

Edinburgh Tram Inquiry Office Use Only

Witness Name: Jennifer Ann Dawe

Dated:

THE EDINBURGH TRAM INQUIRY

Witness Statement of Jennifer Ann Dawe

My full name is Jennifer Ann Dawe. My contact details are known to the Inquiry.

Introduction

1. My role in the Edinburgh Tram Project ("ETP") was as a councillor on the City of Edinburgh Council ("CEC" or "Council") between 1997 and 2012. I was Group Leader of the Scottish Liberal Democrat ("SLD") Group from 1999 onwards, and Leader of the Council from May 2007 to May 2012.
2. I am retired from paid employment. I do voluntary work for three organisations.
3. My *curriculum vitae* is attached as an annex to this statement.

My history as a councillor

4. I was selected to run in an October 1997 by-election for the Gyle ward in the west of the city. I was elected as a LD Councillor at that by-election and re-elected in each election thereafter until 2012. Under the unitary system, from 2007 my ward was enlarged to Drumbrae/Gyle. Councillors are also referred to as elected members or just as members in some cases. The different political parties on the Council were usually referred to as groups rather than as parties. Each group would have a leader. The SLD Group held an annual general meeting ("AGM"). I was first elected as Group Leader at the May 1999 AGM and was re-elected at each AGM thereafter until 2012.

5. During my time in the Council, I probably sat on all of the Committees with the exception of the Planning Development Sub-Committee. The Committees that I sat on varied during my time on the Council.
6. Over the time I served as a councillor, there were changes to the party in power (also called the "Administration"). Initially it was Labour that was in power which continued up until 2007. Their majority became very narrow when, in 2005 or 2006, Labour Councillor Steve Cardownie defected to the Scottish National Party ("SNP").
7. Between 2003 and 2007, the SLD Group was the largest opposition party and so, in effect, functioned as the opposition to the then Labour Administration. Between 2007 and 2012, the SLD and SNP were in administration as a coalition and I was Council Leader (political head of the Council).
8. The Council now has a Labour and SNP coalition administration following the 2012 election. I have not sat on the Council since the 2012 election.
9. I was also on a number of different boards throughout this period due to my position as a councillor and as Council Leader. I was also made a Bailie of the City when the bailiements were reintroduced in 2005 and remained a Bailie until 2012. This is a civic post where I acted for the Lord Provost (the civic head of the Council) when they were unable to deal with various engagements.
10. As a result of my being a councillor, I was elected as one of the representatives on the Convention of Scottish Local Authorities ("COSLA"), which is a forum for Scottish local government authorities and politicians. I was on the Leadership Board of COSLA due to my role as Leader of the Scottish Liberal Democrat Group on COSLA.

In opposition (to 2007)

11. Prior to 2000, there was a Transport Committee of the Council. At that point, much of the discussion was to do with congestion charging and the Local Transport Strategy ("LTS"). Transport Initiatives Edinburgh ("TIE") was set up in 2002 to deliver on the LTS. Information about the LTS and about TIE's activities would have come to the Transport Committee and would also come to Full Council.
12. Transport was never one of my main interests, but I did listen in to some of the meetings of the Transport Committee. I was not a full member of that Committee.
13. The Labour Administration introduced a cabinet system of government to the Council in 2000. As such, between 2000 and 2007, committees of councillors were replaced with government by a group of administration councillors acting as an executive grouping ("the Executive"). As such, the relevance of membership of committees becomes more difficult to assess and was somewhat diminished. For that period of seven years it was principally a one party led cabinet system of government within the Council. There were Scrutiny Panels of cross-party members but their input to policy was very limited.
14. This system made it quite difficult to get good information on a number of issues, including on transport matters. The reason that we were able to introduce a (streamlined) committee system in 2007, when we formed the Administration, was that we were not the only ones that found it difficult. Labour backbenchers also found it difficult because the main decisions of the Council tended to be taken by the Executive, a small group within the Labour group.
15. Full Council meetings were the main place where reports came to, but there was not the same opportunity at Full Council for questioning as

exists under a committee system. There are sometimes Council Officers present at Full Council Meetings who welcome questions, or sometimes a visitor (for example an expert or consultant) may attend and councillors can ask questions, but in general Full Council is a rather more formulaic process. The Lord Provost calls upon councillors, but you have to 'catch their eye' and it is not the same as a smaller committee where people can get into a lot of detail on one topic. The ETP was just one of literally scores of big topics that would be on Full Council agendas each time it met.

16. By Council Officers, I mean the staff of the CEC. Council Officers belonging to different departments or team might be referred to by their team (ie Legal Officers or Finance Officers). The heads of departments and the Chief Executive are sometimes referred to as Senior Officers. The CEC has various departments which are headed up by senior Council Officers. The overall leader is the Chief Executive of the CEC.
17. In opposition, we were not responsible for setting the strategy of the Council. Our duty at that point was to come to our own decision about whether we would support decisions or not. We had to make sure that we had briefings from all the relevant people so that we felt well informed enough to be able to take decisions.
18. In terms of the ETP, it obviously was a huge project and took up a lot of everybody's time and effort. When councillors deal with any topic in the Council, they all have a duty to come to a decision about what they feel about the papers presented to them as councillors. As a political group, we had a lot of group discussions and we would reach a conclusion as to what our view was.

In administration (2007 – 2012)

19. In 2007, following the first single transferable vote (“STV”) election, the SLD returned as the largest group on the Council. The SLD and the SNP formed a coalition after these elections. We had a lot of discussions with all parties before we went into coalition.
20. This was documented in a written coalition agreement (“Coalition Agreement”). It set out what our manifesto was going to be and what we aimed to deliver. This document was signed and lodged with the Council. We also had a private agreement between the coalition parties. This set out the logistics of working together – the timing and attendance at agenda planning and pre-meetings for Full Council and Committees; press protocols; liaison with the Chief Executive; joint briefings, Group Meetings and Away Days; attendance at conferences; conflict resolution, etc.
21. The Coalition Agreement did not relate to the ETP. When the SLD became the largest party on the Council, we had discussions with every group about a possible coalition. One of the key discussions that we had with the SNP group was about the tram. Up until 2007, the SNP had only had one councillor in Edinburgh who was adamantly opposed to the ETP (Steve Cardownie).
22. The Scottish Government Elections were also held in 2007 and the SNP had gone into the election period with a manifesto that was anti-Tram. It was clear that we had very differing views on it because the SLD group had always been supportive of the ETP. There was a conscious decision that there was enough in common to warrant going into Coalition with the SNP.
23. As such our agreement was based around the SLD manifesto, which was much more detailed than the SNP equivalent (as it was a very new

group). Most of them had never been in elected office before and they were pretty much prepared to go with our manifesto. That became the basis of our Coalition Agreement, but we specifically excluded the ETP from that agreement.

24. As the Group Leader for the largest political group on the Council, I became the political head of the CEC – known as the Leader of the Council or Council Leader. The Deputy Leader of the Council for this period was Steve Cardownie of the SNP. Gordon Mackenzie and Phil Wheeler of the SLD both occupied the positions of Transport Convener and Finance Convener at different times during the Administration. The role of the conveners was to chair committees, and to act as spokespeople and ‘lead’ councillor on particular topics for the group. For the parties who were not in Administration, they would appoint a spokesperson who would play a similar role (ie the Labour Group had a Transport Spokesperson).
25. Very soon after becoming the Administration, we reintroduced (as we had said we would in our manifesto), a committee system of government within the Council. This meant that committee membership became relevant again. We also made it possible, as far as we could, for all political parties to have members involved in it proportionate to the number of councillors they had. Every committee was a cross-party committee.
26. Committees covered a number of different policy areas. There were also some committees which had a more overarching role such as the Policy and Strategy Committee (“PSC”) and the Audit Committee. Each committee, except for the Audit Committee, was chaired by a convener that would be from the governing party or coalition. Committees could establish their own subcommittees.

27. From 2007 onwards, I was Convener of the Policy & Strategy Committee, which was an overarching committee made up of all of the conveners of individual committees and senior councillors from different parties. The Council Leader and Deputy Leader were also, ex officio, members of all of the other committees though we would not necessarily attend all of their meetings.
28. There was a Transport, Infrastructure & Environment Committee ("TIEC") which would have been the main one that received reports about the ETP. There was also a Tram Project Subcommittee ("TPS") established under the TIEC.
29. There were a lot of briefings from the Council's Chief Officers and occasional briefings from TIE. The frequency of these TIE briefings varied.
30. In terms of the ETP, as the party in Administration we had a different duty from when we had been the Opposition. We were pursuing a decided strategy rather than scrutinising or objecting to the strategy that had been set by the previous Labour Administration.
31. At the core of our responsibilities, however, it was still a question of getting what information we could, assessing that information and coming to decisions about it. It is important to note that councillors are not 'operators' of the policy of the Council. We are the ones that set the strategy and monitor how it is being carried out but we do not actually get involved in the day-to-day running of the Council. We can comment if we think that something is happening that should not be but we do not get involved in the day-to-day business of the CEC.
32. There is a guideline in the Councillors' Code of Conduct (the 2010 version of this is CEC02086749) at paragraph 3.4 which states: "*Your role is to determine policy and to participate in decisions on matters*

placed before you, not to engage in direct operational management of the Council's services; that is the responsibility of the Council's employees." In Annex C, it states: "...employees are accountable to line managers...". Councillors do not get involved in the relationships between a Council Officer who is the Head of Department and their staff. What I mean by this is that councillors ask questions of and work through the heads of the different departments within the CEC rather than going directly to individual staff members.

33. This division of responsibilities between councillors and Council Officers means that some of the questions put by the Inquiry are quite difficult to answer.

Transport Initiatives Edinburgh and Transport Edinburgh Limited

34. I am familiar with the two Council owned companies involved in the ETP:
- 34.1 Transport Initiatives Edinburgh ("TIE"); and
 - 34.2 Transport Edinburgh Limited ("TEL").
35. I was not, while I was a councillor or Council Leader, a member of the Boards of Directors of either of these companies.

Councillors and the Edinburgh Tram Project (ETP)

Training and experience in relation to the ETP

36. I do not have any qualifications or experience in matters like civil engineering, accounting or contracts, all of which became very important in the ETP context. In terms of legal matters, I have some limited experience in dealing with social security law, analysis of documentation and representation at tribunals as a former Welfare Rights Officer.

37. I did not know a great deal about transport. But councillors do not have to have qualifications in any specialist area to be a councillor – they simply have to succeed at the ballot box.
38. For most topics, including the ETP, councillors relied very heavily on the advice of our Senior Officers and any additional people that the Council Officers thought could assist in advising us (ie external experts, consultants and lawyers).
39. I do not believe we really received any specialist training or guidance about the ETP. I can remember some specific training given to members of the TIEC in relation to Traffic Regulation Orders (“TROs”) due to a law change, but that would have been relatively late in the process in around 2009 or 2010. Our first Transport Convener Phil Wheeler did have a background in accountancy.
40. In terms of training for junior councillors regarding the Council, its structures and bodies such as Council controlled companies, I did not receive any training at the time I joined the Council. However, this was at a by-election and there may have been some training following regular elections. As Group Leader of the SLD, I personally organised training for aspiring councillors and for councillors who had just joined the Council. At some point, however, probably after the 2007 Election, councillors were given more specific training about council structures. This was organised by the Council Secretary (a Council Officer responsible for much of the CEC’s administration).
41. It is very difficult to know what training or guidance would have been helpful or could have been given other than putting councillors through something like civil engineering degrees and accountancy courses. We could always ask anybody from the Council (from the Chief Executive downwards) any questions. I had a lot of meetings with various people

where I could ask about specific things. Usually the documentation and briefings that we got were written or delivered to us in such a way that they were understandable to a lay person.

42. Councillors also sat as members of the boards of Council controlled companies. I seem to recall that the Council Secretary organised introductions for councillors so we were made aware of what our duties were as a board member. I can recall that, when I joined the board of the Edinburgh International Conference Centre ("EICC"), there was guidance given on where your duties to the board lay. As a board member, your duty lay with the Board and as a councillor your duty was with the Council. The interaction of the two roles could sometimes be difficult as something you were told in a board meeting could not then be referred to in a later Council meeting if it was a confidential matter.

Political positions on the CEC

43. I think from the beginning every political group except for the SNP (who did not have any councillors at the very start of the ETP in 2002) was in favour of the tram. I suppose that the quality and extent of support would have varied within the groups, but in general the SLD, Labour, Conservatives and Greens (once they joined the Council in 2007) were all supporters of the project.
44. The SNP were always against the ETP, but the numbers within the Council were such that you could always get something through with a mixture of support from the opposition parties despite SNP opposition. Much later on in the project all sorts of issues arose which caused some political differences to emerge, but in general most of the parties were supportive.
45. The SLD Group did not have a whip though we had discussed it many times. There was a process of "agreement by consensus" which we went

by. Within SLD Group meetings we would have quite deep discussions which were sometimes contentious. However, nobody in our group was ever actually 'whipped' to be a supporter of the tram when it came to making decisions at Full Council or in committees.

46. I do not think the Greens had a whip but the other parties (Labour, SNP and Conservatives) all did. The whip would presumably exercise some sort of control over their members' voting. I was never very sure exactly how their 'whipping' systems worked.
47. There was nobody within my group who dissented. There were some that were more ardent than others. Occasionally there might be somebody with a bit of a 'not-in-my-back-yard' attitude because they happened to be next to a tramline or a potential tramline, but in general my group were all supportive of the tram.
48. If a member of my group had voted against the ETP, I would have had no power to do anything. There were some issues, not related to the ETP, where I had to have quite serious one-to-one talks with councillors. In most cases I was able to discuss the issue with the person and they ended up either voting along with the rest of the Group or leaving the Council Chamber if it was in a Full Council meeting. That did not happen, as far as I can recall, with any of the decisions about the tram. If it had, I would have suggested that it might be more discreet if they just happened to not be in the Chamber at the time rather than putting forward a contrary argument or motion or voting with another group. Suspension was probably the most likely sanction for those groups that did have a whip. I am aware that one Conservative councillor, Kate Mackenzie, was suspended for failing to vote with her group.
49. I suppose there was an inherent difficulty from the fact that we were in coalition with a group who did not support the tram. For a time, the SNP

were set upon reminding the other parties that they had not voted for the project. There did, however, come a point when the SNP conceded that the time for protest had passed and they no longer attempted 'wrecking' amendments every time the tram came up for a vote.

50. I think the most difficult situation probably arose in 2011 when local government elections were looming. In the last year of its existence the Council always becomes a much more contentious place and groups will try to make political capital out of anything. At that point, the tram became one of the political 'footballs' that was being kicked around. As such, we had Labour and Conservative councillors (who were supposedly supporters of the tram) putting forward amendments to motions in Full Council meetings that were designed to halt the ETP in one way or another.
51. However, apart from when it got to that stage, there were enough supporters of the ETP within the Council to not make it particularly politically contentious. Within each group there were some members that we knew were very supportive and some we knew were a bit more reluctant. Sometimes, it was pretty obvious from the body language at Council meetings who those were.
52. There is one other internal matter. Because the SNP were not supporters of the ETP, it did cause some difficulty with briefings from Council Officers. The Chief Executive of the CEC met the Council Leader and Deputy Leader at least once a week and often more frequently. The ETP was generally not on the agenda at those meetings – none of the Chief Executive, Council Leader nor Deputy Leader would have put it down as a point to be discussed. Instead I would have separate meetings with the Chief Executive when it concerned the ETP.

53. Similarly, the Coalition Groups had quite a lot of joint briefings on various matters. It did reach a point where, because the SNP accepted that the ETP was going ahead, we had joint briefings where everybody was told exactly the same.
54. There was a point near the beginning, in 2007 especially, when we did not know if the money from the Scottish Executive would be forthcoming. With the change in the Scottish Government in 2007 (from a Labour administration to an SNP administration) it was not clear whether money that had been promised by one political administration in Holyrood would be supported by the next. There was quite a bit of to-ing and fro-ing between Members of the Scottish Parliament (MSPs), the SNP Group and the Council. It was quite a tricky time and it caused some difficulties.
55. The huge bulk of the money for the ETP came from the Scottish Government and clearly MSPs had an interest in it. However, as far as most groups were concerned there was not any interference in the ETP. Nor did MSPs try to dictate to the Council. In my role on the COSLA Leadership Board, I had a number of meetings with the First Minister of Scotland and other Scottish Ministers and there was no kind of pressure around the ETP. There were lots of conversations about it but there was no interference.

Reporting, meetings and discussion

Council Staff

56. There were quite a few Council Officers advising on different aspects of the ETP. The Chief Executive obviously was the main point of contact, but we also heard from the Director of Finance, the Director of City Development and the Director of Corporate Services. CEC's Corporate Services department covered the legal side of the ETP. From about 2009 onwards, there was a team providing Legal Services and we had

appointed a Head of Legal Services. There was more legal advice (probably because it was needed by that time). Legal Services fell under the remit of the Director of Corporate Services, though the Council Solicitor (later called the Head of Legal Services) was also an important figure in their own right.

57. Those were probably our main sources of advice, together with the main Council Officers. Council Officers would advise us on what was happening and give briefings using PowerPoint presentations and the like.
58. The briefings would be by heads of departments, though they had probably got their information and presentations from their staff. There was never any sort of feeling that we could not approach people in the departments, but it would almost certainly have been expected that you would go through the head of the department rather than directly to one of their staff.
59. In my role I would not have gone, I think, to less senior Council Officers directly though people might have been referred to me by the Senior Officers. For instance, the Director of Finance might have said that someone in his department was a specialist in a particular area and might have then asked them to talk to me about that issue. We were not stopped from talking to or asking questions of anybody.
60. While I was Leader of the Council, Tom Aitchison was Chief Executive until the end of 2010 when Sue Bruce took over. I would have at least weekly meetings with the Chief Executive though contact would usually be more frequent and there were probably only a few occasions where we only saw each other weekly. There were periods when I was Council Leader where there were daily messages from Tom Aitchison's secretary advising me that he urgently needed to update me on some issue. This

could have been any of a range of issues from airport closures to issues in schools or almost anything else.

61. In terms of the other heads of departments, I did not have regular meetings with them as the Leader of the Council, though they would be brought in by the Chief Executive if he felt it was necessary. Our Conveners probably had more one-to-one meetings with relevant Directors than I did. I trusted the Conveners to go about their business, which involved building links with the departments that were involved with the areas that the Conveners were responsible for.
62. When we came to power in 2007, there were a lot of the Senior Officers who were approaching retirement. They had always worked under Labour Councils and I think some of them were not sure how well they would get on with a new administration, so we actually had a lot of change at a senior level later in the term.
63. The most senior retirements I recall were the Chief Executive (Tom Aitchison), Director of Finance (Donald McGougan) and Director of Corporate Services (Jim Inch). The Senior Officers in these posts had all planned to retire during this period. There was also a change in the post of Director of City Development during the course of the project.

Council and Group Meetings

64. As to whether issues relating to the ETP were discussed separately or in the course of other Council business, it varied. ETP business would have been a part of Full Council agendas and also the agendas for specific committees. Further, we had numerous opportunities to be briefed on the ETP and those would be specific briefings on where the project was at. All of the parties were able to request those briefings, and requests were usually made to the Chief Executive prior to the Full Council or a particular committee making a decision. I would expect that each of the

groups took the opportunity to have the issue included as a single item in their group meeting agendas.

65. Between 2000 and 2007, it was more difficult because no opposition councillors were on the Executive, so the only formal time for consideration was in the Full Council meetings. There were Scrutiny Panels under this system, but I cannot recall them ever initiating business regarding the ETP. In addition, the Executive could attempt to hinder attempts at scrutiny by not allowing items to go for a scrutiny review.
66. Formally, the ETP would be dealt with amongst other business at Full Council. The exception was a special meeting of the Full Council about the ETP which was called a week after a major situation with the project in 2011 (at paras 799 - 805 below). I think I can recall only one other incidence in my whole time in the Council when there was a special Council meeting – they were extremely unusual. Other than that I cannot recall any other times where the ETP was the only item of business.
67. In terms of the context of Full Council meetings generally:
 - 67.1 They took place about 10 times a year, and there was a four to eight week gap between the meetings.
 - 67.2 Full Council meetings could last a very long time depending on the length of the agenda and the deputations (groups who wished to speak) that attended. It also depended on how much opposition there was to motions. I think that, at times, the Labour Group took a deliberate decision to put forward an awful lot of amendments which had to be debated and voted on. There were meetings which started at 10 am, but where the actual business proper did not start until after the lunch break because there

were so many deputations and there was one occasion when most councillors missed their bus home at night.

68. In terms of committee meetings, their length would also have been determined by the number of items on the agenda. They would normally have been shorter than Full Council meetings.
69. The SLD Group as a whole had regular meetings. Once a month we had a full group meeting which would be a long evening meeting.
70. We also had two group meetings prior to Full Council meetings on a Thursday:
 - 70.1 We had a big meeting on the Tuesday to finalise what our views were going to be; and
 - 70.2 On the morning of the Council meeting, at 8.30 am, we would have a meeting by which time other groups might have told us what their view was going to be.
71. I very often got emails or phone calls from other groups telling us what they intended to do and asking whether we were minded to accept it. So there was some discussion between groups as to what would be the best way forward,
72. Our group also had what we called "*Policy Meetings*", which happened probably a little less frequently than once a month. I had meetings with all the Conveners on a fairly regular basis and also had one-to-ones with all the councillors. I tried to make sure that every year there was a formal one to one where people could express any problems or difficulties, including what they felt they were doing well or could do better or any training that they felt they might need.

