yes. No costs were not included.

See, e.g.:

- The August 2011 report to CEC, TRS00011725, 3.57

• Email from Edward Foster to you, 13 June 2012, CEC01938541, which refers to "tie VR" costs of £2.56m, and the attached note (CEC01938542)

Rates relief, and other support for those affected by the tram project

There is reference to rates relief being given to businesses disrupted by the tram project.

See, e.g.,

• CEC report dated 25 August 2011, CEC01914650, 3.70;

• The minutes of the CEC meeting on 2 September 2011, CEC02083154, which noted additional revenue support equivalent to £445,000 per annum for the 'Open for Business' programme. See also the report, CEC01891495, paragraph 8.

• Joint Project Forum, 22 February 2012, CEC01942252 at 8.1;

• Minutes of the Tram Briefing Meeting, 28 August 2012, CEC02015435, paragraph 5.

34) What arrangements were made for compensating businesses and others affected by the tram project?

The District Valuer allowed rates relief to Businesses within a certain proximity to the tram works and there was a small business Compensation scheme in place.

35) What was their total cost (including, for example, rates foregone as a consequence of rates relief)?

I cannot recall the cost of rates forgone.the CEC support amounted to c£450k p/a st its peak.

36) Did these costs form part of the total tram cost reported to Council (£776m)? What is the amount of any such costs not included?

Yes. I cannot recall the total sum.

Utilities - Betterment

It was reported that the tram-related utility works improved the city's utilities infrastructure, such that the need for maintenance and replacement in the future would be reduced (e.g., the MUDFA update to the Tram Sub-Committee dated 22 March 2010 (CEC01891483)). That update noted that the betterment should lead to utility companies contributing several million pounds to the cost (paragraph 9).

In an email dated 15 April 2013 (CEC01938450, CEC01938451), you explained that the betterment recovery from utility companies was likely to be several million pounds less than tie had estimated (c. £3.4m instead of £10.8m). You cited damage done to ScottishWater assets by tie's works ("legacy issues") as a major factor.

37) What is the basis on which betterment payments were due to CEC?

> There was a percentage of the cost of the asset enhancement charged to the utility.

38) What amount was ultimately obtained by tie/CEC for betterment? Was that accounted for in the tram budget (i.e., did it help reduce the overall expenditure to £776m)?

> I cannot recall.

39) Can you explain the factors which led to a much lower betterment contribution from the utility companies than tie had estimated?

Because tie under the MUDFA contract had not done the work to the required standard and in the case of Scottish Water assets had actually damaged some assets.

40) What remedies, if any, did tie or CEC pursue to recover the shortfall in betterment recovery which resulted from poor quality works? If no remedies were pursued, what was the reason for that?

> There were discussions with the contractors. However I was not party to the detail and I cannot recall any recovery.

Recovery of costs from advisers, third parties etc

41) What attempts have been made, or are being made, to recover tram project costs from others?

> This was a regular workstream.

42) To what extent have any such attempts been successful?

> Yes there were monies received.

43) To what extent have these been taken intoaccount in the £776m total cost reported to Council?

> Approximately £7m.

Litigation against tie and DLA

NB – we do not by these questions intend to ask about matters which are protected by legal advice or litigation privilege and, to the extent that they are, you should not answer them. You may wish to take legal advice on that matter.

We understand that CEC commenced litigation against both tie and DLA, and that tie commenced litigation against DLA.

44) What is the present status of these actions?

I do not know.

45) What is/was the legal basis for the claims being made and what remedies are/were sought?

I cannot fully comment but failure to alert CEC to the risks that we were signing up to at the outset.

Impact on public

1) What role (if any) did you have in dealing with the effects on the public and other

stakeholders of the delays in the project?

Minimal.

2) Can you describe in overview what those effects were?

General inconvenience, traffic delays.

3) What consequences, if any beyond those already discussed in previous answers, do you consider to have arisen from the fact the line stops at York Place instead of Newhaven?

Loss of potential economic catalyst.

Project Management, Governance and Contractors

NB – there is no need in this section to repeat answers given in the section above, although it would be helpful if you could refer to any such answers that are relevant.