73. For the period from 2007 onwards, when we were in administration, I had a lot of discussions with the Chief Executive. At those meetings, we would discuss what business needed to be raised in Full Council meetings and were given copies of the agenda or what was likely to come up. If there was something that we felt warranted having a briefing for the group then we would ask for and arrange that. I do not ever remember any trouble having these requests responded to, so we really could get any information that we thought was necessary for us to reach a conclusion on a particular issue.
74. Our practice was to go through the agendas for both Full Council and committee meetings. We would decide what our view was on any particular report submitted by a Council Officer and whether we should accept the recommendations made or whether we should submit a motion to modify those recommendations.
75. In some cases, because there had been a lot of discussion we knew what was in the report – and it was there because it fitted with our strategy. In those cases we might have decided that we would vote for a motion to approve the recommendations of the Council Officer. However, we always had to be ready for the possibility that an opposition group might be against the report and might put in an amendment to it. Sometimes, we would hear what the amendment was and would accept that the amendment had a fair point. In Full Council meetings we did sometimes suspend business while we went and discussed within our groups what deputations had said, for example, and what issues they had raised. Equally an opposition group might discuss with us what they were intending with their amendment. We would have a discussion and decide whether to accept it.
76. Whether councillors were encouraged to vote along ‘party lines’ was more or less dependent on their party though it could also be a question

of the issue involved. It was only on rather more general issues that a free vote would be given to all parties. I can remember, for example, one issue about the genocide in Armenia on which there was a debate and an entirely free vote. There were a few occasions when it was a free vote, including issues about taxis at one stage.

77. We had a clause within our group standing orders that, if it was a matter of conscience for somebody, then we would not compel or persuade them to vote within the consensus view. Equally, if it was a really important ward issue – an issue that only affected that person's ward, perhaps in an adverse way – then we would allow them to speak out on that issue. In cases where there was a formal whip in a group then the relationship would have been a bit different.
78. I think in relation to the ETP, given the numbers in the Council and the importance of the project, it would probably have been considered by most groups to be quite important to be supportive of the group line and the majority Council line.

Views of councillors and their constituents

79. I do not think anybody from my group ever felt that they were silenced. I believe they would have told me, as my group were such that they would not have sat silently and grumbled to themselves. I would have been told if somebody was really objecting to what we were doing though they might not speak up in the Full Council about it, but I cannot recall anybody feeling this way. My impression was that nobody felt like they had to adhere to something that they did not want to support.
80. Part of a councillor's job is obviously to listen to constituents' concerns. However, most councillors will tell you, from experience, that for every ten who tell you one thing there will be ten who tell you the opposite and who want you to support a contrary view. It is very much a balancing act

as to what extent you are able to actually do what constituents would like you to do and you try to the best of your ability to listen to what they are saying and take that forward. As far as the ETP is concerned, all of the SLD Councillors got lots of anti-tram emails and letters but we equally got very supportive comments and letters. I do not recall any councillor ever saying anything about this so I do not think that it stopped anybody from representing their wards.

81. There is an argument that every ward in the city was affected by the ETP even if they did not directly have a tramline going through them. This was because of the advantages that the ETP had in helping Edinburgh as a city and in the environmental benefits to the city. Some were very directly affected by the various works that were done. For example, utilities work in Leith Walk obviously affected the Leith Councillors more. I got a lot of correspondence about that, but the correspondence tended to be from the traders rather than from individual residents.
82. We had a proportional representation system in place from 2007 onwards and so the SLD had representatives in all but two of the city's wards. We had a wide coverage: I was one of two councillors from Drumbrae-Gyle ward, there was one councillor in the city centre and we had two councillors in two different Leith wards. So we did have people in the directly affected wards.
83. Regarding any tensions between their party interests and the interests of their constituents, in our group's case this would have been discussed with me and/or with the relevant convener within the group. We also had an away weekend every year where we spent a lot of time discussing policy and various other topics. It would be a case of discussion amongst the group but I do not recall any feeling that people were being silenced or that they were not able to represent their ward interests because of our group view of the way forward.

Updates and sources of information

84. Both Council Officers responsible for transport and our Transport Convener would report to our group on meetings they had had and they would tell us what they could. Some councillors were board members and they did do their best to honour the requirement that what was said in the boardroom was kept in the boardroom.
85. We received information, at various stages, from TIE representatives who would come along to give us briefings and give all the groups briefings. Occasionally, there were mixed group briefings.
86. As Council Leader, I had an enormous amount of information about the ETP. I had every opportunity to get whatever information I wanted. I do not know whether I was getting the information immediately – I suspect not from some of the documents I have now seen as a result of the Inquiry process. I was usually forewarned of any developments that were going to hit the press, other than when David Mackay suddenly resigned. I think that took us all by surprise. My information about the ETP came largely just through either seeking or being offered briefings on the project.
87. Being Council Leader made a huge difference, and it became clear that the amount of information that I received as Council Leader was very different to when I was the Opposition Leader (ie prior to 2007 when the SLD was the largest opposition grouping). As the Opposition Leader and as a Group Leader prior to that, I did not feel inhibited in asking for information but I was definitely getting a lot less information.
88. To the best of my recollection, I never had any meetings with Transport Scotland ("TS"). The first time I really became fully aware of TS's role in the ETP was after a meeting with the Cabinet Finance Secretary, John Swinney MSP, who offered TS's help at one point in November 2010 (at

para 690 onwards below). As far as I can remember, TS did not come to any briefings regarding the project.

89. I had regular meetings, usually with the Transport Convener, with representatives of Lothian Buses from 2007 onwards. The tram was not part of those discussions at that point. Other than that, I cannot think of any outside bodies who came in to offer comment on the ETP.
90. Regarding the problems that arose and the estimates of the cost of completing the project, at some point once the problems started rolling out I was informed. I certainly appeared to be getting updates at relevant times. However, with hindsight I and perhaps Council Officers as well, was not immediately informed about some faults, incorrect estimates and the rest of the problems with the project.
91. It has been very difficult to remember precisely when I was told something in the course of the project. For example, I am fairly sure I was not told that costs were going to exceed the 'funding envelope' of 545 million pounds when that must have been known by others (in this statement I refer to amounts in millions of pounds as 'm' ie £545m).

Confidentiality

92. A briefing note (**CEC00013290**) prepared by Council Officers around 2010 stated that: "*open decision making whilst necessary politically may pre-warn Infraco*" (at para 15.2.6, pg 6). The word Infraco appears to refer, at different points in some documents, to both the infrastructure contract and the contractor under that contract. I have found this double meaning confusing. In my experience with the ETP, I would have generally referred to the two items as 'the contract' and as 'the Consortium', BBS or BSC (depending on whether or not it included CAF).

93. I do not know what the particular confidentiality issues referred to in this document were or when confidentiality issues were first mentioned, but this was a theme that ran throughout everything concerned with the ETP. We were repeatedly told that there was confidential information that we could not be told about and that we could not be given certain figures.
94. That was present from an early stage of the ETP. There were papers that, for example, redacted Lothian Bus figures which were considered commercially confidential. Then there were issues over the dispute resolution procedure ("DRP") processes, where we were told that the contract did not allow us to be given information about the dispute. We were told it could compromise TIE's position if we knew what figures they were agreeing to or what figures they were thinking about. Throughout the whole process, the need for confidentiality was repeatedly brought up. At the time I thought it was reasonable, but maybe it was an excuse. Certainly we were told that we, as councillors, should not be told things that might disclose information such as financial figures and legal arguments regarding the disputes that arose.
95. The issue of confidentiality ran throughout everything, and our councillors who also acted as board members had to comply with their duties as board members. I think that they largely complied with those duties, though I do not know what or how much information they were getting from the relevant companies or whether the board of the companies was told everything. The phrase, "*Oh, it is confidential*" was repeatedly used. Occasionally, I would be shown something that perhaps I should not have been shown, but in general I think we all felt hamstrung by the fact that we did not always get the figures we wanted. That was especially the case when the business cases for the ETP were being analysed by the Council. In those circumstances, it did not seem right for us not to be given the figures supporting those documents. Occasionally, it seemed

that we were being given figures that just did not seem quite right. We were not able to delve as deeply perhaps as we should have done into the details of the project.

96. It is possible that I received information that others did not. This largely came about due to changes in the Senior Officers in the Council which happened later in the administration (as I discussed at para 62 above). They accepted I was not going to run to the press with things that were sensitive. I think that was one of the main fears of the Council Officers that information would leak to the media and particularly to the SNP members on the Council and some SNP MSPs who were particularly anti-tram. I now realise, with hindsight and having looked at the documentation provided to me by the Inquiry, that there was information that was available and should have been made available to councillors.
97. Mechanisms like document rooms had been used in other cases but did not come until later on in the ETP. For example, the CEC negotiated a large information technology ("IT") contract with British Telecom ("BT") prior to 2007. During that process, as a Group Leader arrangements were made to keep me informed. I signed a confidentiality agreement and was given access to a document room where I had access to some of the paperwork for the BT IT contract. Another example arose later during the period when the CEC was looking at adopting alternative business models and contracting out services. There was also a data room in that process, and councillors looked at all the details of bids including the figures involved.
98. For the ETP, that did not come until much later on when, for instance, I signed a 'confirmation of non-disclosure' document in June 2011 and was given access to certain documents. That agreement was for five years. From the Chief Executive, I also received copies of documents that were marked as commercially confidential or not for wider

disclosure. I was trusted not to use that information against TIE or the CEC.

99. There was, however, a big tension between: (i) the need for openness and our need to have full information before we reached Council decisions; and (ii) the need for non-disclosure and confidentiality. I do not think it was ever really fully resolved.
100. After the mediation process in early 2011, I think the information flow was much freer. However, by that time the relationship with the Infraco was on a slightly different footing and it seemed to be more acceptable to show documents to us. The Infraco was made up of a consortium of Bilfinger Berger ("BB"), Siemens and CAF (the tram provider) and was commonly known either as BSC or the Consortium. Sometimes it was also just referred to, in documents, as BBS (Bilfinger Berger and Siemens), as CAF played little or no role in the delivery of the infrastructure works.
101. Our members found the tension between openness and commercial sensitivity really annoying. Our Transport Conveners also found it very frustrating that they might well have known some things as board members of the relevant companies but could not give us full information.
102. In terms of the BT IT contract and alternative business models (which I mentioned at para 97 above), there was a crucial difference in that the CEC itself was contracting with BT. These agreements were directly with the Council whereas TIE was an arm's length company. The contracts for the ETP were with TIE not with the CEC. However, at the end of the day, most people thought that the agreement was with the Council and CEC was the one that was ultimately going to suffer.
103. There was a fundamental tension regarding openness, and it was probably not resolved – certainly not during the period when the

contracts were being drawn up. After the mediation (between TIE, the CEC and the Consortium) at Mar Hall in March 2011 I think there was a different feeling. By that time we also had a new Chief Executive and a new Head of Legal Services (who had come to CEC in late 2009 or early 2010). I think it did perhaps change a bit from that point. We also had an All Party Oversight Group ("APOG") for councillors by that time with a dedicated monitoring role. There was, by then, a general feeling that it was all a bit more open although there were still a number of issues being resolved behind the scenes.

104. I believe that all of the parties involved raised the issue of confidentiality at different stages and this included Council Officers, TIE executives and employees, Council legal advisors and the Consortium. It was TIE and Council Officers who most engaged with councillors around the issue of confidentiality, and who most frequently referred to it in their discussions with us.
105. The Consortium always claimed that they were quite happy to be open about matters such as the DRPs while those disputes over the Infraco were on-going. However, I did not have a lot of dealings with them and I was told at one point that I should not be meeting with them. I do not remember the Consortium ever saying that they would not show things to the Council, though whether they would have been allowed to and whether that information would have been accurate were different concerns.
106. It may well have been that a lot of the documentation in the ETP would not have meant a great deal to somebody who was not a technically or legally qualified expert in the particular fields, but I think most of us felt that there was that fundamental tension. There was also a feeling that people were hiding behind their confidentiality obligations rather than

telling us what we could perhaps have been told without, of course, these disclosures stymying the way forward for TIE.

107. There is some information that you do not need as a councillor. You rely to some extent on the Chief Executive, the Director of Finance and the various other Council Officers to assess the full range of documents or material involved in a policy decision. As councillors, we have to trust in the Council Officers' professional ability to deal with the matters they are supposed to deal with.

Briefings and Information on the ETP

108. Regarding the level of information that councillors required when taking decisions about the ETP, we needed to have enough information to take informed decisions. It is hard to be precise. There was also the opportunity to ask questions arising out of information that we were provided with. I would have expected that any questions would be answered so that we felt we had the full information we needed before taking decisions.
109. The ETP was an enormous project financially and was the biggest project, I think, that the CEC had ever been involved in. It was at a different level from many of the decisions that we normally had to take, so we certainly needed enough information to make the right decision in looking after public funds. £500m was coming from the Scottish Government and various amounts (with the exact amount depending on the stage of the project) coming from CEC's resources.
110. At the time we received it, I think we thought that we were getting enough information. This was apart from the confidentiality issue, which sometimes hindered us from getting what we felt was detailed enough financial information about the costs. That comes back to commercial confidentiality in that TIE did not want to let the contractor know. TIE

seemed to regard the contractor more as the opposition than as a partner.

111. We were not provided with any particularly detailed guidance on financial or technical matters, but we made use of briefings to ask a lot of questions. I suppose we were reassured by what we heard to the extent that we took the decisions that we did.
112. The reports and presentations that we received were clear and intelligible. They had deliberately been designed and written so that both Council Officers and councillors, who were not experts in the various matters under discussion, could understand them. Given – with hindsight – how little involvement the Council actually had in the contract preparation and how little it seemed to understand the contract, the information that we got, largely from Council Officers, may have been limited by their own lack of expertise in the various matters.
113. I do not think that we were encouraged to ask questions of TIE staff (or consultants) or seek information from them. We felt that our relationship was with the Council Officers. Those Officers, in turn, had a relationship with TIE. It did not seem to be up to councillors to interfere in the operations of an arm's length company like TIE except insofar as councillors sat as board members of the company.
114. We did have TIE staff and directors join with Council Officers in giving presentations at times. This was particularly so at a stage when we were all being told we were 'one family' and we all had to speak together. I cannot recall having had a briefing and thinking that I should ask for information directly from TIE rather than from the CEC Chief Executive or the Director of Finance.
115. I knew that there were external consultants who were advising TIE, and there were also various Council Officers with specialist expertise who

were seconded to TIE. But I was not specifically aware of who TIE was using, what they were doing or what reports they were producing. At some point during the project I became aware of firms like DLA, who were involved in drafting the contract. I do not think I was aware of their involvement at the early stages of the project, although it is quite difficult to get the chronology right.

116. I never felt inhibited about asking for further information or further briefings. I do not ever remember actually asking for a briefing or a group briefing, but equally I do not remember ever having a request to discuss something coming up on the agenda refused. While I cannot recall any specific incidences where I asked for further information or briefings, I would remember if these had been refused.
117. Looking back, perhaps TIE was not telling the Council (Officers and councillors) what it should have been. I do not know if there is any blame, or if there was lying, but it would appear that the information that we got was not always as accurate as it should have been, particularly around the time of the contract closure (late 2007 and early 2008).
118. Around that time, there were a lot of questions asked about risk and we were always given very general statements about how the risk level was perfectly adequate, compared favourably with other projects and that Audit Scotland thought everything was fine. It is quite possible that there was information that was available to some people at that time that was not imparted to us as members.
119. I suppose that at the time we trusted that our Senior Officers within the Council were giving us accurate information. The decisions that we took, mostly on a cross-party basis, were taken because I think we were all satisfied that we could rely on the information that we were given to make the decisions that we did.

120. Reports to the Council are usually signed off by the Chief Executive. However, there may be something in any particular report which makes you realise that it was actually drawn up by a Senior Officer such as, for instance, the Director of Finance. I do not remember ever actually questioning where any of the reports relating to the ETP came from.
121. However, I would have assumed that, because TIE was the arm's length company that was dealing with transport matters on behalf of the Council, the factual information that councillors received in reports must have originated within TIE. The Council Officers responsible for the finance, legal, transport and various other departments would have had a part to play in the actual writing of the document.
122. I think we must have trusted the Council Officers' judgement and their professionalism regarding the information they received from TIE. It is only now that I wonder just how much the Council Officers knew about the situation, but I believed that we were being given accurate, up-to-date information and advice about the ETP.

Community Views

123. Regarding communications with my constituents, I put out regular newsletters in my ward. I do not recall the ETP actually exciting a great deal of interest amongst my constituents. They were in the Gyle (later Drumbrae-Gyle) ward in the west of the city, though it stretched across to Edinburgh Park where you could say that the tramline was going to have some impact. I had very little correspondence that I can remember about the ETP and very little came up in surgeries.
124. I produced newsletters, in a few of which I probably put in a bit of information to update people on what was happening. I answered any queries that I got and to that extent reported matters back to my constituents. It was probably not until around 2010 that I had significant

concerns expressed to me. This was because we had some school closures and I had a group of about ten constituents who came to every single surgery I held for months and months and occupied the waiting room. Their main theme was that the £500m for the trams should be spent on schools. Of course, all I could say was that the money was specifically allocated by TS for the tram and it was not money the CEC could use for schools.

125. As Council Leader, I also interacted with members of the public who were not strictly speaking my constituents. There was a lot more about the ETP from these groups. The business community, in particular, were quite open in their views with many of them being very supportive of the ETP. I also remember individuals praising the Dublin tram system and wanting the same for Edinburgh. There were quite a lot of constituents, and other organisations like the University of Edinburgh, who were very supportive as well. I had a lot of correspondence from a wide range of people who were supportive of the project but equally I had a lot of complaints, particularly from traders in the West End and in Leith. The Convener for Economic Development Tom Buchanan (deceased) and I had open business surgeries for any business people in the city to come and see us. Their views were very often about the ETP and the impact it was having on their businesses.

Media Views

126. I do not think my approach to the ETP was informed by the media. It certainly was not informed by the figures that were being presented in the media. Obviously, I did not like it when there were negative headlines. There was a lot of coverage, because stories about problems at the Council sold newspapers.

127. There was an SNP MSP, Shirley Anne Somerville, who was getting figures as to costs from somewhere. I was never able to tell where and they did not equate with the figures that I was receiving at the time. There were also figures being spread around at the time of the first dispute over Princes Street (in late 2008). Those figures were not in the public domain. I was told that these might have been given to the Evening News by the Consortium but I do not know if that is accurate.
128. However, there was also supportive media coverage. When it came to late 2010 and early 2011, the editor of the Evening News was particularly supportive of the idea of mediation and offered some assistance.
129. I certainly did not ignore what was being said in the media. If, for example, a newspaper article said that that the project was millions of pounds over budget then I would ask (possibly through the Finance Convener) for Council Officers to explain where that figure had come from, whether it was accurate and whether we, as councillors had the wrong information. We must generally have been satisfied with the answers that we received from Council Officers in response to these queries.
130. When someone was known to be strongly 'anti-tram', there was a natural instinct to be somewhat dubious about the figures they were producing. There was always a possibility there was something there. I suppose the likelihood of those figures being more accurate than we would initially have liked to have believed became more of a possibility in our minds as the project developed. The assurances about the press figures that we had been given by Council Officers at the time were perhaps not as good as they should have been.

Initial Proposals (2000-2006)

The New Transport Initiative and the creation of TIE

131. I was a councillor from 1997 onwards and Group Leader for the SLD from 1999 onwards and so was part of the Council at the time the New Transport Initiative ("NTI") was proposed.

Regarding who I understand being responsible for the decision to create TIE in 2002, it is difficult to remember back to that time. I think TIE must have been a proposal of the Labour Administration presumably on the advice of Council Officers. I can recall that the initial name for TIE was ENTICO. I have only a vague recollection of the discussion around that time, which involved a lot of schemes that the Labour Administration wished to deliver – including the idea of congestion charging.

132. I am not sure to what extent alternative financing or private sector involvement was part of the reason for creating TIE. I only really became involved in discussions on the Council about using Private Finance Initiatives ("PFIs") or Public Private Partnerships ("PPPs") when they were proposed for building schools. I was very opposed in principle to that idea at the time.

133. I believe the SLD were opposed to the creation of TIE on the grounds that we saw the Council as the democratic decision-making body whereas we saw TIE as being somewhat secretive. This was because it was not until much later on that opposition councillors were offered places on the board of TIE. I know that as a political group our views on the different ways of raising finance and on the different ways of delivering Council services developed over the years, but at that time I think we were concerned about secrecy because we were going to have no say in what TIE did.

134. I believe we thought that TIE was established to deliver projects that were related to Edinburgh. I know that Edinburgh Airport Rail Link ("EARL") was one of the early projects that it was involved in. It would certainly have been our view that, if it had to exist and if it was a company connected to the CEC, then it should be dealing with transport for the CEC area.
135. A Council report of May 2002 on the implementation of the NTI (USB00000232) refers (at pg 64) to concerns about the CEC's ability, as a local authority, to deliver the NTI. References to page numbers in this statement are to the page numbers of the documents as they appear in the Inquiry's document collection rather than the original page numbering of these documents. I think that was quite a large part of the reason for the creation of TIE. I think there was a general feeling that the Council had a very poor reputation in delivering transport services. This was possibly a slightly strange or ill-founded conclusion as, at that time, we had within the body of councillors some people who were very knowledgeable in transport. We also had a number of Council Officers who had a good reputation in the field. However, in general the Council itself had a poorer reputation and I know that politically we made use of this fact. There were a lot of schemes over a period which had had quite a lot of money spent on them and then had not been taken any further. As a result, there was a general feeling that the local authority, for whatever reason, was finding it difficult to actually deliver on the ground.
136. I cannot remember the exact timing of the various schemes, and many of them were described by acronyms such as WEBS or CERT. Later I think there was the City Centre Transport Management Scheme. None of them came to fruition. The feeling was that the strategy had good ideas but they did not seem to end up being developed, and that was one of the reasons TIE was set up.

137. The Labour Administration at this time was seen as using a lot of consultants, and frequently Council Officers would leave only to return as consultants shortly afterwards. I suppose that TIE was seen as a body that was going to provide external expertise more cheaply than getting a whole variety of consultants in for various projects.
138. I do not know how important it was that TIE was an 'off-balance sheet' company with its own accounts. TIE was generally referred to as a Council owned company and it had to report to the Council. Later PFI and PPP projects were completely 'off-balance sheet', which had an impact on borrowing and risk. TIE may have been less clear cut and I am not sure how important a reason it was at the time. Equally I do not remember any discussions at the time about whether the Council was acting as a guarantor and was ultimately liable for TIE.
139. Initially, when TIE was established, I believe there were only Labour Councillors on the board and I presume they were seen as having some control over it. There would have been, I think, some Council Officers on the board of TIE as well. So there was some direct input by the Council into the board of the company.
140. For some Council controlled companies there was quite a strong relationship, though I am not sure this occurred with TIE. With Edinburgh Leisure, for instance, their annual business plan would be approved by the Council. It was, however, unusual for the budget to be challenged as the councillors on the board of Edinburgh Leisure were seen as responsible for its budget being sound. At this time, I was still an opposition councillor and we were not really privy to a lot of the discussions in these areas. I would have expected there to be some kind of control.

141. As far as what I understood of TIE's obligations to the CEC, I would have said its main obligation was, in essence, to deliver on the transport strategy that the Council had asked it to deliver.

Initial Estimates for the Tram Network

142. Various Scottish Transport Appraisal Guidance ("STAG") Appraisals and draft Business Cases for a tram network, with different estimates, were produced between 2000 and 2004.
143. At that time I would not have had much detailed insight into the ETP. I expect TIE would have commissioned various professional organisations to help with the preparation of estimates.
144. In headline terms, it was TIE who was responsible for the preparation and presentation of these estimates. It was my assumption that they had, within the company, the capacity they needed. If they did not have the capacity to deliver what they needed, they would commission somebody to give them that capacity.
145. In terms of TS, I know the Council made various applications for Transport Initiative Funding that was available from the Scottish Government.
146. I cannot recall very much about this stage of the project, but certainly the allowance for risk was always something that was important in any project. Cost estimates are not absolutely written in stone and you had to allow for all sorts of unforeseen circumstances. I do not remember reading the STAG Appraisals or much in the way of the Draft Business Cases. At that time, 2002 to 2004, it was a case of the administration dictating terms to some degree. We, as the opposition, were not closely involved in any of this. It is possible that our Transport spokesperson at

the time, who was very interested in Transport and had a legal training, would have had more insight but I did not.

147. Obviously variations in the estimates would have caused concerns but I cannot recall any of the figures or estimates which were produced at this point. I do not remember being given very much information at all on this at that stage.
148. I do not think there was any change in approach or increase in information in the lead up to the 2007 local authority elections. It remained largely the same until we actually ended up in administration. I think that, in most local councils, the administration is dealt with in a slightly different way from opposition councillors in terms of the amount of detail that they are given. This is because it is up to the administration to set the strategy but the Council Officers, or in this case an arm's length company, then develop it and put it into practice.
149. An email was sent by a member of the public, Alison Bourne, to all councillors on 10 December 2003 (**CEC02082850**). That email mentions discrepancies in the figures being offered for the cost of the ETP in different reports. Ms Bourne was later part of a deputation to the Full Council which raised similar issues about costs and funding. Our understanding at the time would have based on what was in the Council Officers' report for the meeting. The Labour Administration did not discuss with us in advance the various costings and we were not really in a position to influence them.
150. I can certainly remember Alison Bourne's emails, which she sent to councillors over a long period of time. She was a persistent complainant, particularly about the ETP. I do not remember what happened at the time, but when faced with that sort of issue we would generally not reply individually as councillors. When you were sent something like that, it

would usually be the relevant spokesperson or convener who followed it up and got information from Officers to explain something like the discrepancy she is mentioning but I have no recollection of what I did in 2003 about this one particular email. I am fairly sure that we would have checked out her concerns. I think, because we did support what was being suggested, we must have been satisfied there was not an issue. I think that most likely our Transport Spokesperson would have followed it up and then sent the response he received to the rest of our group. As far as I can remember, the SLD Group supported the Parliamentary Bills being lodged.

151. In terms of the costs figures for the ETP that were being discussed at that point, I believe it would have been £350m for the project – but that may not be the correct figure.

Further Development of the ETP Proposal

October 2004 Arup Review

152. A report was prepared by a consultancy, Ove Arup and Partners Ltd, on behalf of the Scottish Parliament, which reviewed the Business Case for Line 1 as at October 2004 (**CEC01799560**). That report makes various points about the business case including about its Benefit to Cost Ratio ("BCR"), a potential funding shortfall, and treatment of contingency and risk. I have read this report as part of the Inquiry process. I cannot recall reading this report at the time it was produced. The SLD Transport Spokesperson may have reviewed it at the time.
153. A response to the Arup Report was prepared by TIE in November 2004 (**CEC01705043**). I do not recall seeing that response at the time it was produced though I note, reading it now, there are clearly concerns about the levels of risk and its over-optimism.

The 2005 Road Charging Referendum

154. In February 2005, the public voted against the introduction of road charging in a city centre congestion area.
155. As a group, the SLD were opposed to the road charging scheme that was being proposed. Our reasons were that there was an awful lot of 'stick' in the idea of the congestion charging but no 'carrot' in the form of improved public transport. We thought that improvements were needed before the scheme could be brought in. I know that Labour thought that they needed the income from the congestion charging to deliver the ETP amongst other public transport improvements. It was the view of our group that they actually did not need that income. The Council had received a lot of money in the preceding years from various funding sources, and it seemed to us that there would almost certainly be adequate future funding from the Scottish Government transport funds that any council could apply for. It was our view that the potential income from road charging was not actually necessary to deliver the ETP.
156. I cannot remember exactly what figures were being talked about in terms of the congestion charge. There was always huge doubt about the figures. There are various models and views on congestion charging. If its aim is actually to reduce congestion, then people will not bring their cars into the city and will not pay the charge which leads to limited income. It did not seem to us that the sums added up and we already had significant TS funding for the ETP.

The May 2005 Draft Interim Outline Business Case

157. TIE's May 2005 Draft Interim Outline Business Case (CEC01875336) contains a number of points about funding, costs of the ETP and the lines involved.
158. I do not remember seeing this document and I note that it is marked "*Strictly confidential and commercially sensitive*". As an opposition councillor in 2005, the chances of me having seen it are relatively small.
159. I think right from the start of the project there was considerable comment from the media and people like Alison Bourne suggesting that the entire project was out of control even before the signing of the contracts and construction started.
160. That was not my impression, and I was assured by Council Officers that it was not the case. As a Group Leader and as the leader of the opposition, I was meeting with the Chief Executive (Tom Aitchison) on a fairly regular monthly basis. I think that either I or our Transport Spokesperson, if he saw the report, would have raised any concerns about cost estimates with the Council Officers we were in contact with. Had I seen the document, I would have had concerns based on its contents and would have raised them.
161. In terms of the general variations in the cost estimates, I knew that there was some fluctuation in prices and I took that as not unreasonable. Realistically, until the project actually advanced further it was very difficult to put out a concrete, final figure on a big project like this. It would depend on what sort of bids were received, and I would have expected there to be some fluctuation at that stage. However, I think if I had seen that Arup report I would have regarded it as a fairly objective unbiased comment on the project from people who know the business well. As

such, the fact that there was such a large shortfall at that time would have been a matter of concern.

162. I think there were always three lines under discussion and which had bills going through the Scottish Parliament. There was a Bill for, and a lot of discussion about, Line 3, which would have gone to Little France and the Royal Infirmary. Then there were Line 1 and Line 2. Line 1 eventually became 1a and 1b. I think we knew and we had been given information about what the lines were, so I do not think there was particular confusion about that. Looking at it now I can see that there may have been some confusion as Phase 1a probably did not mean the same as Line 1a eventually came to mean. This confusion did not extend to the figures we were looking at, as those would have been spelt out in the reports and we must have been aware of what was actually covered by the projected figures.
163. A passage in the Draft Interim Outline Business Case refers to the project being under "*a challenging timescale*" (pg 17 of **CEC01875336**).
164. The reason for the challenging timescale was that there was a date set for the tram to be operational: by late 2009. The CEC was aware of its reputation, so there may to some extent have been an imperative to show that something could be delivered by that time. I do not know whether, at that time, there were any limits on the £375m of grant funding from the Scottish Government. Most likely the Council had said, in the LTS, that the trams would be up and running by this point. That would have been of some significance to the CEC and would have been passed on to TIE. I do not know if there were any other pressures and I do not know of any particular reason for the 2009 date.

2006 Reports to the Council and Draft Final Business Case

165. A report to Council dated 26 January 2006 (**CEC02083547**) made certain recommendations for funding and phasing the tram network given that the total estimate for lines 1 and 2 was £634m and the total available funding was only £535m (comprising £490m from the Scottish Government and £45m from the Council). The figures quoted in the report to the Council appear to be based on the Edinburgh tram progress report of September 2005 (**TRS00000209**).
166. I note that reports to Full Council or committees by Council Officers would usually bear a headline date corresponding to the date of the meeting. The paper itself would have been prepared at least a week beforehand and we would have had various briefings on it during that week.
167. I can vaguely recall these documents at the time they were presented to the Council in 2006. I believe that we would have questioned the numbers and, given that we continued to support the ETP, would have been satisfied with the explanations or clarifications we received. We were always aware that we were not receiving final figures for the project as there would always be adjustments for inflation or other reasons. We were very aware these were estimates.
168. We were always told that the proviso to these estimates were that the figures we were getting would not be what it might finally cost. That would not be known until the contract documentation had been put out and bids had come in. We would then know whether the bids were of the right quality and the right cost and we could be satisfied that it was affordable. Inflation was mentioned as one of the aspects that might increase the costs.

169. The fluctuations in costs estimates did not cause me to have any doubts about TIE's abilities at this stage.
170. The main reason that the first phase was to be built from the Airport to the Leith Waterfront was that this line covered certain very key development areas in the city, including the West Edinburgh development area and areas near to the airport. Connecting the airport to the city was also of some importance. The Leith Waterfront was a huge brownfield site for which there were plans for development at this point in 2006. Many of these plans were 'put on ice' or never happened because of the global recession that happened in 2008. However, in 2006, that line was seen to cover the biggest areas for future growth. There was high unemployment in a lot of those areas. Overall, it was considered that it would give the best return to develop the line from the Airport to Newhaven.
171. In terms of the West Edinburgh development area, I am referring more to the Edinburgh Park and Gyle areas of the city. Areas around the Airport itself were considered for development at various times but there was a focus on development around Edinburgh Park business centre and Gyle shopping centre.
172. In terms of the role of the Scottish Government, I do not remember them having any real involvement in the route selection. Clearly they were providing the vast majority of the funding and I expect that TS was playing a role, but I do not recall the Scottish Government playing any role in the decision. I remember it more as a process of debate within the Council, with us having received advice from Council Officers that this route offered the biggest return on investment.
173. In terms of why this route was favoured over a North Edinburgh Loop (passing through Granton), the decision was based on the key

development areas in the city, the effect on employment, the suggested cost-benefit ratio, the fact that this route would have higher patronage and the idea that it would serve key areas of the city.

174. It was quite important that the ETP should be self-supporting. The best way to develop the ETP was through development that was related to it. Where planning applications were being put in for housing or business developments in areas which would benefit from the tram then we felt there should be a contribution towards the costs of the tram.
175. At this stage, the vast bulk of the money was coming from the Scottish Government and the CEC's contribution was only going to be £45m. We were shown tables which suggested that this would be funded from the sale of land, developer contributions, and various other sources – without taking it directly from Council Tax. Of course, with the way the ETP turned out we needed significant borrowing. While that was not taken directly from Council Tax, it did have an impact on the Council's revenue.
176. There was a joint report to the Council, dated 21 December 2006 (CEC02083466), by the Directors of City Development and Finance. In that report they sought members' approval of the draft Final Business Case for the Edinburgh Tram Network with the estimated capital cost of phase 1a (Airport to Leith Waterfront) being £512m if built alone.
177. The report discusses (at para 4.28, at pg 11) the most significant risks affecting the timeous completion of the project within budget:
 - 177.1 The advance utility works;
 - 177.2 Changes to project scope or specification; and
 - 177.3 Obtaining consents and approvals.
178. Councillors were told (para 4.32, at pg 12) that to maintain control over the capital cost of the project certain actions were required:

- 178.1 Enabling works, including utility works, should be authorised to proceed on a timetable that would not disrupt the main infrastructure programme; and
- 178.2 Negotiations with bidders should continue with a focus on achieving a high proportion of fixed costs in the final contracted capital cost.
179. Before it came to Full Council for a decision, we had had a lot of briefings and group meetings which had involved the Chief Executive and a wide range of other people both inside and outside Council. These included TIE, Lothian Buses and Council Officers. We had had an opportunity to question each of them, so that by the time it actually came to the final report we had had a lot of background information and understanding. We had also, as councillors, had a lot of correspondence and emails from various organisations, such as Friends of the Earth and Asthma UK, saying they were very much in support of the ETP and that they hoped that we would support it.
180. By the time it came to actually discussing the proposal and coming to a decision, I think I was fairly satisfied at the quantity and quality of the work that seemed to have gone into the preparation of the draft Final Business Case. I and the rest of my group were ready to support it. In the event, all but one councillor supported it. The exception at that time was Steve Cardownie, who had defected from Labour to become the sole SNP member on the Council (and, effectively, his own party). Otherwise all members on the Council appeared to have reached the same kind of level of satisfaction about the project.
181. I thought there was enough in there to give approval for work on developing the ETP to continue. We were always aware, though, that this

was the draft Final Business Case and there was going to be a lot more that would happen in the interim before the final sign-off on the ETP.

182. Regarding the risks affecting the proper completion of the project within budget, the utilities work always seemed to me to be a huge unknown because nobody was sure what would actually be found under Edinburgh's streets. The potential for finding things like Victorian era piping or other surprises could well have affected how quickly the utility work would be done. Getting that work done was very important. I cannot remember how central a part this played in the briefings, but it was certainly something we were made aware of.
183. This work was also a very beneficial side effect of the ETP, in its own right, in that Edinburgh would be getting renewed pipework and cabling throughout large parts of it. Over the years there have been countless breaks in cables, water leaks and other problems caused by utilities in the city, so it was a good opportunity to have that problem resolved. I was very aware that it would be difficult to say how long any particular section of work would take, so that seemed to be one of the biggest risks to the actual completion of the ETP on time.
184. We were also made aware of the fact that there would be construction inflation costs, ie that steel might become difficult to buy or that there would be other industry costs. There was always going to be a lot of risk around the actual construction costs, but at the time we were certainly assured that these had been taken into account.
185. I think it was made clear from the beginning that, once we came to actually approve the Final Business Case, the aim would be to keep costs as fixed as possible. That was an obvious way to keep control on costs. Negotiation with the bidders to actually get fixed costs through the bidding process would be important. I cannot remember exactly what

detail we were given, but I assumed or we were told that there would be constant monitoring of the costs by TIE and that the Council would have to be satisfied that everything was being kept within bounds.

186. I cannot remember whether the draft Final Business Case included any particular mechanisms for keeping the Council updated on costs. We certainly would have been informed. It would not be a case of setting the project up and then simply telling TIE to go away and get on with it without reporting to CEC as the project developed.
187. Regarding the ETP procurement strategy, it is difficult to recall what my understanding was at that time. Certainly, at an early stage in the process, I knew that the procurement strategy would be with the Official Journal of the European Union ("OJEU") rules and would comply with other requirements in terms of correct bidding and fairness. It would take into account the costs, the value, the time involved and what represented the best value.
188. My assumption would have been that utility diversions and design work would be at a stage where work could begin once the contracts had been awarded. That would let whoever was chosen get on with things.
189. At this stage, I think I knew that the design was being dealt with as a separate work stream. My assumption would have been that a fair amount of design work would have to be done before you could actually develop the procurement documents because obviously the construction company would have to know what it was actually bidding for. I do not know whether we were specifically told about the level or detail of design, but it would certainly seem common sense that design work would have needed to be at a fairly advanced stage of readiness to enable the procurement to go ahead.

190. I was not aware at this point that the design contract would eventually be 'merged' into the Infraco. I think that discussions about the design contract and its novation to the Consortium came later. I think I assumed that the design work was a discreet entity that would be dealt with separately from the infrastructure contract. I do not remember what we were told, at the time of the draft Final Business Case, about the level of development that the design had reached by then.

Events from 2007 to May 2008

Change in local politics

191. As I have previously mentioned, the local government election on 3 May 2007 changed the administration of CEC from a Labour Administration to a SLD/SNP coalition.
192. I do not remember the ETP being particularly contentious at a CEC level in the lead up to that election. There was a general view that the ETP - for all sorts of social, economic, environmental reasons - would be a good idea for Edinburgh. There was almost unanimous support.
193. Where it was more contentious politically was at Scottish Government level, where elections were also being held. I was responsible for writing the local SLD manifesto and our transport policy was to deliver the whole tram scheme for Edinburgh and eventually to extend it out to Little France and the bio-centre that was growing by the Royal Infirmary. I cannot remember specifically what the other parties said about the ETP and I do not remember it being a big issue. When I attended hustings, including ones sponsored by the Chamber of Commerce, the only real opposition came from SNP candidates.
194. The Council had 58 councillors in total of which 29 came from the SNP/SLD coalition while the opposition had 29 councillors made up of

the Conservatives, Greens and Labour. Between the SLD and the opposition, who in principle could be relied on to support the tram, we could ensure that decisions would be taken.

195. I understand that there were some tensions within the SNP Group on the Council. The members of that group were very new with only two of them having held elected offices before. I had the impression that SNP MSPs were giving guidance to or putting pressure on local councillors because they were not keen to follow through on the funding commitment. As such, there was a lack of keenness for the coalition at the level of the MSPs.

Changes in (Scottish) national politics

196. I have been referred to the grant letter sent by TS to the CEC on 2 August 2007, in which the Scottish Government confirmed it would provide funding of £500m (this followed a vote in the Scottish Parliament) (CEC01666269).
197. The Scottish Government prior to the 2007 elections was led by Labour, and was pretty keen on the idea of the ETP and prepared to award grants for it. However, the SNP, who came into power at Holyrood in 2007, said in their manifesto they would drop the commitment to the ETP. This was for a variety of reasons, including whether they might benefit from an anti-tram stance in certain constituencies.
198. The national administration prior to 2007 had committed an initial £375m to the ETP, and we knew that would be increased for inflation. The change in government did have an enormous impact because, had they carried out their manifesto, the TS funding would have been cancelled. The First Minister, Alex Salmond MSP, I felt, was particularly anti-tram, but I know from later conversations that his antipathy towards it was not necessarily shared by other ministers who had been very keen but had

changed their minds for political reasons. In the first couple of months of the new administration there was this feeling that the project was under threat.

Changes as Council Leader

199. When I became Council Leader, in May 2007, I certainly did not envisage the problems that were to come. However, I did know that it was going to be a huge and pretty difficult project. At that point I fully expected that the tram system would be up and running within our five year term of government. My general view was that it was a project that we had supported and we had every intention of ensuring that it came to pass.
200. There was an issue very early on about the funding (at para 198 above). This was sorted out by about the end of June 2007. There was also scrutiny of the ETP from Audit Scotland ("AS") at around that point. I think the Scottish Government asked for AS' involvement because of their big concerns about the amount of money being committed, particularly as the SNP's manifesto had committed them to dropping funding. My general view of the ETP at this time was that it would be difficult but I did not foresee the scale of difficulty that would emerge.
201. I certainly received a great deal more briefings and was given a great deal more information by Council Officers when I became Council Leader. These were on every topic imaginable and there was considerably more information than I received prior to 2007. Particularly because Labour had been leading the Council for a considerable time up to 2007, a new administration meant that Council officers were eager to communicate information to the new administration. Everybody wanted to ensure that I was briefed on everything,
202. I think at that stage I still felt that the information we were getting on the ETP was as accurate as it could be. Apart from the initial worries about

funding, in those first two months following the elections, where we had to do a bit of lobbying to ensure the money came through, everything seemed fine and there were no 'skeletons' divulged.

Changes in council controlled companies

203. A 20 July 2007 briefing paper was prepared by a Senior Council Officer, Jim Inch, for the Chief Executive (Tom Aitchison) (CEC01566497) in relation to the governance arrangements of TIE. The paper noted that the governance arrangements for TIE were "complex", that it was "vital that more rigorous financial and governance controls" were put in place by CEC and that "Transport Scotland have previously urged the Council to implement a more robust monitoring of TIE's activities in delivering the project". I do not recall seeing that briefing paper.
204. In a more general sense, there were changes in the make-up of CEC controlled companies following the 2007 elections.
205. Prior to 2007, the SLD had always queried the relationship between the Council and arm's length companies – particularly what we saw as a lack of democratic accountability, since there had not been opposition councillors involved in the boards of these companies. TIE obviously was part of that.
206. At some point prior to 2007, we did actually succeed in getting cross-party representation so I believe the SLD had a representative on TIE's board before we came into Administration. However, one of the first things we did in administration was to have the Council Secretary draw up a huge number of charts for us which showed how many members should be on boards, committees, and other CEC bodies to ensure there was a rough proportionality.