Tie

In relation to tie:

1) To what extent do you consider tie to have been responsible for managing and co-ordinating the different contracts and works (including, in particular, the design, utilities and Infraco works) and the interfaces between these contracts and works?

That's what their role was.

2) Which body or organisation do you consider was ultimately responsible for ensuring that the contracts and works were properly managed, including the interface between the different contracts and works?

Tie pre mediation.

3) Did you have any concerns at any stage in relation to tie's project management of the tram project or the performance of any of tie's senior personnel or Board members?

Yes, sometimes significant concerns.

CEC

In relation to CEC:

4) How were important matters relating to the tram project reported by tie to CEC (including by whom and to whom)?

Through various reporting and Governance forums but often informally.

5) How were the views and requirements of CEC fed back to tie?

In writing or informal conversation.

6) How did CEC exercise control over tie?

There was an operating agreement in place but it was not effective or acted on actively enough.

7) Did they have sufficient control over tie? Please explain your answer.

Yes, we were the sole shareholders, however, I do not think the control was strong enough.

8) Did you have any concerns at any stage in relation to the performance of senior CEC officials or councillors?

Yes.

9) To what extent was full and accurate reporting to councillors inhibited, e.g. by

a) the need to avoid undermining tie's commercial position significantly.

b) the uncertainties affecting the project

i) whilst the contracts were being negotiated and

ii) whilst the disputes were live?

To a small degree I would say as there were a number of unknown factors.

10) Were there any other factors which inhibited full and accurate reporting?

the underlying transparency of information from tie.

See, e.g.,

- Dave Anderson's email of 21 July 2009 (CEC00698019);
- your email to Donald McGougan of 24 July 2009 (CEC00679484);
- an exchange with Graeme Bissett in August 2009 (TIE00031196);

Richard Jeffrey's concerns, 11 May 2010 (CEC00246138).

Tram Project Board

In relation to the Tram Project Board (TPB):

11) How were important matters relating to the tram project reported by tie to the TPB (including by whom and to whom)?

I think the TPB reports were extremely bland and did not contain key information.

12) How were the views and requirements of

the TPB fed back to tie?

I cannot recall.

13) Did you have any concerns at any stage relation to the performance of the TPB or any members of the TPB?

To an extent but I do notthink the Information presented was always transparent and balanced.

On 19 May 2010, you raised concerns about reporting of financial matters to the Tram Project Board (CEC00110355, CEC00110356 at 2.24).

14) Can you explain your concerns?

There was a sub committee of the Board to deal with these matters but discussions often happened Informally.

TEL

In relation to TEL:

15) How were important matters relating to the tram project reported by tie to TEL (including by whom and to whom)?

In a similar way to CEC.

15) How were the views and requirements of TEL fed back to tie?

As above.

16) Did you have any concerns at any stage in relation to the performance of TEL or any senior management of TEL?

I did not think TEL were an effective Body and didn't exert influence or control over tie.

Transport Scotland

In relation to Transport Scotland (TS):

18) How were important matters relating to the tram project reported by tie/CEC to TS (including by whom and to whom)?

Monthly meetings and reporting and the quarterly meeting prior to mediation. Post Mediation TS were involved more visibly.

19) How were the views and requirements of TS fed back to tie/CEC?

Through meetings and daily business.

20) Did you have any concerns at any stage in relation to the performance of TS or any senior officials of TS?

No.

At the TPB on 9 August 2007, it was noted that Transport Scotland had advised of their intention to resign from the TPB in anticipation of new governance arrangements (CEC01561047_5, at 2.1; see also 3.9.1).

17) What was your view of TS's decision to withdraw from participation in the TPB?

This was prior to my involvement.

18) What was your understanding of why that occurred?

Because they were no longer funder of last resort.

19) What impact, if any, did it have on the governance of the project?

I think it would have helped to have TS closer.

At the TPB on 12 July 2007, James Stewart had said that "despite the recent funding announcement, TS would remain responsible to assure prudent spending of taxpayers' money. This should require continued attendance at the TPB...".

20) What was your view of that?

I agree.