207. In addition, we asked for a review of arm's length companies, of which the Council had established quite a range. This involved looking at the relationships between the Council and the various bodies that existed at arm's length from the Council, sometimes with overlapping functions with other bodies (though TIE was not an example of that). The outcome of that review took quite a while to produce and there were certain amalgamations or other rearrangements as there had come to be proliferation of companies. For instance, I happened to be quite involved with the City Centre Management Company and the outcome with that was that it was subsumed within another body.
208. I do not remember at that stage having any specific discussion about TIE and its governance, although I had a lot of meetings around that time and it is possible that it may have been touched on.
209. In terms of total funding and TS scrutiny, the Scottish Government quite rightly wanted to be sure that the grant was properly spent. I knew that they had to be satisfied with the relationship with CEC or with TIE, but I did not see the actual detail of that.

Funding and Finance

210. There were various discussions in relation to finance. For instance, in July 2007, Council Officers recorded in an email that Councillor Gordon Mackenzie (SLD Finance Convener) had sought information on a number of matters, including what contingency plan needed to be in place in case of a cost overrun (CEC01556572).
211. Additionally, a highlight report to the CEC Chief Executive's Internal Planning Group ("IPG") on 30 August 2007 (CEC01566861) (para 4.1, at pgs 8 - 9) noted that the capping of the grant from TS changed the risk profile for CEC. The report sought guidance on the procurement of

resources necessary to provide a risk assessment and analysis of the Infraco contract for CEC.

212. I cannot remember what steps were specifically taken following the changed risk profile to protect CEC's interests regarding ETP risks, but very early on in our administration we were given an overall picture of CEC's finances. The Director of Finance, in a report to Full Council, informed us that the Council finances were not at all healthy and that there were practically no unallocated reserves. In general terms, we inherited a very poor financial situation, but during our five years in administration we managed to build up the reserves of the Council.
213. Given the poor financial situation, it was very important that we knew how we were going to raise the Council's contribution – which, at that time in 2007, was expected to be a maximum of £45m. Looking at how that £45m would be raised involved risk, because we obviously wanted to minimise the amount that the Council was going to have to pay. There were all sorts of considerations on the agenda in looking at how that money would be found. So discussions about risk came in very early on, but these discussions were mainly related to how the Council would be able to provide the funding for its contribution to the ETP.
214. I have been asked if there was any discussion, at this stage, about what would happen if CEC's contribution ended up exceeding the £45m it had planned for.
215. I do not think there was any planning or conception in 2007 about what would happen if CEC's contribution ended up exceeding the £45m. It had been made very clear to us that we were not going to get more than £500m. As a councillor on the COSLA Leadership Board, we had quarterly meetings with the First Minister (Alex Salmond MSP) and other ministers such as John Swinney MSP. Invariably I would be nobbled by

one of them and the phrase used was that we “*would not get a penny more*” than the £500m contribution. The Scottish Government had had its hand forced into dropping a manifesto commitment, which nobody likes to do, and so they were absolutely adamant. There was no way we were going to be able to go with a ‘begging bowl’ and we knew that it was not going to come from anywhere else. At that time, as far as I can remember, we were absolutely convinced by what we were told in Council reports and from briefings, which was that it was unlikely we would need the £45m. I do not recall it being discussed, at this time, that it would ever be more than that.

216. I do not know of any contingency plans that were in place, because at that time I certainly did not think there was a likelihood of a cost overrun. We thought that there had been enough risk allowance put into what we saw that the costings would have allowed for things like inflation costs and all the rest of it, so there was enough allowance to cover unforeseen things.

Governance arrangements as at 2007

217. There are minutes of a meeting of the Full Council which took place on 23 August 2007 (CEC01891408) and which I attended. Item 22 on the agenda of that meeting was an update on the ETP including a report of the Chief Executive (at pg 31) which contained a number of recommendations. Councillors approved those recommendations which included:

- 217.1 Setting up a revised governance structure;
- 217.2 Agreeing operating agreements with TIE and TEL;
- 217.3 Reviewing board positions for TIE and TEL; and

217.4 Establishing a Tram Project Subcommittee (TPS) of the Transport, Infrastructure and Environment Committee (TIEC).

218. The project was moving on by this stage and the governance arrangements were a very complicated structure. There was TIE, TEL, the Tram Project Board ("TPB") and so on, and their lines of connection were pretty obscure. It was necessary to make it fit for purpose. It was also clear that there needed to be a proper relationship between the Council and TIE, because matters had reached the stage where it was now clear that TS was going to be giving the funding to TIE. As such, it was essential that we had as clear a governance structure as possible. While it was not precisely noted in the recommendations, this was also because we were not going to get more funding and that the Council was, at the end of the day, the funder of 'last resort'. It became really important to make sure that everything was in place.
219. I think what is mentioned in the minutes did come to pass. I do not know precisely when those changes were put in place
220. The changes probably simplified the governance structure a bit, but it was still quite a complicated structure. At various later stages it actually became a bit more complicated, until it was all sorted out following the mediation at Mar Hall in March 2011. One of the key ingredients of the ETP was that there should be an integrated transport system with Lothian Buses, so there needed to be some clarity about TEL's role, the role of Lothian Buses and the relationships with TIE. It always remained quite complicated and there were all sorts of groups at different times, including internal groupings within the Chief Executive's office (the Transport Operating Group, I believe). It always remained a relatively complex arrangement.

221. The TPS was, in essence, to give elected members an opportunity to spend more time actually looking closely at matters connected with the ETP. They would then be expected to report back on the ETP, as appropriate, to their own groups. Until this point, the ETP had just been one of many items within the TIEC remit. As its name suggests, the TIEC covered a lot more than just transport and had a huge environmental remit as well.
222. As you can see from the TPS's composition, we tried as far as possible to make it reflect the actual number of members that the various groups had. Overall the Council was split (29 SLD and SNP councillors as against 29 opposition councillors). So it featured 3 members each. It was an opportunity to have cross party scrutiny at a committee level. I was never a member of the TPS. I believe Councillor Wheeler and Councillor Hawkins were the SLD members of it.
223. Subcommittees would usually report back to their originating committee, TIEC in this case. There were sometimes informal working groups set up (which did not have formal clerking support), but the TPS was a proper subcommittee so its agendas, papers and minutes were all available to any councillor who wanted to see them. The information would also have, generally, been publicly available, although there were various confidential items that they were not able to publicly report on.
224. There was no kind of direct lines between the PSC and TPS. The PSC was intended to be a group of the more senior councillors. All the Conveners, for example, were on the PSC. The convener of TIEC was also the convener of TPS, and was also on the PSC, but other than that there was no connection. It was a very loose link.
225. I do not remember anybody ever suggesting linking the TPS and the PSC together. The PSC was a kind of over-arching committee, setting

strategy which often crossed the boundaries between convenerships, committees and Council Departments. Accordingly, it did receive papers about the ETP. I do not think we actually had any subcommittees of the PSC because, if there had been a need to focus on a particular issue, the Conveners would normally create a relevant subcommittee reporting to the committee they were responsible for.

226. Regarding the Full Council meeting of August 2007 and how the roles of the Executive Chairman of TIE and the Chief Executive of TEL changed as a result of the revised governance arrangements, I have difficulty remembering the precise situation at that time. From May 2007 until around August of that year, I think William (Willie) Gallagher, who was the Chief Executive of TIE, was also acting as the Chair of TIE. I have always been very uneasy about the notion of an Executive Chair (ie the chair of a board also acting as an executive rather than independently). The changes around this time would have, I think, dealt with him occupying both roles.
227. Jim Inch's July 2007 briefing note (at para 203 above) made mention of concern for more robust and rigorous governance controls.
228. The changes in the latter half of 2007 and the first half of 2008 exposed some quite serious issues about the actual footing on which all these different company boards, and the TPB, were resting. The TPB was at that time a very loose arrangement and it had no proper lines of authority or responsibility between it and TIE. Equally there were no operating agreements in place for these bodies.
229. There was a CEC Tram Monitoring Officer ("TMO"), whose appointment came around then. While someone might have been informally fulfilling that role before this point, a proper TMO was needed. If things were to go awry, it was very important that the Council had its relationship with TIE

clear and that the governance was properly worked out. I think these steps probably produced more robust monitoring. There had been loose relationships before, but it was certainly put on a more legal footing and the relationships were better identified.

Design and utilities

230. There are a set of minutes for a joint meeting of the TIE board, TPB and the Legal Affairs Committee which took place on 15 October 2007 (CEC01357124). The Boards were advised that the Infracore bids were primarily based on preliminary design (at pg 11).
231. I did not see this document until I saw it as part of the Inquiry. At the time, I certainly would have been rather surprised to have learnt this. I think I would have been aware that design was not totally complete but I do not think I was aware of the specifics of the issues that actually come up in these minutes. The design of the ETP later became a major issue, but the impression I had at the time was that the design was a lot more complete than later turned out to be the case. At this point, late 2007, the unknown factor of what was going to be found underneath the city's streets seemed to me to be a bigger issue than the design. I thought that the designs would have been further progressed by the time that procurement was underway and the bids were received.
232. I perceived utilities as being one of the biggest risks. Clearly you could not have the infrastructure contractor going on street when the utilities pipes had not been dealt with and when there were large ditches and holes in the street. Equally, there was no point in digging up roads twice or in having tracks laid and then finding that there had not been pipes laid underneath or there were hidden pipes that we did not know about. So, at this point anyway, I saw the utilities as being more of a concern.

233. I thought that TIE would have progressed the design to the stage where procurement could happen. You cannot really put out something and expect to get realistic bids if you have not got the majority of the design work done beforehand. Otherwise the contractor does not know what they are bidding to do. I was unaware of the potential for that being an issue, and if I had been aware of it then there would be an obvious concern about its effect on prices. I am pretty sure that design was included in the costs estimates and that there was a risk factor that put in the costings for design work. So I would have thought that it was covered. If we had been told that the design was not as advanced as we thought it was, then it might have caused serious questions.

The ETP Final Business Case (Version 1)

234. Coming to October 2007 and the Final Business case ("FBC"):
- 234.1 The Final Business Case (FBC)(Version 1), dated 3 October 2007, was prepared by TIE (CEC01649235).
 - 234.2 A presentation was given to the Full Council by Willie Gallagher (TIE), Andrew Holmes (CEC) and Neil Renilson (TEL) at a meeting on 25 October 2007 (CEC02083536).
 - 234.3 A report by Andrew Holmes (CEC Director of City Development) and Donald McGougan (CEC Director of Finance) was given to councillors. It reviewed the FBC and recommended that councillors vote to approve it (at pg 16 of CEC02083538). It noted the estimated capital cost of Phase 1a (Airport to Newhaven) was £498m (which included a risk allowance of £49m) and that there was a 90 percent chance that the final cost of phase 1a would come in below the risk adjusted level (paras 2.4 and 4.2, at pgs 1 and 8 – 9). Tender evaluations would also be reported back to the Council (at para 3.19, pg 6).

235. By the time that the FBC came to the Full Council meeting in October 2007, we had had several briefings on FBC in addition to the presentation that was actually given at the Council meeting. There had been various comments from external bodies as well. The Auditor General had reported in June 2007, which I think had been sought by the Scottish Government before deciding to allocate funding, and he was satisfied that the correct procedures were in place. That report, I think, specifically mentioned risks. There had been an earlier Office of Government Commerce ("OGC") Gateway Review which had basically given the green light to the ETP.
236. The Scottish Government had by this time also dropped the EARL project, which TIE had been dealing with. This actually had a helpful impact on, and improved the business case. A heavy rail line going direct to the airport was going to impact on the patronage from the airport itself. Although at times those against the trams complained that it was set up solely for the benefit of visitors to Edinburgh, I do not remember the airport side of it actually being one the big features in looking at where the line would go. It was more to do with growth areas in the city. The BCR did improve with the fact that you were not going to have a (near) duplication of transport services for part of the route.
237. Having had a great deal of information, and having questioned everybody a great deal when they gave presentations or reported, at the end of it we were satisfied that the case had been made. We were quite happy that our concerns had been addressed and that it seemed a good FBC.
238. I know that the allowance for risk was something that was usually brought up in relation to these types of reports. Risk was certainly raised and we were reassured that the levels of risk that had been written into the project (for various things) were comparable to the levels that were used in other projects. I believe we would have asked about how definite

the prices were and would have been told that they were not. We knew that there was always a possibility that the prices would change once it reached the stage of actually having contracts in place. It is difficult at this time distance to remember what in particular was asked but I do know that my group was not slow to ask questions.

239. I do not remember the fact that significant sums of money had already been spent influencing our decision at all. I think we were looking at the FBC on its own merits and we were not thinking about whether there was waste if it did not go ahead.
240. I do not think I had a good understanding of how much had been spent on TIE at this point. TIE had been working on a number of different projects such as the Congestion Charging Scheme, EARL and the WEBS project. Those had been pulled and I assume that a fair amount of expense had gone to nothing for those projects. The referendum on congestion charging, for instance, cost £7m. I think we were told at some stage how much had been spent on the project to date.
241. I would have thought the £498m capital cost figure was arrived at by TIE and the various advisors that TIE had commissioned. They would have been the sole source for the estimates. I do not know who in particular worked on it as TIE had various different consultancy firms working for them at various times. I do not remember at that point seeing any external documentation from those advisors. By October 2007, I think that the costs had been worked out much more fully than we had seen previously. My understanding at the time was that they had been worked through by TIE – who had the remit to come up with the costs of the project.
242. CEC's Chief Executive or the Senior Council Officers did not take any external advice on the costs at this stage, as far as I know. I know

external advisors were eventually employed by the Council due to concerns about whether there was a conflict of interest, but that was when things reached a difficult situation with the contractor. There were questions, at that later point, about whether it was right and proper for the Council to be getting advice from the same people as TIE. However, up to that point it was very much the perception that TIE and the Council were one and the same, albeit that TIE had the specific remit to deal with the ETP.

243. It is quite unusual to have presentations to Full Council though they did happen occasionally. I cannot remember now whether the October 2007 presentation (CEC02083536) (at para 234.2 above) is what we saw at the Full Council meeting or was presented to the SLD Group at an earlier point. When it was a big matter coming up to Full Council, we would be given presentations on the ETP, in groups, prior to going to Full Council. I doubt very much if they would have differed enormously from the presentation at Full Council.
244. I remember having seen other presentations given by these three individuals (Andrew Holmes, Willie Gallagher and Neil Renilson). This presentation may have been slightly different in that Neil Renilson tended to be less involved in presentations to groups, though he did come to some. His involvement at this stage is interesting because there was a feeling that Neil Renilson was not particularly enamoured with the ETP overall. However, in his involvement with presentations at this time he gave the impression that he fully supported having a fully integrated transport system (that was an important aspect of the ETP). I was impressed that he did appear to make that case very strongly.
245. I do not recall the report on the results of the tender evaluations being given to councillors, but I could be mistaken. We would not actually

normally get that level of detail. We would tend to get the headline results of a tender evaluation.

246. I do not believe there was any further information provided by members of the Council who also sat as board members of TIE or TEL around October 2007. To a large extent, our members who sat on boards did honour their commitment to the boards. I am sure the questions they would have asked when we got presentations, as a group or Council, would have been fuelled by what they had learnt at the board, but they did not come back from board meetings and tell us what was happening. If you are given private and confidential information it should stay as such, but sometimes, particularly if information appeared to have got out into the press, one of our board member councillors might say that they knew that the press statements were wrong.
247. At various stages when there were issues raised that caused huge concern, though I cannot remember if it was specifically at this time, I did have very private and confidential comments made to me. However, I do not remember a board member telling us anything that we did not get from those presenting the information to us. Ultimately our decision to approve the FBC was arrived at as a group and was obviously informed by the board members' views on it, which were obviously informed by what they had heard and learnt through the companies.
248. I cannot remember whether there was any explanation of the bids received or any high level comparison between them in relation to the Infraco bidding. I remember a lot more about the contract for the tram vehicles. I think we must have been given more information, because I can recall that there were four bidders for the tram vehicles contract, including Bombardier, Alston and CAF who were successful. For the Infraco contract we may have been told it was down to two bidders and that the Consortium was the preferred bidder of those two. I do not have

any memory of anyone distinctly laying out the 'pros and cons' of each bidder for us.

249. I would assume that, as with any kind of contract, the Consortium was identified as the preferred bidder because they gave best value. TIE would have obviously looked at quality and timely delivery and whether the delivered quality would be what they were looking for. I do not remember actually seeing any of the tender documents. I do not believe I ever saw a matrix of important factors or scoring or was ever given any specific information from TIE about it. It was their assessment that the Consortium were the preferred bidders and we would have accepted that. We were not, as councillors, actually looking at the bids ourselves or involved in choosing who we thought should be the preferred bidder.
250. An email was sent by Alan Coyle (CEC Tram Project Finance Manager) to Andrew Holmes and Donald McGougan (CEC Directors) on 3 December 2007 (CEC01397538). That email attached a briefing note (CEC01397539) setting out a number of issues in relation to the ETP and the approval of the FBC.
251. I had not seen this document prior to it emerging as part of the Inquiry. The note appears to raise concerns which I did not know about at the time. I also do not think that other councillors would have been aware of these issues at the time.
252. I think there is enough of concern in the note to suggest that we probably should have been told. It is always quite difficult for Council Officers to decide what to tell councillors. This is because situations are fluid and there may be no point in raising an issue, for instance, on Monday if it is going to be sorted by the next morning. There is always an issue about what information should be imparted and when, particularly if an issue can be resolved. Given what was being said in the note and the many

different issues, then I think I would have expected to have been told that things were not all 'sweetness and light' as perhaps we might have thought.

253. If we had been made aware of these concerns, I think we would obviously have sought to be reassured and we would have sought further information to find out whether there were issues about time and money with the ETP. One thing that really struck me, in reading this note, was the fact that Council Officers did not know the contract at all. That was a problem. I am not saying that the councillors should have been told that, but it was a big concern. There is clearly a concern that the Council did not have the capacity itself to fully understand the arrangements. Though that is a reason why TIE was set up, there were a lot of issues there that were quite worrying indeed.
254. An email was sent by Duncan Fraser of CEC to Geoff Gilbert of TIE on 14 December 2007 (CEC01397774) which refers to a presentation given by TIE staff the previous day. The email was copied to a number of others at CEC and TIE, including Andrew Holmes and Donald McGougan. The email raises questions about the Quantified Risk Allowance ("QRA") and the provision for risk given the likely change in the project's scope due to outstanding design and extensions of time. I believe Duncan Fraser was a transport specialist within the City Development Department.
255. I did not see this email at the time but, from what Duncan Fraser is saying, it appears the Council Officers were unclear on the scope of works. As such, it would have been unclear to councillors who were getting their information from those officers. In December 2007, I certainly believed that the scope of the scheme was pretty much fixed, though obviously there might be unforeseen circumstances that would emerge. That would have been covered by the risk allowance which had

been written into the plans. This document does suggest to me that we were given an overly optimistic gloss on the situation.

256. It would seem that, and this appears regularly in documents which come later in this statement, there were people within the Council who had concerns, but whether they were then acted on by those to whom they were reporting is perhaps a different matter.

257. I do not remember this type of concern being reported to the Council at this time. These are internal emails to Council Officers and they would have to exercise their own judgement on whether they then transmit that information to councillors.

Wiesbaden Agreement

258. Between 17 and 20 December 2007, negotiations took place at Wiesbaden, Germany, between representatives of the Consortium and TIE. On 20 December 2007, an agreement, or heads of terms, was reached (the Wiesbaden Agreement). I have been asked what my awareness was of the Wiesbaden Agreement and its purpose. I was not aware at all of these discussions at the time. It did not surprise me though, that in the negotiations with the preferred bidder, there would be on-going discussions. I would not have expected to have known that sort of detail about on-going discussions with a potential contractor.

The ETP Final Business Case (Version 2)

259. In terms of updates to the Full Council following the first version of the FBC, at this stage, I do not remember getting updated information other than what was presented to us when there was due to be a report to the Council or a committee. The updating of information became better later on in the ETP. The information given to us at that stage was what had to be shared with us in order to get the decision made, the information to be

shared being decided by Council Officers. I would not have expected to be informed about internal, operational matters.

260. Regarding whether I had the impression that TIE knew that the contract was not fixed price and might result in the Council breaching the terms of the funding agreement with TS, my view on the pricing assumptions in late 2007 is totally coloured by what I later learnt. Therefore it is a difficult question to answer. The impression that TIE always gave to councillors, and the phraseology that they used in things like reports and press releases, was that it was a fixed price contract. In the reports, TIE did use the phrase fixed price but they sometimes qualified it by mentioning exceptions such as a major design change or something like that. I now understand that there was a caveat to that. We were not made particularly aware of the caveat.
261. At that time, I probably thought that it was a fixed price contract unless there was a major change - for example, if the Council decided on a major change to the route (which was technically not possible because it was already defined in the Tram Acts) or they suddenly decided that there were to be a lot more tram stops. If there was a major issue or some fault of the Council which caused a great deal of expense, and that had not been written into the contract, then I think I always knew that might lead to additional costs. However, the headline phrase communicated to councillors always was that it was a 'fixed price' contract. I probably thought it was something like 95 or 98 percent fixed, and that the small element of variability was actually covered under the risk allowance that had been put into the project.
262. I think the first time that I really became aware that perhaps the contract was not as fixed as I thought was some years after this. I had a meeting (which I discuss further below at paras 432 - 434) with Richard Walker, who represented BB as part of the Consortium. This was a heavily

'chaperoned' meeting, with the CEC Director of Finance (Donald McGougan) also present. Certainly, his (Richard Walker's) implication was that TIE knew very well that the contract, far from being fully fixed or almost fully fixed, was probably less than 50 percent fixed by then.

263. It is very difficult to know whether TIE knew or who at TIE knew. As the Council was the 'funder of last resort', then it was a real problem if the contract was not fixed price (or as near as possible to fixed) so that the risk allowance would not cover it. It was very important that it was sold to us as fixed price because we had the £500m and not a penny more. Anything that then ate into the funding that the Council was providing (£45m) was obviously something that had to be considered very seriously.
264. The FBC came back to the Full Council in December 2007:
- 264.1 The FBC Version 2 (**CEC01395434**) was prepared by TIE and dated 7 December 2007.
- 264.2 A report (**CEC02083448**), dated 20 December 2007, was prepared by the Directors of City Development and of Finance (Andrew Holmes and Donald McGougan) asking the Full Council to approve the FBC Version 2 and instruct TIE to award the contracts subject to price and terms being consistent with the Final Business Case and the Chief Executive being satisfied that all remaining due diligence was resolved to his satisfaction. It was noted that the estimate for Phase 1a of £498m (inclusive of a risk allowance of £49m) as reported in October 2007 remained valid.
265. It was a very detailed Final Business Case and again, as with all reports like this that came to the Full Council, we would have had briefings and the opportunity to ask any questions about any parts of it that concerned

us. At the end of the day, we thought that the report was a reasonable one to support. I think that within the Council Officers' report we were told that DTZ Piedad (a consultancy) had been asked to look matters over. There was some kind of external assessment of the capacity of the Council to make the contribution that was going to be required. On those grounds it seemed to me that the ETP was worth supporting and any concerns that I might have had, or other members of my group might have had, would have been addressed by Council Officers before we actually went to the Full Council meeting.

266. The DTZ Piedad report, in a way, gave some comfort that it was not just the view of CEC's Director of Finance, who was the main person who was advising on finances and the Council contribution. The fact that it had some external assessment probably gave us the feeling that it was a reasonable way forward. The headlines in these papers were about where the money was going to come from, and presentations showed us the amounts in sales of land, developers' contributions and the like.
267. It has been noted that the DTZ Piedad report only related to the Council's financial contribution. That is correct but £45m, at the time, was a lot of money from the Council Budget. Obviously the bulk of the money was coming from TS, but we still had to be satisfied that we could actually bridge that gap if we had to. The external report helped us answer the question of whether we could actually afford the project. What we did not know at that stage was that the global recession was going to have a huge impact on development everywhere, including in Edinburgh, and that did impact the figures quite dramatically. Overall, it seemed to us to present a good enough case to support.
268. In terms of concerns about the FBC Version 2, I think any concerns we had at the time would have been satisfied before the meeting. Otherwise we would not have supported the project.

269. Regarding my understanding at December 2007 of the extent to which design, approvals and consents and utility diversion works were complete, the utilities question was easier for councillors to understand and was an important aspect of the ETP. The diversion works were moving the pipes and cables from all over the street and consolidating them within a single trench in one section of the street. That would avoid future disruptions involved with digging up the whole of the street. It was costing us a lot of money and it was disruptive at the time, but it would be a benefit for generations because the equipment that was there was a century old in most cases.
270. At this point, December 2007, it was obvious that the utility diversion work was not complete because there were signs of it throughout the city's streets. We definitely knew that that work had not been done, and it would also have been clear that you could not have contractors coming in to start working laying tram tracks while the road was still in upheaval. I knew that that would cause difficulties for contractors coming in.
271. The design work is something I was not so familiar with. I knew it was not complete, but I did not know to what extent it was not complete. I suppose my assumption would have been that it had been completed to a stage that meant that the procurement process could have been gone through with a good understanding of exactly what was being asked for. As for the progress of approvals and consents, this again was in a way dependent on design, so I would have understood that that was not complete.
272. Regarding how TIE would deal with these aspects of the ETP at this stage, presumably their job was to make sure that the design, utilities and so on had been dealt with adequately for the purposes of the Infracore to start delivering. So, as far as I was concerned, it was an operational

matter for TIE. I did not receive any information on contingency planning by TIE and would not have expected that level of detail.

273. In terms of my understanding of the risks borne by TIE and by the Council from the Infraco, there were Infraco risks identified in reports to the Council about things like inflation, but the main risk that I can recall thinking of at that time was related to the utility diversion work. As with any project, there also was a general degree of risk in relation to unknown ground conditions. There had also been issues with steel prices at various stages and I suppose I wondered whether they would get the tracks at the right price at the right time. These were the sort of things I thought of as the main risks.
274. I am fairly certain we were given figures for the different aspects, including design and utilities, and a detailed analysis of overall figures.
275. I thought the contract would cover most of these things because there was risk allowance presumably written into it and there must have been some headroom within the contract. It would not be the Council that would end up having to pay large sums, under a fixed price contract unless there were unforeseen large matters caused by the Council or a third party. We had a lot of discussion about risk and about the figures that had been put in to account for it. I think overall there was a 10 percent risk allowance on the whole project, but others would have known all about that. The information would have been transmitted to the councillors who were being briefed on the situation.
276. We were, in general, reassured by the Council Officers that had taken us through the paperwork or briefed us that the risk allowance was adequate, compared favourably to other big projects and offered enough cover. We were shown the percentages that had been allowed for all the

elements of risk. I cannot remember exactly what Optimism Bias is though I do remember the phrase coming in somewhere.

277. Regarding whether the aims of the procurement strategy had been met, I am not quite sure what this entailed but it seems to come back to getting best value and ensuring there was capacity to do the relevant works. Councillors had to make a judgement based on the advice that we had been given. In this case I cannot recall any of the Council Officers saying that they had a problem with the project. They were recommending that the FBC should be approved and I would expect that the aims of the procurement strategy had been met.

278. As a councillor, you are very reliant on the advice of the professional Council Officers. They themselves very often base their views on advice they get from somebody else. So, at the end of the day you have to make a judgement as to whether you trust the reports and that the information is as it should be. I think if there had been any questions about the FBC not meeting the aims of the procurement strategy, we would certainly have been told about it. It is only now, having looked at all the other aspects of this, that you wonder to what extent the Council was actually monitoring matters. The Council had given this remit to this company (TIE), who claimed to be the experts and the Council Officers themselves did not have that expertise.

279. I have been asked whether, at the time, I noticed any difference between the figures involved in the FBC presented to us and the infrastructure contract. Things did move quite a lot in this period. However, in general when we were presented with the figures and they had moved we always – if we queried the movement – got a satisfactory explanation as to why it was now that figure.

280. The report to Council accompanying the FBC Version 2 (at para 264.2 above) (CEC02083448) noted that some allowance had been made for risk associated with the detailed design work not having been completed at the time of financial close (para 8.1, at pg 5). However, the “*fundamental approach*” had been to transfer risk associated with design not having been completed to the private sector and that this had largely been achieved (paras 8.10, at pg 6). This reflects what I remember being told about the FBC and contract, and the type of assurances we were given.
281. The report noted (at para 8.16, pg 7) that the risk contingency did not cover major changes to scope and that changes to the programme could involve significant costs that were not currently allowed for in the risk contingency. This is something I have already discussed.
282. I must have felt comfortable with the FBC as I supported it. I must have felt that all our questions had been answered and that what we were being presented with was a reasonably argued case that was worth approving. All of the parties supportive of the ETP were in favour of the FBC.
283. I do not remember any discussion about postponing the award of the Infracore until after the design and utility diversion works were complete, and I think everybody wanted things to get started as soon as possible. I would have expected that, if that was a viable option, TIE would have put it to the Council and the Council Officers would have put it to the councillors but I do not remember that happening. By December 2007 we already knew that the utilities work was taking longer than it should have done. The utilities work had actually stopped when the new Government came in because there was such uncertainty about whether funding would be provided (at paras 196 - 198 above). That was not the only reason that it was delayed, but that was one of them.

284. The Council report (at para 264.2 above) (CEC02083448) noted (at para 8.13, pg 7) that the Council retained certain risks, including agreements with third parties (including utilities delays), finalisation of technical and prior approvals and a lack of indemnity insurance for TIE (as a Council controlled company).
285. My position on these risks comes back to the advice that we had been given that this was reasonable. One of these, planning approvals, was to some extent within the power of the Council to progress. The issue about indemnity insurance seemed quite technical though and I may at the time have understood what that was all about. Overall, the risks seemed reasonable in light of the advice we received that they were containable.
286. The report's discussion and recommendation (at para 8.12, pg 7 and para 10.2, pg 8) concluded that the CEC's Chief Executive should approve the award of the Infraco subject to completing due diligence.
287. As far as due diligence on the award of the contract is concerned, that would have been, I would have thought, TIE's job to carry out. I do not know whether this was a question of carrying out due diligence on the bidders or something else. The Infraco was a contract between TIE and the successful bidder so it was not the Council itself. There were various devices, such as the company boards and the operating agreements that provided a connection between the Council and TIE. I would have assumed that the Council was satisfied with TIE's progress and performance on that aspect.
288. Councillors themselves do not enter into contracts. These are entirely an operational matter. There is a very clear demarcation between the councillors who develop the strategy of the Council, and monitor that to ensure that that strategy is implemented, and the Council Officers who are the ones that actually implement the decisions and conduct the

practical day-to-day stuff. Looking in intimate detail at contracts is not something that any councillor should be involved in, and so it is very often the case that Council motions (and reports underlying them) ask that you delegate the authority to the Chief Executive or sometimes a relevant Director.

289. In fact (which I discuss further below at para 343) the decision came back to Full Council and the power of delegation had to be renewed. You trust your Chief Executive to come back to councillors and report on changed conditions if he (Tom Aitchison) was uncomfortable because things had changed either cost-wise or risk-wise or for some other reason. So the actual interaction was between the Chief Executive and his team and TIE, not between councillors and TIE. We were distanced from them in that way. We did not, at that point, ask the Chief Executive to come back to us to tell us why he was satisfied it could go ahead, but the expectation was that he would come back if he was not. In fact, the process was quite drawn out after this decision.
290. The actual financial close of the Infraco was in May 2008 and at that time we were satisfied that the requisite conditions had been met. But it should be borne in mind that our satisfaction was entirely based on what the Chief Executive reported to us. We, as councillors, did not go to TIE's offices and ask to see the contracts or question them in depth. That would be entirely outwith the remit of any councillor. When it came to the actual financial close, we were assured by the Chief Executive that proceeding with the contract was what we should do. In the end, all parties on the Council signed up to that at the time.
291. At the time that we received the report (at para 264.2 above) in December 2007, we were happy to grant authority to the Chief Executive because we felt that the outstanding matters were such that he should not have to come back for further approval. That was what was written

into the recommendations and the motion coming out of that meeting. TIE would be actually entering into the agreement, but the Chief Executive was given the power to actually instruct them to enter although he himself was not involved directly with that.

292. There were various issues raised in the report, and we had to judge that through his professionalism and his use of Council Officers he would ensure that he was satisfied that they had been resolved. That is very common practice. It is quite complicated to explain a councillor's role in all of this. New councillors do not always really understand the relationship between them as a councillor and the Council Officers. Very occasionally, a councillor will actually cross the line in the relationship. That can cause huge problems if they start actually directing staff to do things and getting involved in the day-to-day workings and operations of the Council. As it turned out, it took much longer than was expected to have these issues in the report resolved and the Chief Executive's power of delegation did come back to be renewed.

Negotiation and changes in lead up to Infraco

293. Around 2008, we had entered into the start of what eventually developed into the international global financial crisis. However, the main reason for increases in the price of the infrastructure contract was that the original information that we had was not quite complete. The contracts had not been firmed up and there were still a lot of question marks about some aspects of the project. So I would have assumed that we were, by the end of that period, at a point where we had final information.
294. That final point was reached in May 2008, when a report came to the PSC. By that time the figures were firm. We always knew that what we had been presented with previously were best estimates which, by January 2008, were very good estimates. Nevertheless, we knew that,

once we were at the more advanced stage of assessing contracts, there would be increases.

295. We were told that more of the risk had been transferred to the private sector, but that the transfer came at a cost. If you are transferring risk then you pay for that. However, this would be worth paying and cheaper than having taken on the risk ourselves if the worst case scenario occurred. I think one of the reasons for the increase was that more of the risk had been transferred to the bidders. I know that for the contract for the tram vehicles (Tramco), which went to a Spanish firm (CAF), there were currency issues. As BB and Siemens were based in Germany that currency variation may have been a reason for variation in the Infraco as well, although I do not know for sure. Largely it was the firming up of the project and the transfer of risk.
296. A report from TIE to TS, dated 14 January 2008 (**CEC01247016**), noted that discussions with the Consortium had resulted in the signing of an agreement for the price (as a precursor to the Infraco) on 21 December 2007, "*essentially fixing the Infraco contract price based on a number of conditions*". The key points of the agreement were said to be transfer of the design development and scope changes risk to the Consortium and the exclusion of certain items, all of which were said to be well understood, from the fixed price of the contract.
297. This was an internal email that I did not see at the time, so I have a general awareness of some of its points but not the specifics. It becomes difficult to recall exactly when I learnt of certain things over the course of the ETP, but I certainly was aware at some point that design was to be novated to the Consortium and that the risk was to be transferred. For the construction programme, I must have known that certain items were excluded but that those items must have been adequately provided for –

I would assume that these were items that could reasonably be excluded from the contract.

298. I have been asked whether the figures provided by way of the Infraco contract, including the novations, represented the entire budget of the project.
299. I would say that the figures provided by way of the Infraco contract, including the novations, did seem to represent the entire budget of the project. They all seemed to add up and make sense, it was essentially a fixed price contract, all the cost headings had been taken account of, and the whole project was deliverable within the sum of the £545m that had been agreed. This understanding came from reports that we were given by Council Officers and the responses we received, in reply to councillors' questions, from those officers.
300. There were a series of exchanges, in preparation for the Infraco, amongst the legal team and other depute officers of the Council (see **CEC01567522, CEC01567520, CEC01560815, CEC01508412, CEC01400919, CEC01400987, CEC01399016, CEC01399075, CEC01401032, CEC01401628 and CEC01401629**). These raised concerns, including that the price had risen by £10m, that the project timetable was now three months later than predicted, that the risk of approvals and consents had not been taken by the private sector and that there was a residual risk, potentially a very significant one, associated with design.
301. I was not aware of these concerns at the time and it was an 'eye-opener' to read some of these emails, especially some of the emails that refer to TIE's lack of transparency with the Council and to questions about the robustness of the risk and contingency measures. I do not know if any of

the other councillors, such as the Transport Convener for instance, were aware of them.

302. Whether the councillors should have been aware of these concerns comes back to the difficult issue about exactly what a councillor needs to know. With hindsight, it is very easy to say that it might have influenced some of our views had we known it at the time and that we should have been aware of those concerns. However, there may be an awful lot of to-ing and fro-ing between Council Officers before final decisions are reached, and a lot of the issues raised there might have been sorted out by the time a report needed to be put to councillors. There are a lot of issues in which a councillor would not normally be involved, but when it becomes a more strategic matter that you would expect councillors to be involved.
303. There appears to be quite a lot of email correspondence, particularly (in the documents mentioned at para 300 above) involving Colin Mackenzie, Nick Smith (both CEC solicitors) and Alan Coyle (CEC), going on behind the scenes. These emails were not amongst Senior Officers such as the Directors (heads of the CEC's departments) and the Council Solicitor. These more junior Council Officers would have been transmitting their thoughts to the Senior Officers (in this case, Gill Lindsay, as Council Solicitor at the time). It was really up to the Senior Officers to decide to what extent it was their duty to pass on that information to councillors. It might be that this information was not going to make a material difference to the information that we had already been given.
304. If I had known about these concerns at the time, I think I would have sought an immediate discussion with the Chief Executive and other relevant Senior Officers to establish how serious these issues were.

305. I do not know what legal advice the Council was receiving at the time of the Infracore approval process. I know that, at one stage of the project, an issue did emerge in relation to DLA, who were involved in giving advice to TIE. There was an issue about whether or not DLA should also be involved in giving advice to the Council. That was fine when it was 'one family', but it was not so good when there were issues raised about how TIE was performing.
306. I know that the Council Solicitor was involved in the ETP issues, but I also know that the Council did not have the legal know-how within its own staff to cope with the technicalities of such a huge and very detailed contract. This is evident in some of the email correspondence (at para 300 above). I do not know who was advising on the Infracore other than DLA, who were advising TIE. I do not think that, at this stage, the Council, had external advice on the contract. I cannot recall any discussions about getting external legal advice at this time.
307. A document titled "*Design Due Diligence Summary Report*" was produced by the Consortium on 18 February 2008 (DLA00006338). This reported that "*more than 40% of the detailed design information*" (at pg 3) had not been given to the Consortium and raised other concerns.
308. I did not see the report and was not aware of the matters discussed in it. I do not know, specifically, what design was like at this stage of the project. I understood that, in general terms, it was not complete, but I do not think I understood it to be as incomplete as the report suggests.
309. Regarding how the Consortium could or would price for those works in respect of which the design was not complete, I think that would essentially have been a matter for the Consortium. It would be difficult for them. If they were aware of the level to which design was incomplete, then it might well mean that their bid overcompensated for that.

310. I do not believe there was anything in the materials that Council Officers or TIE presented to councillors setting out the mechanism or means by which additional work under the Infraco would be priced. This would have been a technical matter that would be unlikely to be brought to councillors' attention.
311. Regarding how the issue of incomplete design was reflected in the risk allowance, I think that the reports at this time contained some reference to design and there was an element associated with that in the risk allowance. I do not know the details. By element, I mean that risk was usually expressed as a certain percentage. As we did not have the final figures, it made more sense to be given percentages rather than specific sums.
312. By letter, dated 12 March 2008, (**CEC01347797**), DLA advised CEC on the Draft Contract Suite. A series of emails and exchanges prior to that letter show that employees of TIE, particularly Graeme Bissett, had input into DLA's drafting of the letter to CEC (and into subsequent letters) (**CEC01551064**, **CEC01551066**, **CEC01541242**, **CEC01541243**, **CEC01474537** and **CEC01474539**).
313. I had not seen these documents prior to their provision by the Inquiry but I have now reviewed them. I do not think that this was something that I would have given any thought to at the time. My understanding of DLA's role, at the time, was that they were employed by TIE as consultants for the contract work. I do not think the Council had a direct relationship with DLA at that time and I was not aware TIE had an input to that. I do not know the details of the Council, DLA and TIE's relationship or whether the Council was expecting some kind of unbiased letter of comfort but maybe that would alter the perspective.

314. Regarding the possibility of the Council seeking independent legal advice, I do not remember it being mentioned at this time. I do recall having a conversation with our Transport/Finance Convener at the time (I cannot be sure when this was) who suggested that perhaps the Council was not getting the level of legal advice that it should and said that they had raised that with others. I do not know whether that information had come from one of the Council Officers, which is possible.
315. Coming on to mid-March 2008, there are the agenda (**CEC02083387**) and the minutes (**CEC02083388**) for the meeting of the Full Council which took place on 13 March 2008. Those minutes do not contain any update on the ETP. At this point, the Infraco contract was close to being concluded (on 14 May 2008).
316. Regarding why there was no update to councillors on the ETP at this meeting, it was not a standing item on the Full Council Agenda so there was no requirement that there had to be a report at every Council meeting about it. There were many Council meetings where there was no report. I do not know why there was no update. My assumption would be that there was not enough finalised, additional information to give members at that point and there was no need for a report for a report's sake.
317. Regarding whether I had any discussion with Council Officers prior to the meeting as to whether members should be updated on the ETP and the Infraco, it is difficult to expect me to remember what occurred before a meeting in March 2008. Before a Full Council meeting, I would usually meet with the Council Secretary (who prepared the agenda) and the Lord Provost (who chaired the Council) to go through the business for that meeting. If there was some glaring gap in the agenda I certainly would ask about it. I would also speak with the Chief Executive who would discuss with me matters that he thought should come up at the next

Council meeting, so in general terms it may well have been explained to me at the time.

318. I did check the Council minutes for that day. At each Full Council meeting there is a slot for the Council Leader's report. I have looked at my Leader's report for the 13 March meeting (**CEC02086466**). The only comments I made about the ETP were about the utilities diversion work and the compensation scheme (called "*Open for Business*") (at pg 5). There are also questions to the Council Leader and councillors can ask questions on any matter at all. There were no questions at all to me on the tram at this meeting. Had there been surprise that there was no update on the tram, there would have been questions about that. It suggests that the Chief Executive may have informed Group Leaders that there would not be an updating report on the ETP and why there would not be a report, but that is speculation.
319. An email was sent to Alan Coyle on 14 March 2008 (**CEC01386275**) attaching a note that had been approved by Gill Lindsay (**CEC01386276**). The Note, to be signed by Donald McGougan (Director of Finance), Andrew Holmes (Director of City Development) and Gill Lindsay (Council Solicitor) confirmed that it was appropriate for Tom Aitchison (Chief Executive) to authorise TIE to immediately issue a Notice of Intention to award the Infraco contract to the Consortium. The final contract price was £508m and the risk contingency had been reduced from £49m to £33m.
320. I have no recollection of being given this information. These were emails between the Council Officers that I would not have seen. In general terms, the Chief Executive had been delegated authority to instruct TIE if he was satisfied regarding various matters that were outstanding in the December 2007 report already referred to (at para 264.2 above). Presumably, the Chief Executive would have to have been satisfied that

the changes were not substantial enough to have told councillors and sought advice before issuing the authority to TIE. The Chief Executive would not have gone searching for this information himself; he obviously used his Senior Officers to do that. He was clearly getting advice from relevant people in the Council who thought it was appropriate to go ahead.