On 25/26 May 2010, there was exchange of emails prompted by John Ramsay (Transport Scotland)'s concerns that the monthly reports to TS were "clearly out of date, continuingly inaccurate or just redundant" (CEC00374576, TIE00089520, TIE00089521). You noted in response that there had been previous instances where Mr Ramsay had not been acting in the spirit of supporting the project.

21) Can you comment on Mr Ramsay's concerns about reporting, and on your remark?

I do not think Mr Ramsay was a very positive influence. He didhave a fair point on the reporting on reflection.

Scottish Government and ministers

In relation to the Scottish Government (SG) (including, in particular, the ministers involved in the project):

21) How were important matters relating to the tram project reported by tie/CEC to the SG (including by whom and to whom)?

I cannot comment.

22) How were the views and requirements of the SG fed back to tie/CEC?

As above.

23) Did you have any concerns at any stage in relation to the performance of the SG or individual ministers of the SG?

As above.

Governance arrangements

See, e.g., your Tram Governance Report, circulated on 23 October 2008 (CEC01053688, CEC01053689).

24) What were your views on the governance arrangements for the tram project including, in particular, their effectiveness and fitness for purpose?

Pre mediation the governance was poor.post mediation much stronger.

25) Did you have any concerns at any stage in relation to the governance arrangements?

Yes

26) Do you consider the respective roles, responsibilities and reporting requirements of the different bodies involved in the management and governance of the project were sufficiently clear?

Not pre mediation.

27) Did the changed governance arrangements after the Mar Hall mediation improve governance and, if so, how?

Clear governance structures at all levels with the appropriate terms of reference and escalation points.also strong leadership which ensured everyone on the project acted within the governance framework.

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

Pre mediation tie were responsible. CEC were accountable. Post Mediation CEC were both.

A paper circulated by Alasdair Sim on 10 March 2011 (TIE00787343, TIE00787344) set out (in section 9) certain criticisms of the governance arrangements.

29) To what extent did you agree with those? Which, if any, had a significant impact on the project?

I think conceptually it looks ok. There was not terms of reference and roles and responsibilities that underpinned this though. Also people did not always respect the boundaries of the governance process.

Contractors

In relation to the main contractors involved in the tram project:

30) Did you have any concerns at any stage in relation to the performance of any of the main contractors, or the senior personnel employed by these contractors?

In only worked closely with the Contractors post mediation and whilst there were disagreements the capability and professionalism was always there.

31) If so, what were your concerns?

None.

Final Comments

1) To what extent do you consider CEC to have had the necessary resources and experience for the role it played in the tram project?

Initially CEC relied too much on tie and did not have the skilled resource. This changed post mediation.

2) To what extent do you consider it now to have the necessary resources and experience to perform a similar role in future projects?

I think CEC would still need external resource expertise to assist the CEC team.

3) To what extent has CEC had experience (whether before or since the tram project) of engagement in projects comparable to the tram project?

The size and scale has never been repeated.

4) Can you identify up to five of the most closely comparable projects in which CEC has been involved (giving an indication in overview of their similarity to the tram project, in terms of value, complexity and subject matter)?

There has never been another project close in scale or complexity.

5) To what extent do you consider that Councils (with their need to report to, and have decisions taken by, a body of elected members with potentially differing political interests) are equipped to run, manage or otherwise play a significant role in the governance of major infrastructure projects such as the tram project?

I think it is a very difficult balance and not the best model of delivery.

6) By way of final thoughts:

a) How did the Edinburgh Tram Project compare with other comparable projects you have worked on (both previously and subsequently)?

It was by far the most complex. However, post mediation the project was an exemplar and this has given me many skills and good practice to take into other projects.

b) Do you have any views on what were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?

The budget was not sufficient in the beginning for what was to be built. Poor scope definition, understanding thereof allied to a complex contract contributed for many of the issues.

Design should have been completed prior to construction. Also MUDFA works should have been a bow wave in front of Infraco and managed effectively. Project teams must also work in partnership to be successful. This was missing pre mediation.

c) Do you have any comments, with the benefit of hindsight, on how these failures might have been avoided?

As post mediation bring the right expertise into the project in terms of legal advice, commercial and project management expertise. Align this with strong leadership that have mutual respect and there is a formula for success.

d) What lessons have you learned for future projects of this type?