321. Two documents were also produced in March and April 2008 while preparations for awarding the Infracore were still in progress. These were:

321.1 An email, dated 31 March 2008 (CEC01493317), in which David Leslie (Development Management Manager, Planning Department, CEC) sent a letter (CEC01493318) to Willie Gallagher (who was at that time in charge of TIE) expressing certain concerns in relation to prior approvals for design.

321.2 A letter, dated 3 April 2008, sent by Duncan Fraser to Willie Gallagher setting out similar concerns from the CEC Transport Department relating to Technical Approvals and Quality Control Issues (CEC01493639).

322. I was not aware of these letters at the time, though I recognise the names of both authors as respected Council Officers.

323. I have been asked whether, if these issues were sufficiently serious, these Council Officers could have been expected to raise these issues with councillors. I would not have expected either Duncan Fraser or David Leslie to have raised these issues directly with councillors. They would have been going outwith their own roles if they had gone direct to councillors with issues like this. This would be the sort of information that would be fed to their Director of Department who would then feed it in to the Chief Executive. If he thought it was appropriate, he would ensure that the information was then given to councillors.

Council Meetings - March to May 2008

324. Full Council Meetings occurred about 10 times a year. There were Full Council meetings on:
- 324.1 13 March 2008;
 - 324.2 1 May 2008; and
 - 324.3 29 May 2008.
325. The Infraco contract was, ultimately, agreed on 14 May 2008. There were meetings of the PSC (Policy and Strategy Committee) (see at paras 27 above) between the 13 March and 1 May meetings and between the 1 May and 29 May meetings of the Full Council.
326. We did not consider having the dates of the Full Council meetings, or the committee meetings relating to the ETP changed so that councillors had the best possible picture of information on the contract as it developed.
327. It would be extremely unusual to change a Full Council meeting, as they are set five years beforehand at the start of the Council term. The ETP would have been one of many other items of business on the agenda so there would be no reason to change the date of a Council meeting to take on board what might or might not be a change in one report. Also it would not be up to me, as Council Leader, to decide whether a Council meeting would go ahead or not. That would be up to the Council Secretary who was responsible for calling meetings. The Chief Executive would also have input, if he had thought that was necessary, but I would have been amazed if he had cancelled or postponed a meeting because of one report on the agenda.
328. There was power to call special meetings of the Full Council but, as far as I can remember, there was only one special meeting ever called

regarding the ETP in 2011 (which I discuss further below at paras 799 - 805).

329. What we were doing here was delegating power to the Council's Chief Executive. If matters changed dramatically or enough that he felt he had to come back and have that authority refreshed by the Full Council, then that is what he could do. He could also use the PSC to do that because it was cross party and had all the senior councillors on it. At this time, there would have been no suggestion that there would be a special meeting. We were still within the £545m. The key factor was the assurances that we were given that, no matter what happened with the risks and costs of the project, we were not going to be breaching that funding envelope.

Lead up to Infracore Signature – April and May 2008

330. There was a chain of emails amongst Council Officers (**CEC01401109**) including an email, dated 11 April 2008, from Colin Mackenzie (a CEC Solicitor) to Gill Lindsay (Council Solicitor) advising of a difficulty that had arisen with the prior approval for a bridge at Russell Rd. It raised the question of whether the sum allowed in the Quantified Risk Allowance for System Design Services Agreement ("SDS") delay (£3m) was sufficient. The SDS was the separate contract for the design of the ETP. Colin Mackenzie noted: *"This is getting very close to calling upon the Monitoring Officer to become involved"*. There was also an earlier email from Alan Coyle expressing concern that this was contrary to the risk transfer to the private sector. Also that insufficient information had been provided by TIE for CEC to accept the risk on these matters. It led him to ask: *"how many more of these things are going to come out of the woodwork?"*
331. I was not aware of these emails at the time. Regarding the Monitoring Officer, presumably this means the Tram Monitoring Officer (there was

also a Council Monitoring Officer). The Tram Monitoring Officer's job was to look after the Council's interests regarding TIE and to be a kind of operational liaison person. I would have thought that Monitoring Officers should be kept aware if there were concerns that the Council should have been be aware of.

332. At this time, it is very difficult to judge what would I have done in April 2008 had I been given this information. If I had believed that the information was correct, clearly I would have sought some detailed explanation on whether, for example, there were doubts about the Risk Allowance and whether it covered certain things sufficiently. It is easy to say now that I would have checked this out, but at the time I do not know if I would have done. I would not have expected to have been informed of this sort of thing.
333. There is an email, dated 14 April 2008, in which Colin Mackenzie set out certain concerns (**CEC01256710**). He noted that in his view that it would be "*prudent and proper*" to report again to the councillors before Financial Close of the Infraco contract was authorised given the various changes which had emerged since December 2007. These included: "*the new final estimate of £508 million; a four month delay to the revenue operating date; and continuing concern over the risks to the Council arising from the SDS programme*".
334. I was not aware of the specifics of these concerns regarding the Chief Executive's authority. By this time, I think I would have known that there were some issues in terms of delays and costs, but I was not aware of the specifics of those.
335. I believe Tom Aitchison almost certainly would have spoken to me about the decision to decline to sign off on the award without further authorisation. I cannot point to a specific meeting. During my time as a

Council Leader, I was having weekly and sometimes daily meetings depending on the issues that were live. I think that, given the time since December 2007, he would have consulted with me about his subsequent report (which went to the PSC rather than Full Council as I discuss below at para 361 onwards). I would have been aware that the contract was not at a stage where he felt that he could either sign off what he had been asked to do or bring a report to Council. He obviously was being advised by those within the Council who were doing the groundwork.

336. There were then a series of emails and documents received by CEC's legal personnel. On 15 April 2008 (CEC01245223) they were sent a copy of the draft Schedule 4 (Pricing Provisions) to the Infraco contract (CEC01245224) and a cost analysis spread sheet (CEC01245225) by Alan Coyle (CEC Finance) who had received these from TIE. They replied to Alan Coyle on 16 April 2008 (CEC01247679), asking whether it would be appropriate to get a revised statement from TIE confirming that the risk allowance was still sufficient.
337. Regarding whether I ever saw the pricing provisions schedule ("Schedule 4") to the Infraco contract, these were internal communications and I would not have seen them at the time. I certainly became aware that there was a Schedule 4 to the Infraco contract, but I think my awareness probably came a bit later when there was such an issue about what was included within the pricing. At this time, I do not actually remember being made aware of it in detail.
338. I think the first time I saw Schedule 4, and then only at a glance, was when I met Richard Walker (of BB) later in the project (at paras 432 - 434 below). He referred to Schedule 4 and had the whole contract with him, but I never actually had it in my hands as far as I can remember.

339. Regarding whether I ever saw pricing in the level of detail expressed in the cost analysis spreadsheet (at para 336 above), I am fairly certain that we never saw that level of detail. We had headline assumptions about the level of pricing and risks, but not to the detail found in that spreadsheet.
340. Regarding whether Council Officers ever reported to the Council on the pricing provisions, the Pricing Assumptions and Notified Departure provisions contained in Schedule 4 and on whether the QRA was still sufficient, I cannot recall this happening. We were generally given headline information about risk, which said that the QRA was sufficient compared to other big infrastructure projects, but I certainly do not remember being given a huge amount of detail on it.
341. Regarding the extent to which councillors were advised that the intention and effect of Schedule 4 was that the contractor was entitled to claim for additional payment over and above the final cost estimate of £498m, I think the knowledge of the right to claim additional payments came when the various disputes arose between 2009 and 2011. It was at that point that we realised that this was the set of provisions that made the contract less fixed price than we thought.
342. An email (CEC01241689) dated 30 April 2008, sent by Colin Mackenzie (CEC Legal) to Gill Lindsay (Council Solicitor) noted: *"You may know this already, but BBS have increased the price by a significant amount. Urgent discussions underway at TIE this afternoon. Wonder how this leaves the report to Council tomorrow!!"*.
343. A report was prepared by Tom Aitchison for the next Full Council meeting which took place on 1 May 2008 (CEC00906940). The report sought refreshment of the delegated powers previously given to him to authorise

TIE to enter the contracts with the Infraco and Tramco bidders (para 6.1, at pgs 3 – 4). It noted that:

343.1 The cost of the project had increased from £498m to £508m (comprising a base cost of £476m and a revised QRA of £32m) (para 3.4, at pg 2). That increase was said 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, at pg 2).

343.2 95 percent of the combined Tramco and Infraco costs were fixed, with the remainder being provisional sums which TIE had confirmed as adequate (para 3.4, at pg 2).

343.3 In terms of the overall risk of the project (para 3.10, at pg 3): *“As a result of the overlapping period of design and construction a new risk area has emerged which has been the subject of extensive and difficult negotiation. [TIE] advise that the outcome is the best deal that is currently available to themselves and the Council. Both [TIE] and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms”*.

344. There was a presentation that was prepared for a briefing that we, the councillors, received prior to the meeting on 1 May 2008 (CEC01276012). This was dated 24 April 2008 so was prior to the email on 30 April 2008 (at para 342 above). The presentation shows a price of £508m and the underlying reasons given for that were complexity and scale, impact of the Euro, significant transfer of risk and fixed costs. This was within the £545m funding envelope. This presentation would have been given to all the political groups. We were not aware of a further increase beyond that. In my notes for the speech that I gave, as Council

Leader, on 1 May 2008, I can see no mention of any further price increase.

345. Regarding my understanding of the "*new risk area*" (at para 343.3 above) that had emerged as a result of the overlapping period of design and construction, I suppose that the Consortium had not been expecting incomplete design. Obviously incomplete design work would impact on the construction work, thus leading to delays and further costs.
346. Regarding discussion of how finalised the design was in the notes to councillors at the time, I do not think we were given any details on percentage completion. Risk was obviously a very important factor throughout the project and this was a risk.
347. Regarding changes I understood to have been made to the contracts (as they stood in December 2007) to reduce the Council's exposure to risk by the time it came to May 2008, I understood that elements of risk had been passed on to the contractor, which was reflected in the price change. This was so that the burden of the risk did not fall on the Council.
348. We were continually reassured that adequate allowance had been made for that in line with other projects and we were told that the risk allowance was acceptable to those looking at the finances of the project in detail. We were all aware that there were overruns in price and had been major delay in other large public infrastructure projects in Scotland and elsewhere, so it was always something we had in mind. However, I am not a specialist risk analyst and as a councillor you rely upon the information and advice that you are given by Council Officers. If they were satisfied and answered our questions adequately (as they would have done) then we thought, at the time, that we were getting as full a

picture of risk as we needed. The fact that the Council Officers were satisfied with it must have reassured us.

349. It has been noted that the Chief Executive's report (at para 343 above) on 1 May 2008 provided no explanation of the pricing under Schedule 4, despite this having been provided to CEC's legal team on 15 April 2008 (at para 336 above). The report again stated that 95 percent of the combined Tramco and Infraco costs were fixed.
350. It is easy to say with hindsight that it would have been helpful to have had more information, but there is also a limit to how much technical information councillors could cope with being given. There was also movement in the conclusion of the contract and the situation was changing constantly. I imagine that Council Officers would have made a value judgement on whether they should have presented something straight away or should have waited to see how it evolved.
351. With hindsight, we would all have liked to have known more about what the contract really said about how much of the costs were fixed, and how much risk was actually transferred to the private sector and how much remained with TIE and (ultimately) the Council.
352. At the time, we felt adequately briefed. It has, now, become clear that matters were not quite as they were presented to us. I do not know whether that was because the Council Officers briefing us were not aware of the details or for some other reason. At the time, we seemed to be given information and all our questions were answered adequately.
353. I think there was optimism within TIE and they knew that everybody would be happier with a fixed cost contract. They knew that the Council was greatly concerned not to pay out more than the £45m maximum that the Council had set aside to deliver its share of the funding envelope for

the project. Any misunderstanding came from the information that we were given which did repeatedly refer to the costs being fixed.

354. Regarding whether it was TIE or the Council Officers who tended to use the expression 'fixed price' to describe the Infraco contract, presentations given to us by Council Officers were based on information from TIE.
355. Briefings and presentations given at around this point in May 2008 were generally briefings on the project as a whole rather than on particular aspects (ie utilities). They tended to be overviews, though they would include updates about things like utilities.
356. As Council Leader, quite often I would get a briefing before other councillors did. There were occasions where I would get a briefing, then group leaders would get a briefing and then political groups would get a briefing. I would be at all three briefings – they were the same briefings. There was no information that was not being shared with everybody.
357. There was an email (CEC01248988) dated 8 May 2008 from Stan Cunningham (CEC Committee Services Manager). This email was in relation to a further report on the Infraco negotiations that was to be submitted to the PSC, which was meeting on 13 May 2008 (which I discuss further below at para 361 onwards). The report noted a further price increase from £508m to £517.2m, and sought approval for the Chief Executive to instruct TIE to enter into the relevant contracts. As Stan Cunningham noted, the proposed timing of the distribution of the report meant: *"it may be the first time that many of the members are aware of this matter. This is not satisfactory..."*.
358. I do not recall precisely what conversations there would have been around whether the PSC was the appropriate forum for the report (rather than the Full Council) and whether I regarded it as satisfactory that approval was granted through the PSC. I would definitely have been

consulted on this, as would other Group Leaders. I do not remember having a discussion with Group Leaders and the Chief Executive about it, but I would be very surprised if there had not been that discussion.

359. It was perhaps slightly unusual, though not unheard of, that it was brought before the PSC. Given that the next Full Council meeting was not until some three weeks later (29 May 2008) and that there had already been quite a lot of delay in getting to this point, it was reasonable to get the PSC to give the necessary approval. This was because the PSC had on it the most senior councillors, was cross party and would have seemed a reasonable forum to have made that decision. The Chief Executive had also already been given prior approval to enter into contracts and that authority had been revalidated. It would seem reasonable for the PSC to have discussed the matter (rather than referring it to the later Full Council meeting) because, in theory, the Chief Executive had been already given the authority. We were still within the crucial funding envelope of £545m, even with the price increase.
360. Regarding who proposed and who ultimately decided that the matter should go to the PSC; it would have been the Chief Executive. He and the Heads of Department are responsible for deciding what is included in meeting agendas. Those are then compiled by the Council Secretary who is in charge of the Committee Services team. In the minutes of the PSC meeting on 13 May 2008 (**CEC01891564**), there is no suggestion, that there was any objection from any councillor to this matter being dealt with by the PSC.
361. There are two documents important to the meeting of the PSC:
- 361.1 The minutes of the meeting of the PSC on 13 May 2008 (**CEC01891564**) recorded that I was appointed as Convener of

the PSC and Steve Cardownie (SNP) was appointed as Vice-Convener (at item 1, pg 1).

- 361.2 A report submitted to the PSC by Tom Aitchison (Chief Executive) (USB00000357) advised that the estimated capital cost for Phase 1a (Airport to Newhaven) was now £512m and that, in return for the increase in price, TIE had secured a range of improvements to the contract terms and risk profile (see paras 2.9 and 2.11, at pg 2).
362. As Convener of the PSC at the 13 May 2008 meeting, I ruled that the report needed to be considered as a matter of urgency to allow an immediate financial close of the contracts for the ETP (CEC01891564, item 11, at pgs 7-8).
363. Regarding why I was appointed convener of the PSC on 13 May 2008, this needs to be understood in the context of the 2007 local elections. Between 2000 and 2007 there was the executive system in the Council. In 2007, the new coalition administration introduced a streamlined committee system. PSC was one of those committees. At the second Full Council meeting after local government elections, appointments are made to committees, boards and such like. Committees themselves elect their Conveners and Vice-Conveners at their first meetings. Following Group AGMs, usually in May, Conveners and Vice-Conveners of Committees are elected for the next year at the first Committee meeting after the AGMs.
364. I was elected as the Convener of the PSC at a meeting called on 23 August 2007 when the committee was called for the first time, for the purpose of electing a Convener and Vice Convener. The meeting of the PSC, in May 2008, was seen as the most appropriate point, in the year,

to appoint the Convener and Vice-Convener as it was the anniversary of the elections and also fitted with the parties' AGMs.

365. In our proposal for the streamlined committee system, it was assumed that the PSC would have the Council Leader as Convener and the Deputy Leader as Vice-Convener and that the members of that Committee would be the Group Leaders, Conveners of the Committees (for the administration) the senior spokespersons (for the opposition).
366. The minutes of the meeting for that day (CEC01891564) record that notice of the agenda item relating to the ETP (item 11 at pg 7), "*had been given at the start of the meeting*". This item sought approval of the final costs of the project and the entry into the contracts (by way of delegation to the Chief Executive).
367. Agendas and the papers for committees were normally provided to councillors a week before a meeting. I cannot remember whether that time limit, or the requirement for notice, was written into the Standing Orders but we certainly always got them in plenty of time.
368. The wording in these minutes is simply the formal wording required under the Standing Orders to refer to an item of committee business not on the original agenda issued for the meeting. While we do not like it when papers are received late, it does happen. We always complained to Council Officers when we received papers late because councillors needed time (usually a week) before a meeting to study the paper, discuss with their political group and get soundings on what the other groups are thinking. In this case, I think everybody had been forewarned that it was going to happen so it was not sprung upon them at the start of the meeting.
369. Strictly speaking, in those circumstances approval had to be sought for the item to be considered. A councillor could have objected and we

would have had to vote on whether to hear the item or not. I certainly do not recall any dissent, and there are no objections recorded in the minutes.

370. I cannot remember exactly what documentation was provided to councillors prior to the financial close, though much of it will be available through the online papers on the Council website which shows what was provided. I know that the Chief Executive's report (USB00000357)(at para 361.1 above) was on a B Agenda. Council meetings will sometimes have to deal with sensitive matters and these will be listed on an additional, closed agenda known as the B Agenda. For normal Council or committee business items, any member of the public could go in and sit as part of an audience and we sometimes had the press there. When it was a B Agenda item, it would only be the elected members and necessary members of staff who remained in the hearing room.
371. There were not really different procedures for dealing with B Agenda items. I think we handed in B Agenda papers after we had finished with them. B Agenda papers are circulated a bit later because of the danger that they might get into the wrong hands.
372. The Chief Executive or another Senior Officer would have spoken to the paper, particularly as it was a late paper, so there would have been an opportunity to question Council Officers about what was in it. Sometimes that would go on for a long time, sometimes there would be no questions; it would depend on the issue.
373. Regarding the amount of time that was devoted to discussion of the ETP item, it is impossible to remember at this stage exactly what happened in that particular meeting. There is no end time recorded for meetings in Council minutes. However, it was actually a very light agenda for the PSC and we would normally have had more than ten items on the

agenda. PSC meetings would normally last for a couple of hours, but there was no end limit and councillors could ask questions for as long as they wished. The only possible indication of the length of the meeting is that I had other meetings around 12.30 pm that day and I think the PSC was probably over by then.

374. In the end, all members of the committee agreed to the approval of the contracts and there were no opposing amendments to the motion that we adopt the recommendations in the report. This included the SNP Councillors (Cardownie, Brock, Buchanan and Munn), as the minutes show no dissenting votes to the motion (**CEC01891564**, at pgs 7-8). Although, in general the SNP were opposed to the ETP, there were occasions when they did actually vote for things to move on and they did not put forward wrecking amendments in every case.
375. Under "*Declarations of Interest*", Councillors Buchanan, Jackson, Wheeler and Mackenzie declared membership of the TIE or TEL Boards. These board positions did not lead to a financial conflict of interest. However, a Conservative Councillor, Gordon Buchan, had to excuse himself from all discussions on the ETP because he worked for a company that was involved in the contracts with TIE.
376. Provided the role is not something from which they make a financial gain, members normally make a declaration of interest prior to making Council decisions. As long as that conflict of interest is declared at the start of every meeting, it did not mean that members should not have voted on the topic.
377. As I have already discussed (at paras 42, 84, 95, and 246 - 247 above), our councillors who sat as board members respected their duties of confidentiality to those companies though information they had might have shaped their decisions. I was aware of them attending board

meetings around this time. I think they were probably unaware of how difficult the ETP would eventually turn out and they thought that councillors were being given the full picture on the costs and risk of the project.

378. All councillors and groups would have had the opportunity to have received briefings over the preceding days and had the opportunity, at the meeting, to ask whatever they wanted to ask. I think we all at the time thought that we were being kept reasonably well informed. I would imagine if anybody did feel that they did not have enough information they would have sought to get as much further information as they could. The Chief Executive and his team spoke to the opposition groups just as he did to Administration groups. When I was Group Leader in opposition, I never felt inhibited in what I could ask the Chief Executive or his Directors to come and brief us on. There was never a feeling that we were being excluded, although I am sure that the Chief Executive and the others spent more time with the administration group than they would with the opposition groups.
379. In terms of urgency, as I have already discussed, the next Full Council meeting was somewhat later and we had lost quite a lot of time on the project (at para 359 above). Waiting for the Full Council meeting might have allowed more time for consideration provided the papers were actually provided in good time. There was always the possibility that the papers could have been held back anyway for fear of disclosure to the press (which was a continual problem) but committees actually usually allowed for more opportunity for questions and discussion. Full Council meetings were more formulaic - ad hoc questioning does not happen to the same extent at Full Council meetings. In some ways there was more opportunity to ask questions and discuss at a committee meeting.