Ensure there are the correct skills across the teams. Clear scope definition. Effective governance and reporting to control and measure progress. Ensure the budget is realistic and deliverable and allow appropriately for risk.

e) Are there any final comments you would like to make that fall within the Inquiry's Terms of Reference and which have not already been covered in your answers to the above questions?

No thank you.

I confirm that the facts to which I attest in the answers contained within this document, consisting of this and the preceding 143 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

[redacted]

Supplementary questions

Alan Coyle

8 August 2017

Final costs - breakdown In the Turner & Townsend Infraco cost report (WED00000092_3), the Infraco costs are split into the Off Street and On Street sections. Costs for the section between Newhaven Road and Haymarket appear in both (£82m in the off street section, and £29m in the on street section). 1) Can you explain why? I cannot recall
In that cost report (again at page 3), the total for Infraco preliminaries is approximately £182m (£160m for the off street, and £22m for the on street). The figure for Infraco construction preliminaries in schedule part 5 of the Infraco contract (milestones, USB00000073) appears to be £96.3m, including a £45.2m mobilisation payment (see, e.g., page 3). 2) Is our understanding correct? yes

3) What accounts for the difference between the preliminaries figures (i.e., between those originally provided for in the Infraco contract, and those actually incurred)? Primarily prolongation
The costs per section appear to have changed as follows:

Section	***Infraco schedule part 5*** ***USB00000073 (page references in brackets)***	***T&T final cost report*** ***WED00000092_3***
Newhaven Road to Haymarket	£38.3m (_7)	£112m (Off Street element: £82.8m; On Street element: £29.7m)
Haymarket corridor	£5.5m (_48)	£8.8m
Roseburn junction to Gogar	£50.1m (_51)	£84m
Depot	£12.9m (_79)	£20.4m
Gogar to	£11.1m (_83)	£15.4m

Edinburgh Airport		

4) Do you agree? I cannot recall

5) In overview, what accounts for the differences? This would likely be design change and prolongation costs

6) Is it possible to identify, within the final outturn cost for the Infraco contract, amounts which represent:
   a) The cost of delay, compared to the original Infraco programme; not from the above table
   b) The cost of change, compared to the original Base Date Design Information. not from the above table
7) If so, please provide figures and explain how they have been calculated.

An estimate report circulated by Turner & Townsend dated 17 January 2013 contained a "probable cost" estimate for the extension of the tram line from York Place to the Foot of the Walk, Ocean Terminal and Newhaven (CEC01930374). The cost of the utility diversions was estimated at £25.1m all the way to Newhaven (paragraph 3.1).

8) What is your understanding of the extent of utility diversion work still required in that section? i cannot comment
9) Does this report give an indication of the extent to which utility diversion work under the MUDFA contract was not completed? i cannot comment

Supplementary questions

Alan Coyle

10 August 2017

Mar Hall Budget Appraisal spreadsheet
At page 141 (question 14) of your Q&A response, you say that document CEC02085613 "*just provides file data details*". That appears to be a mistake. The document is a spreadsheet entitled "Mar Hall Budget Appraisal", with the password 'marhall'. Please reconsider the document, and answer the following questions in relation to it: 1) Can you explain what this document is, and who prepared it? This document provides a range of potential outturn costs for a range of scenarios. This documents was prepared using outputs of various documents and discussions with a number of parties 2) Can you explain in overview what it shows? Potential outturn costs for a number of scenarios 3) We understand it may have formed part of the data room

documents made available to council members in relation to the Council Report of 30 June 2011 (report, CEC02044271, minutes CEC02083232_22). Do you agree? yes

4) How does it relate to the statement in that Council report that the costs of the various project options had been considered (e.g., paras 2.1, 3.31 to 3.47)? it helped to inform that statement

5) Where did the data in it come from? A number of reports and sources

6) To what extent were the figures in this spreadsheet affected by uncertainty? Please identify any significant figures which were particularly certain or uncertain. There could have been variability on a number of the to-go costs and there were still a number of risks apparent on the project which is why the document had a range for each scenario.