380. Regarding whether concerns about leaks affected the way in which papers were distributed, there was a standing joke in the Council that, when talking about a 'B Agenda paper', the 'B' actually stood for 'Broadcast' because it was difficult to control information getting out. This was always a concern though, to the best of my recollection, the vast majority of ETP reports that came to committees and Full Council were generally on the standard agenda.
381. Regarding price increases, the main reasons were as covered in the report (at para 361.1 above): Consortium demands, the fact that previous amounts were provisional and were now finalised, inflation and very importantly transfer of risk to the private sector. Regarding our understanding of the range of improvements to the contract terms and risk profile, we were told that the specifics were confidential but that the TPS would be informed in due course. In the papers for that subcommittee and their 16 June 2008 meeting, they were informed of the improvements (**CEC00455373** is the agenda and **TRS00017180** is the briefing paper. The PSC were just given a general, non-itemised view of what the improvements were.
382. Regarding whether, during this period, the TPS had been meeting to consider the changing position in the negotiations, I do not know but this would be recorded on the Council's website record of meetings. I know that, sometime later, when all of the governance arrangements were being looked at, there was a comment that the TPS had met perhaps six times and the expectation was that perhaps it should have met more often.
383. I do not remember Schedule 4 being specifically mentioned at this meeting or there being any detail on Pricing Assumptions or Notified Departures.

384. On 13 May 2008 (CEC01891564, at pg 7), as Convener of the PSC, I ruled that *"a changed commercial position in procurement negotiations for the Edinburgh Tram Network constituted a material change in circumstances and accordingly that the matter be reconsidered at this meeting."*
385. The explanation for this is that, at the 1 May 2008 Full Council meeting, the Chief Executive's powers had been refreshed (from the December 2007 meeting) as between December and May there were changes that we felt required the Chief Executive's authority to be renewed. Had there not been those changes, the Chief Executive had the authority to have TIE enter into the contracts. However, he was only authorised to do that provided there were very small departures. In this case, the changes were such that he was not comfortable with giving the authorisation so he was requesting that we look again and re-authorise him. The outcome was that he had his authority to have TIE enter into the contracts renewed.
386. The material change prompting this ruling was largely the price increase. I do not know if there was an actual set limit that was decided upon (ie if the costs increased by a certain amount then he had to come back to us) but the expectation was that minimal changes would not require reauthorisation. This was more than a minimal change though.
387. Regarding whether this meeting, and decision, of the PSC constituted the final 'sign-off' by the CEC, I cannot remember whether, at the time, we thought it as such. In other documents, the 1 May 2008 Full Council meeting is often given as the date when the final 'signoff' was given. However, I suppose it actually was this PSC meeting because we were authorizing the Chief Executive to take matters forward.

388. I do not remember having discussions with other group leaders as to whether this represented the final opportunity to make a decision on the ETP. While within the Council Chamber and in committees, councillors are often very antagonistic to each other, behind the scenes there is often quite a lot of discussion between groups. We would receive motions and amendments from opposition groups asking whether we would be minded to agree some amendment. While the SNP were officially still 'anti-tram', they did not object to this decision. Had they made it known that they were going to put forward an opposing amendment there would have been discussion between the groups.
389. A team within the CEC was responsible for producing draft press releases which would be sent to me for comments. There would certainly have been a Press release stating that the contract had been signed, but I do not remember what was put out or when it was released. As Council Leader, I ended up having to do a lot of interviews with radio, TV and newspapers throughout this project and I was probably asked about this.
390. In terms of communications to our SLD Group, I always reported on various matters at our group meetings. At one stage I had a written report, at other times later on it just became a verbal report, but they would certainly have known that this was happening. I may well have emailed the group telling them about this because no member of a group wants to find out what is happening from the headline in the Evening News the next day.

Signature of the Infraco – 13 and 14 May 2008

391. The Infraco was signed on 13 and 14 May 2008. I did not see or expect to see the contract, which was made up of thousands of clauses, during this process. I do not know what detailed changes were made to the

contract. All of my knowledge about it came from the relevant Council papers and briefings.

392. In terms of the legal advice given about the Infraco, it is quite difficult to remember when particular Council Officers provided briefings. From 2009 onwards, we had a new Head of Legal Services who was responsible for a lot of briefings. I do not remember there being Council Officers from the legal team at the meetings but the flow of information from that team was better later on. It is possible that Legal Officers were present at meetings or that the Transport Convener or Finance Convener had input from them. In terms of Schedule 4, I do not remember being aware of this as a particular issue at this time. I did not receive anything from DLA nor did TIE provide any briefing on the legal aspects.
393. Regarding how the risks of the contract, particularly those that might be put on the Council, would be managed and mitigated, I know that at one point Councillor Mackenzie (our Finance Convener until around 2010) asked a lot of questions about risk and he may have known more about it. The general theme of what we were being told when we asked questions about it was that the risks were manageable and reasonable. We were told that the amount that had been set aside to deal with risks was correct, Council Officers were satisfied with it and passed that recommendation to us.
394. As I have already discussed (at paras 260 and 353 above), my understanding of the Infraco was that it was very largely fixed price, unless certain major things happened, in which case there might be increased costs.
395. Regarding the extent to which the aims of the procurement strategy had been met, my opinion was coloured by being advised by Council Officers that all was in order and the Chief Executive should approve the Infraco. I

now have doubts as to the degree of awareness they had as to what was really happening.

396. The design work, in the form of the Base Date Design Information ("BDDI"), was fixed by reference to November 2007 when the Infraco was signed in May 2008. I do not think that, at the time, this would have been something I was particularly aware of. At some later point in the project, the issue of the design information not being finalised and the potential for changes became very important.

Events between May 2008 and December 2008

397. An email was sent by a Council Officer to councillors (CEC01230480), on 2 May 2008, setting out a schedule of works for the Leith area. This email was addressed to me but I do not recall the details of it as I received a large number of updates about forthcoming works.
398. I was certainly given comprehensive information about what was intended to happen in terms of the works. I would have been told that there were delays because the information was being circulated. At around this time, I was absolutely inundated by complaints from Leith Walk traders, particularly those with shops that fronted onto the works. They were concerned about the effect of the works on their businesses, the messy state of the work sites and the lack of information or the quality of information coming from TIE. The Economic Development Convener and I had open surgeries for business people. On several occasions we had representatives of the Leith Walk traders at these meetings and they were not slow to tell us what they thought about what was going on.
399. In terms of delay and the schedule for works, I cannot now recall what precise delays there were nor how long those delays lasted but it was a

'running sore' that works were not being completed to the schedule that had been set. One of the complaints from the traders was that they felt that they were told that there would be some disruption from a certain period but there were then extensions of works and sites remaining uncleared, etc.

Line 1b

400. There was a report to the Full Council Meeting on 18 December 2008 (CEC01043168) from the Directors of City Development (Dave Anderson) and Finance (Donald McGougan) discussing the position on Phase 1b (Roseburn to Granton) of the ETP. The report noted that the indicative costs were £87m but that a decision on this would be required by March 2009 (at paras 4.1 – 5.1, pg 3). It also noted that TIE were engaged with the contractor on re-programming Phase 1a to address the slow start up of construction (at paras 5.3 and 5.4, pg 3). There was also a report to the CEC Chief Executive's Internal Planning Group ("IPG") (CEC00860021) dated 29 April 2009 which discussed the options, including postponement of Line 1b.
401. Regarding why the CEC continued work to consider Line 1b in light of the difficulty of delivering that due to the costs increases for Line 1a, it remained the aspiration of most in the Council to deliver lines 1a, 1b, and 3. I think it was right to continue to work on possibilities until it became clear (which was by the time of 30 April 2009 Full Council Meeting) that the then current economic and funding constraints meant postponement of line 1b.
402. Regarding what I understood to be the nature and cause of the slow start-up and what on-going effect, if any, it had on the ETP, as far as I can recall, at this time there were issues about the complexity and scale of contract issues, a late increase in contract prices, and BBS taking

longer than expected to mobilise. BBS said this was because of delays with MUDFA and Princes Street and other areas not being ready for them to start work.

Embargos and business disruption

403. There is a note of a meeting of councillors and business representatives held at the City Chambers on 28 November 2008 (CEC01069591). I was at, and in effect led, that meeting. The note records that I requested TIE suspend Phase 2 of the works around Haymarket until after the 'Christmas Embargo' (item 3, at pg 2).
404. There had been discussion about having embargos during two of the most important times for traders in the city, which were the Christmas and Edinburgh Festival periods. The general idea of the embargo period was to give some relief to the traders who were finding it very difficult with all the noise, dust and barriers that were affecting customers of the various shops and businesses along the routes.
405. The note referred to the Christmas 2008 period. There was a rider to my request for an embargo during that period: that the Tram Monitoring Officer would make sure the impact was mitigated if works could not be suspended, as minuted, *"It was agreed that if the works cannot be suspended then efforts must be made to mitigate their impact"* (item 4, pg 2). It was an effort to offer a concession to traders. However, if it would impact too adversely on the ETP then those works would have to go ahead.
406. It was always accepted that we wanted to keep the city's retailers and businesses as happy as possible, and minimise the impact during their most important trading times in the year. Most of them were very much behind the ETP and could not wait to have it working because of the

beneficial impact they thought it would have. However, in the meantime they were suffering a lot of distress because of it.

407. There were three sets of retailers and traders in the city who, at different times, expressed views to us. They were grouped in Leith Walk, Princes Street itself and the West End. All three areas were impacted, but not all at exactly the same time.
408. I do not know whether the concept of these embargos was built into the ETP prior to the sign-off of the FBC or whether it evolved later. It was certainly something that was accepted by all involved. I think nobody really reckoned on just how serious and expansive the works were, and anybody that was here at that time could not fail to notice that the city was rather a mess.
409. There was a lot of discussion with businesses at different times in the life of the ETP. There were roads that were closed and areas where access to business became more difficult. The communication around these issues became much better later on in the project when the retailers and traders came to councillors, particularly to Councillor Buchanan (SNP, Economic Development Convener) and myself, and explained what the impact was.
410. I think there was a realisation that any support the retailers had for the ETP was likely to dissipate if they found that their businesses were being affected adversely. Of course, as things took longer than expected because of unexpected discoveries under the streets, there were obviously concerns about the impact on trade. The Princes Street Traders showed us a lot of information about peaks in business, including the Festival period and the Christmas and New Year period. At both those times there was a lot of effort going into attracting people into Edinburgh for the various festivals, events and celebrations and events.

Normally, the retailers would have expected that these would be their busiest times of the year.

411. After all these discussions, it was decided on balance that, whatever the impact on the project was, the impact on the retailers justified the embargo being put in place. I did not have precise figures about what happened in terms of the project or at what stage the contractors were informed that they would have to stop work. Certainly, after the first embargo period they would have realised that this was something to be expected.
412. Regarding the cost and time implications of the embargo periods, we certainly had briefings. It was obvious it was going to have an impact but it was also obvious that the city was losing the support of very key stakeholders who had been, in general, very supportive of the ETP.
413. I was asked why this decision on 28 November 2008 was reversed on 12 May 2009 by the PSC but pointed out that the discussions at that PSC meeting related to the embargo period for that year's Edinburgh Festival.

Princes Street Closures

414. An action note (**CEC01069093**), dated 1 December 2008, notes that Tom Aitchison (CEC Chief Executive) was to meet with me and Councillors Wheeler, Cardownie and Buchanan, to brief us on the Princes Street closures (item 1, at pg 1).
415. I know that we had a comprehensive briefing from the Director of City Development and other Council Officers at around this time. The reason was that, on 1 October 2008, the Mound had been closed and there had been an absolute snarl up of the greatest order. This was something that we did not want repeated, so we had discussions about what would happen when Princes Street had to close and to what extent it would

have to close. There was a huge amount of traffic modelling done. That work had also been done before the Mound closure, but obviously it was not enough because the city ground to a halt and everybody was upset about it.

416. These were very detailed discussions about Princes Street. I do not know if Lothian Buses were at that meeting, but there was a lot of modelling about buses so that those that had gone along Princes Street would go along George Street. For instance, there was a lot of talk about what would happen if a bus broke down in George Street and special recovery services were put in place as a result.
417. As of December 2008, work had been planned in Princes Street and the plan was that, in February 2009, Princes Street would close. We were given a huge amount of information and the reason that we sought it was because we had received criticism for the city grinding to a halt. The outcome was that a decision was taken that Princes Street would close.
418. As a result of what had happened on the Mound and with those works, we realised that everybody had to be involved in deciding what the plan would be for Princes Street. The Council was the Roads and Planning Authority and so actually had the authority over whether a road could close or not. That was not something for TIE to decide, and so we had to be sure that if the major shopping street in Edinburgh was being closed that everything had been taken account of (including police and buses etc). Lothian Buses were certainly involved in some of these discussions.
419. I do not remember TIE's involvement in this. I think the meeting with councillors and the Council Officers was to explain and discuss what the Council's plan would be rather than what TIE's plan would be. I would imagine that the Consortium had said how much of the road was needed for the works and how they wished to do it. There are different ways that

this could have been done and it would have been possible to close portions of the road or the whole thing.

420. The decision was taken at about this time that the closure would be from the Lothian Road end of Princes Street through to the Mound. It would have been possible to close a smaller amount but you would still have had a problem with diversions, so I think it was better to provide a clean stretch of road to work on. TIE had probably given the Council some information about how long this was likely to go on, but things emerged that actually stymied a lot of this work. At the time, what we were looking for was a way to cause the least disruption to the city while a very important part of the tram work was being done.
421. I do not think, at this stage, that I had met anybody from the Consortium. That was not the Council's business as TIE was dealing with all the contractual matters. I think their involvement came much later.
422. There was an email (**TIE 00887286**), dated 10 December 2008, sent by Councillor Iain Whyte (Conservative) to Tom Aitchison (CEC Chief Executive) and Donald McGougan (CEC Finance Director) and copied to other councillors including myself. That email raised concerns about comments made by David Mackay (TIE Chair) which suggested that TIE had not started with a fixed budget and that it would always change because of the design. While I was copied into this email, I do not have any particular memory of this exchange or my reaction to it.
423. We were all probably beginning to have concerns about what had been sold to us as an essentially fixed price contract, which was how we described it to other people.
424. It seems that David Mackay was saying that we never started with a fixed budget. Councillor Phil Wheeler (SLD Transport Convener at this time) was saying that he was, "*Confident that we are still on budget*" so the

budget was fixed inasmuch as there was a price agreed at financial close within the £545m funding envelope. Obviously within that budget was an amount for the Infraco contract. At that time we definitely thought it was a largely fixed price contract and that it would require fairly extreme circumstances for there to be further payment required for aspects that were not within it. This seems like a 'throw-away' comment from David Mackay. I do not think this would have caused me any more concern than just the general concern that we had around that time.

425. Regarding whether there were any particular incidents around this time that caused me to have those concerns, not long after this we had major incidents with Princes Street. I am sure that much had been building up behind-the-scenes.
426. At December 2008, there was still a broad consensus regarding this project. People were working together, as can be seen from Councillor Whyte emailing the SLD members, Council Officers and Councillor Jackson (Conservative Transport Spokesperson).

Princes Street Dispute and Agreement – January to April 2009

Overview to the Dispute

427. I cannot give a precise date for when I first became aware that there was a dispute between TIE and BSC in relation to the infrastructure contract. It must have been around mid-February 2009. In February 2009, Princes Street was, from the Council's side of things, ready for the contractors to move in. About the time of the dispute, in mid-February 2009, there was a flurry of panic stricken emails, phone calls and meetings. It became clear that the closure was going to plan and things had actually advanced to the stage where the closure could not be put on hold. So I learnt about the dispute around the time that the closure of Princes Street was either imminent or had just begun. There was no advance warning.

428. My recollection is that, at the time, we were told that the Consortium was proving very difficult to work with, were not performing as they been expected to and were making all sorts of claims about variations to the contract. The general message was that it was the Consortium that was to blame.
429. I was told, very close to the time, that the Consortium was refusing to start work on Princes Street. However, the messages we were getting about the dispute were slightly confused. At another point I think I was told that TIE had told the Consortium they could not go onto Princes Street. This meant that there was essentially a dispute about the dispute. In essence, the Consortium was asking for more money to go onto Princes Street. I suppose this was perhaps the first time that it really came to my attention that what we had thought of as basically a fixed price contract had a lot of leeway within it. It seemed the Consortium was definitely aware of it and they had the opportunity to ask for more money.
430. In terms of the money, there were all sorts of figures mentioned at the time. It was a very substantial, additional sum of money that the Consortium was asking for, around £50m to £80m. I cannot remember what the Princes Street part of the works was supposed to cost, but I believe that was a huge amount higher than what it was originally expected to be.
431. I have to say that not long after this that I did begin to have some doubts and I suppose it was at this point that I did begin to question some of the information that we had been getting.
432. That was because I had a meeting with Richard Walker (BB). The CEC Director of Finance was also present. I remember the meeting quite clearly because I was on the EICC Board and it was on the day of a board meeting. I am fairly certain that the meeting was on 25 February

2009 as that was the date of the EICC Board meeting. Richard Walker had been trying to contact me and had been wanting to put the Consortium's side of things to me.

433. The advice that I had been given by the Director of Finance (and perhaps other Senior Officers) was that it would not be a good idea to meet him because as councillors we were not involved in the contract and we could scupper any negotiations that were going on. However, I could see no reason not to do so provided all I was doing was listening to their position. Given the standoff at this point between TIE and the Consortium it seemed to me not unreasonable that as leader of the Council I should at least hear what the other side were saying rather than have it filtered to me through first TIE and then through Council Officers.
434. I did have the meeting with Richard Walker and he brought a lot of paperwork to that meeting. He spoke for almost all of the time, as all I said that I wanted to do was hear his side of it. He said to me that not only was the contract nowhere near a fixed price but that this was not the first dispute. He said that they had problems almost, I think, from the day that the contract had been signed. His reading of it was that they were legitimately due money and TIE was refusing to pay.
435. It was at this point that I really became quite unsure about who was responsible for the disputes. I did wonder whether it was the Consortium that was the problem or whether there something more going on. I queried this with the Director of Finance. Before the meeting he cautioned me to be careful about what Richard Walker might say, and after the meeting his position was that what Richard Walker had said was just nonsense. I was in no position to judge who was right or who was wrong, but clearly Richard Walker knew the contract inside-out because in the meeting he referenced it extensively and kept referring to all these documents. It was probably Schedule 4 that he was referring to. It did not

make a huge amount of sense, as I was being shown a Schedule to a contract that I had not read. His reading of it appeared plausible.

436. Regarding my understanding of TIE's strategy for resolving the dispute, it is difficult to remember the exact timing of when I learnt things or when my views may have changed. For the Council it looked (and was) absolutely awful. It had been announced that Princes Street was going to close, but when it did close nothing happened. It was important to get the matter resolved. Initially, my impression was that there was discussion between TIE and the Consortium to try and get some movement but this did not prove to be an approach that worked. Shortly afterwards there was all sorts of talk that TIE was going to terminate its relationship with the Consortium. This time period (February 2009) was probably the first time that I ever heard mention of the DRPs, which was the more legalistic way of trying to resolve issues that TIE and the Consortium eventually entered into. I would have assumed such provisions existed under the contract but it had not come to my attention before then.
437. I would not have thought that TIE would have sought permission or input from Council Officers in relation to their strategy for dealing with the disputes. This was because the contract was between TIE and the Consortium. The Infraco was not with the Council. I would imagine that TIE would have to have told some of the Council Officers about the disputes and their strategy but I certainly do not remember having to take any Council decision on that.
438. Later in the project, there was a much larger stand-off with the Consortium. As I discuss later in this statement (at para 456 onwards below), I do know that the general view that we were asked to take as a Council was that we were standing side by side with TIE.

439. Regarding the use of the contract DRP, this was probably the first time I had ever heard about how disputes like this would actually be resolved. We must have been told that this procedure existed for severe difficulties, although I suppose that most councillors would have been disappointed that it had got the stage of a legal dispute.
440. At some point we did have a briefing on what the contract DRP meant. There was an internal process and then, if that was exhausted, there was a more external process. It would end up being objectively adjudicated, leading to a result in favour of one party.
441. From the time that I first heard about DRP being used, the message directly from TIE at briefings was positive. This message from TIE (and probably from Council Officers as well) was that the majority of disputes had been or would be decided in their favour. By this stage (February 2009) I am not sure how many had actually gone to a result. However, things were being described in winning and losing terms and the impression was that TIE was definitely winning the disputes. To some extent, this was perhaps said to give councillors some comfort that they had gone down the right route in actually invoking the procedures and that matters were going their way. That was the general impression given to us, though I cannot say that it was precisely at this point because there was much more use of the DRP later on in the project.
442. I believe TIE came to speak to us about the DRP and there certainly would have been input from the Council's Chief Executive and Director of Finance. There may well have been some of the members of the Council Officers in the Legal Services team involved as well.
443. I certainly had conversations, either at this time or later, with the Finance and Transport Conveners about the process as both of them were on the TIE Board. I do not think they told anything that they should not have told

me, but they gave me some background regarding what was happening. I am not sure where I got the information about the success rate but I am pretty sure that would have been at briefings from TIE and Council Officers.

444. We asked for more information and this became an issue. If we had got all the information that was available, most of us would probably not have understood it because I am sure it was extremely technical matters that were being discussed. However, we were also told that the whole DRP was shrouded in secrecy, that we were not allowed to discuss it and that we were not allowed to have the information because it was commercially confidential. We were told, as far as I can remember, that if we got the information it could easily get to the Consortium and TIE's arguments would be known in advance. Everything around the DRP was designated as highly confidential and we believed that TIE could not divulge to us what was actually happening. It was said that neither party could disclose any information at all about the process once it had started.
445. It is possible that, as Council Leader, I was given a fraction more information. I think people trusted that I was not going to go 'blabbing' to the press. As I have already discussed (at para 52 above), it was the practice of the Chief Executive to give joint briefings to the Council Leader and Deputy leader at least once a week. Possibly the Council Officers themselves, who were receiving information from TIE, did not have full knowledge about the way that the dispute was going.
446. At the beginning of the disputes, when we were being told that everything was going in TIE's favour, we were quite happy that there would not be major cost implications. At some stage, and I am not sure exactly at what stage but it was almost certainly later than this, we became aware that TIE was not on the winning side nearly as often as they had portrayed.

There was certainly a moment where it became clear that the rather optimistic view of events that had been given to us was not quite what was actually happening.

Events between January and March 2009

447. There was an action note following a meeting of the special tram Internal Planning Group ("IPG") on 29 January 2009 (CEC00867661). The IPG was made up of Council Officers. The note (at pg 2, under "Cashflow" and "Public Realm") stated that absolute clarity was still needed on the price and noted that there was concern that the Consortium's costs, for works in the public realm, did not represent value for money. The IPG was a group of the Senior Officers and councillors would not have seen the minutes or known about these internal discussions. I think that, by early 2009, I was aware of the existence of the IPG and its role.
448. The public realm is a term used to denote the common spaces around Edinburgh for which the Council had responsibility. My reading of the note is that the IPG was concerned about the value for money of the Consortium's work in the public realm, not in terms of the contract more generally. This covered the remedial works that would need to be done, or the changes that needed to be made, to matters like pavements, edging and cobblestones.
449. In terms of the note's comments about pricing and clarity, although it was quite clear that absolute clarity was still needed around the price, at this stage I do not think I knew how close we were getting to the maximum funding level or that that was a matter of concern.
450. I do not think I knew how the IPG fitted into the governance or reporting arrangements for the ETP. There are a lot of groups involved in the ETP whose names I might not have been familiar with prior to this Inquiry. I knew, of course, that there were internal discussions for the Council

Officers but I was not aware precisely how those worked or who they involved.

451. Giving the IPG report to the Council Leader was never suggested. At briefings, the Chief Executive would give me what he felt were the headline things that he needed to talk to me about. The ETP was not always an item on our weekly meetings and there were countless other things happening at the time. For our early Monday morning meetings, I would usually know at the end of the previous week what the Chief Executive had decided to include in the agenda. As I have already discussed (at paras 257 and 350 above), Council Officers had to make decisions as to what councillors needed to know about a particular situation or issue.
452. Regarding whether any of the Senior Officers said anything to me at this time about the lack of clarity on pricing, it is difficult to recall any specific briefings by particular Council Officers but this may have occurred, though as far as I can recall, the mantra at this time was still "it's within the funding envelope".
453. There was an email which was sent by David Mackay to the Consortium on Friday 22 February 2009 (CEC00867359) stating that the Consortium's response to: *"questions in relation to Princes Street is typically overlaid with extraneous comments and bold statements of Infraco's position which are not backed up in any reference to the terms of the Contract."* There appears to be some contradiction in this email as David Mackay, at one point, is suggesting that the Consortium were refusing to do the work. Then, in the last part, he is telling the Consortium that they must not do work other than as stated in that last sentence.

22 February
should be
20 February

454. I do not have a specific memory of being briefed by TIE around this time though I do remember that we were given various briefings on the dispute.
455. It must have been about this time that I begin to wonder to what extent TIE were aware that it was not a fixed price contract and about the status of the bid that the Consortium had made. I think that my views at the time were mainly just impressions. If I thought that one side was at fault, it was based what I had been told and the information I was being given.
456. Initially, my impression was that TIE was standing firm. I think there may well have been a press release or Council motion to ratify the action that TIE was taking. I believe the Council said something to the effect that we supported TIE in its endeavours to work through the DRP. Certainly, in these early days both Council Officers and councillors were being asked to stand side-by-side with TIE. There was talk of what was called the 'one family' approach and of and no-one breaking the bond between the CEC and TIE. At the beginning I certainly thought that TIE was dealing with a very difficult contractor and were trying to resolve the dispute.
457. There definitely was pressure to maintain a unified front and it existed throughout almost the whole existence of TIE. I can recall conversations with a variety of people, including with David Mackay and Richard Jeffrey, who would strongly suggest that it would help nobody if the Council and TIE were not seen to be united. Throughout the project, the Consortium did try to meet up with councillors and they may well have had meetings with Council Officers. However, the advice to us was that we should not get involved and that this was not a matter for councillors – which is true. There was definitely a very strong imperative to be seen to be acting as one, presumably so that the Consortium could not 'divide and rule' by getting councillors, TIE and Council Officers saying different

things. The TIE senior people and the Council Chief Executive wanted that approach.

458. Hindsight is a wonderful thing. It eventually became apparent that things were not going the way that TIE was portraying and that they were being overoptimistic about what was happening. But the exact point when that happened is a difficult one to answer. There was also a lot shrouded in this commercial confidentiality.
459. Regarding the Princes Street dispute, if TIE was well aware that matters were actually going differently behind-the-scenes, then they were not as open and transparent as perhaps they should have been. The matter was sorted out relatively quickly. There was a Princes Street Supplementary Agreement ("PSSA") and the Consortium was given additional money over and above the discrete, fixed price cost we had believed would cover Princes Street. It was quite clear from the PSSA that more money had been paid to them, and so to that extent TIE were not open and transparent. On the other hand, they might not have known at the time exactly how the disputes were going to work out.
460. There was certainly a lot of pressure on TIE from both councillors and Council Officers. Having closed Princes Street, we wanted to get the dispute sorted as quickly as possible. That was the main message that was coming from the Council side to TIE. I do not know whether there were any steps by TIE to force the Consortium into doing these works. This might have triggered an obligation to pay more for these works.
461. I think this was the first dispute regarding the Infraco that I was aware of. It was the first publicly acknowledged dispute.
462. Regarding whether, having been told about previous disputes by Richard Walker, I asked TIE for details of these previous disputes, I do not recall

doing so. However, I am fairly certain that I would have despite what I had been told about Richard Walker's trustworthiness.

463. As a result of the dispute, there was a letter (CEC00870592) dated 5 March 2009 from Tom Aitchison to TIE which set out a number of measures required of TIE to keep the Council updated about disputes. That letter was copied to me (at pg 3).
464. I do not remember this particular letter, though I believe that Tom Aitchison would have copied it to me as he said. I think the very fact that the letter had to be written at all and was laid out in such detail does suggest that the flow of information from TIE to the Council was not as good as it should have been. From this letter it appears that the Council Officers felt that they were not being informed in a timely and full manner as to what was actually going on. The Council was the public face of the ETP and so it was pretty important that the Council knew what was going on in as much detail as possible.
465. From Tom Aitchison's letter, it does appear that there were concerns that information was not being conveyed to CEC and, as a result, that the issues in the DRP could not be scrutinised as they should be. It was really important that the Council Officers had adequate information. How much of that information would then need to be made public and how much passed on to other members of the Council would be something that would have to be decided. Maybe Council Officers (as well as councillors) felt they did not know everything. While I was not actually on any of the relevant company or project boards at any time, from this letter it would sound to me that there was a general lack of information flow from TIE.
466. I know that the councillors asked a lot of questions and the Council Officers might have liked, in some circumstances, to answer more fully

when they did not have the information. The councillors were all frustrated by the issues of confidentiality around this time but I do not recall Council Officers saying the same to me.

467. At about this time there were exchanges about the Infraco and the DRP including:

467.1 An email, dated 6 March 2009, in which Andrew Fitchie of DLA (TIE's solicitors) sent the Council Solicitor the parties' position papers in relation to the Princes Street dispute (CEC01031402).

467.2 There was another email, dated 11 March 2009 (CEC00869667), in which Colin Mackenzie (CEC Solicitor) advised that Council Officers did not know whether the Infraco contract was sound, that it was possible the contract was not robust enough (making affordability of the works an issue) and that the Council were lacking the requisite information, certainty and confidence at that time.

467.3 There was also a 12 March 2009 report by DLA (DLA00001357) responding to questions posed by Council Officers about the DRP.

468. I had not seen these documents prior to the Inquiry and they are not the type of documents I would normally expect to have seen as a councillor. There were a lot of briefings around this time, as you would expect, because of what had been happening regarding Princes Street. I do not remember any briefing that discussed different interpretations of the contract at this stage. I suppose we must have had some understanding that there were different interpretations of the contract. The concerns that some Council Officers had, in these documents, were not passed on to us.

469. As far as I can recall I never had any interaction with DLA. I knew their name as it came up in various contexts but I do not believe anybody from DLA came to any of the briefings.
470. Later on there were some questions raised about the extent to which DLA's opinions could be relied on and whether the Council should rely on them (at paras 546 - 547 below). This was because DLA had been involved in drawing up the contract in the first place.
471. Regarding whether Council Officers ever gave a worst case scenario on what might happen if TIE's interpretations of the Infraco turned out to be wrong, I think we were given outlines of the consequences. I cannot remember when this occurred. Certainly, the SLD Finance Convener (Gordon Mackenzie) and Transport Convener (Phil Wheeler) had various concerns and asked a lot of questions. I am not sure whether those came from information they had gleaned as board members of TIE.
472. In the following months I certainly knew the DRP had been used. That was reported to us, but always with the proviso that they could not really tell us anything about it because it was very confidential. We were told this confidentiality was written into the contract and that we could not have the information. I can see why that would have been as it is very common to have some sort of obligation that you do not disclose precisely what has happened in this kind of situation.
473. Regarding the letter sent to TIE by the CEC Chief Executive (CEC00870592, at para 463 above) and whether that resulted in an increase in the level of information that was passed to CEC and was available to me as Council Leader, I think there probably was an improvement. It is clear from the letter that Council Officers were not satisfied that they were getting the quality and quantity of information that they wanted. At the end of the day, as it said in that letter, it was the

Council that was going to be responsible for any overspend and so it was very important that the Council did have really good information. I do remember weekly updates being sent to me by Marshall Poulton, who was by that time the Tram Monitoring Officer ("TMO") or by the Director of City Development who he worked under. I believe those updates stemmed from about this time.

474. The Council was the ultimate shareholder in TIE. Regarding whether there was any discussion at this stage as to whether the Council should give more direction or leadership to TIE, I do not think so. However, Tom Aitchison's letter (at para 463 above) can be read as instructing TIE to change its relationship with the Council, in that TIE were being instructed in the nicest possible way to give the Council and the TMO more information than previously.
475. To begin with perhaps the Council thought that the flow of communication was not quite what it should be but that this was fine so long as TIE were making progress. Once issues arose, however, it was clearly the case that the Council found it was lacking the amount of information that it should have had. The Director of Finance, for instance, had been present at the meeting I had with Richard Walker, and I know that he had had a meeting with Richard Walker prior to that. It may be that, following those meetings, for the first time he queried the fact that they were being given two different views of the situation.
476. There are two documents detailing meetings that took place around this time (February to March 2009):
- 476.1 On 27 February 2009, Councillor Phil Wheeler (Transport Convener) emailed me (**CEC00868427**) informing me about his meeting with Richard Walker of the Consortium.

- 476.2 In an email dated 11 March 2009 (TIE00446933), Mike Connelly (TIE Stakeholder Relationship Manager) advised David Mackay (TIE Chair) of his meeting with Margaret Smith MSP and Alison McInnes MSP (both members of the SLD). Margaret Smith was the MSP for Edinburgh West and Alison McInnes may have been the SLD Transport Spokesperson at Holyrood at this point.
477. I knew Phil Wheeler was having a meeting with Richard Walker because it was a couple of days after I had had my meeting. From what I understood from his email, it was almost precisely the same as occurred in my meeting with a discussion and referencing of the Infraco (at paras 432 - 435 above).
478. I also knew that Margaret Smith and Alison McInnes were having a meeting with Richard Walker, and Margaret Smith had asked me about him. I was aware that he was doing the rounds and was meeting whoever he could to put the Consortium's case. I cannot remember whether Margaret Smith or Alison McInnes fed back to me in any great detail but I was aware that they had been told much the same as I was. I think that Richard Walker would also have met with other MSPs at around this time, and I doubt he met just with the SLD MSPs. I am not aware whether he had any meetings with the other political groups on the Council.
479. In the meeting with the MSPs, which is summarised in Mike Connelly's email (TIE00446933), Richard Walker is recorded as mentioning the idea of a 'Gentleman's Agreement'. He mentioned Willie Gallagher, who had said he could not immediately go back to the Scottish Government for more money.
480. This was similar to something that was said in the meeting that I had with Richard Walker. The phrase that he used with me was that Willie

Gallagher had had a 'Gentleman's Agreement' with him. The Consortium's reason for going ahead in the way that they were was because Willie Gallagher said he could not go back to the Council for more money so soon after signing off on the deal and that they would have to wait a while. This was very similar to the comment that the MSPs had relayed to me from the summary of their meeting. It raised some worrying doubts and rang huge alarm bells both for myself and the MSPs.

481. Regarding the 'Gentleman's Agreement', Willie Gallagher had left TIE before this point (February and March 2009) and had been replaced in the Chairman's role by David Mackay. My recollection is that Willie Gallagher became difficult to contact after he left TIE. I thought he left the company rather hurriedly, but I did not know much about the background to it. I queried it and left it with Council Officers to do what they thought should be done, but I do not know what attempts were made to contact him officially.
482. The advice that would have initially been given by the Council Officers was that we should not meet with the Consortium. I cannot remember if TIE said anything directly to us on the subject. There were several approaches over the years from the Consortium to meet directly and my reaction to that would always have been to check whether it was appropriate. Councillor Wheeler, myself and, I imagine, the MSPs as well would have been going into these meetings in 'listening mode' as it were; we would not then have to negotiate anything or put anybody's side except to stress that we were very keen to have the ETP delivered as soon as possible.
483. At the back of my mind, I thought meeting with the Consortium would make them realise that there were councillors making strategic decisions about matters like the ETP and that we needed to be well informed. I can

understand why TIE, who probably did not know any of the councillors particularly well, might have feared that we might say something that would jeopardise their position. I do not think any of us involved would have done that. I suppose TIE might not have wanted us to hear the other side of it; I do not actually know what their reasoning was, but I know that they were concerned.

484. The CEC Chief Executive and Director of Finance (who came to the meeting) were well aware of my meeting with Richard Walker before it occurred and so I imagine TIE would have been told about it as well. I did not receive any messages from TIE.
485. I think up until the discussions at this time, we had gone with this fixed price contract idea. By this point, it was now clear that there was doubt about that from the very fact that the Consortium thought that it could do what it was doing ie seeking more money to go onto Princes Street to do the works there. It was clear that there was certainly a reading of the contract at that time that suggested it was not nearly as fixed price as we had thought. My impression of the contract was not that the contractor would immediately be able to find ways going of getting more money for starting works in various areas based on their reading of the contract. It was of concern.
486. I do not remember being given any detailed information about the design basis of the contract at this time. Some of the delay was to do with the site not being ready for the Consortium. That may have included design as well as the physical conditions.
487. Tom Aitchison, CEC Chief Executive, prepared a report for the Full Council meeting on 12 March 2009 (**CEC01891494**). This appears to be the first report to the Full Council to refer to contractual difficulties

between TIE and BSC, though there was an earlier report to the PSC as I discuss later in this statement (at para 495 below). The report included:

487.1 A statement made by the Council (at pg 5) which made reference to the contractors wishing to impose unacceptable conditions in order to start the works (though the details of these conditions are not identified in the statement).

487.2 A comment by the Chief Executive stating (at para 3.2, pg 2): *"members will appreciate that I am restricted on what I can say while commercially confidential negotiations are taking place."*

487.3 A comment by the Chief Executive stating (at para 3.3, pg 2) that TIE was maintaining: *"a clear, consistent and determined approach to what was agreed after tough negotiation before the contract was signed."*

488. I would say that confidentiality affected the information given to us to a very large extent. As can be seen see from that report, we were essentially not told why this was happening. It was frustrating to all councillors. I think our TIE Board members (Councillors Mackenzie and Wheeler) found it very frustrating that they perhaps had information that they could not share with the rest of the group.

489. Regarding the work that was expected to start on Princes Street, the television cameras were showing that nothing was happening. I found myself in various TV and radio interviews, continually having to say that a lot of matters could not be discussed because of commercial and legal confidentiality. I think it put everybody into a difficult position where they could not answer to their constituents.

490. In relation to the dispute over Princes Street, Council Officers certainly would have questioned this, but the answer would have been that these

were confidential matters and it would compromise things for TIE if others were told.

491. Confidentiality concerns certainly affected our understanding of what the contract was, such as the fact that fixed price did not appear to be fully fixed price. It obviously limited our capacity to take any decisions on the basis of full, good quality information. I do not know whether there were any decisions taken that would have been different had we known what was being kept from us.
492. I do not know whether I ever knew the precise conditions that the Contractors wanted to impose before starting the Princes Street works (at para 487.1 above). At this time, I thought that the disagreement was about costs which the Consortium saw as being outwith the contract. There may also have been a problem about the readiness of the site for entry which may also relate to the design question.
493. I do not know if the readiness issue related to the utilities works on Princes Street, but certainly it had arisen in other parts of the city. The utilities work on Leith Walk and in Shandwick Place are strong in my memory because of the number of retailers who were lobbying about it.
494. I note that the Chief Executive's report to the Full Council (CEC01891494) (at para 487 above) includes a comment that the contract was fixed-price (at para 2.2, pg 1). This reinforces my previous comments (at para 260 above) in that we thought it was largely fixed price with a small element of variation.
495. Another report of the Chief Executive, this time to the PSC meeting on 24 February 2009 (CEC00682449), also discussed the dispute. This was prior to the Full Council meeting. I note that the Chief Executive's recommendations in that report include (at para 6.1, pg 3) that the Council stand with TIE.

496. I do not recall if there was any more discussion of the issues. From the minutes of the PSC for that date (CEC02083836), it appears that David Mackay (TIE Chair) was in attendance. All the questions requesting more detail were always stymied, whether they were done in a public forum like a Council meeting or behind closed doors (for instance, at a group meeting). This was said to be due to commercial and legal confidentiality around the dispute and those comments are mirrored in the reports I have just discussed.

Approval of the PSSA

497. Press releases were put out on 20 March 2009 announcing the PSSA (TRS00016944). We had no involvement whatsoever in negotiating the PSSA. That was entirely between TIE and the Consortium. I would not have expected to have been involved in that and the detail of it would not have been made available. I was certainly involved in compiling the press release. I cannot specifically remember any briefing on the conclusion of the PSSA agreement before it was signed off, although it is possible that we did receive one.

498. From TIE's point of view, the rationale of the PSSA may have been to get the Consortium back into the works on Princes Street. From the Consortium's view, it may have been to get the level of financial return they originally expected from the contract. From the Council's point of view, the point was to get TIE and the Consortium working together – but I am not sure that can be described as the rationale of the PSSA.

499. The main element of the PSSA seemed to be that, as long as BSC could show that there was some obstacle hindering them and that it came at cost, there would be an additional cost for that.

500. Regarding the £50m to £80m figure that I have mentioned as being discussed at this time (at para 430 above), we were told by the CEC

finance team that the project could still be done within the funding envelope and we had faith in them. It was clear that the funding for the project was being eaten into and, at this stage, I believe there was roughly £11.5m left of the risk allowance. The project was obviously moving the wrong way but we were assured, as we had been in the past, that it would come within the £545m allowed for. I think we continued to be assured of that even after this point, although I am not sure how much longer that lasted. That it remained within the funding envelope was a very crucial aspect of it from the Council's point of view.

501. It has been noted that the PSSA appears to have been entered into very quickly. I do not think councillors were given any time to consider or comment on the PSSA. It really was not a matter for councillors to do that. This was a matter between TIE and the Consortium and it was up to them to sort it out. We were not in a position to comment; we did not know enough about the contract for a start. We would not have got involved in that kind of operational issue. The decision to conclude the PSSA was taken quickly because it was essential that things get moving quickly. Further action under the DRP was not going to serve either the Consortium or TIE well. It certainly was not going to serve the Council well. I think we all wanted the dispute to end quickly. If there was a supplementary agreement that suited both parties, and the Council Officers that were advising us were satisfied with it, then that was really all that we, as councillors, needed to know.

502. I think the PSSA came back before either the Full Council or the PSC for approval prior to its signature by TIE. It may have been a part of the recommendation that we were committed to supporting TIE. I cannot remember if there was any further approval but I was given a very general set of heads of terms as to what the agreement involved.

503. Regarding whether it was appropriate for TIE to enter into a supplementary agreement when there was still disagreement about the original Infraco terms that is a very difficult question. There was such an imperative from the Council to get things moving that it was very clear to TIE that there was a need to get going with work on Princes Street. I received a lot of correspondence from interested parties in the city saying how important it was to have a quick settlement. That included a phone call I had from the Scottish Transport Minister, Stewart Stevenson MSP, who said that he would be very uncomfortable if we got no more than a few holes in the ground and that the quicker things got sorted out the better. That would have been around February or March 2009.
504. I believe though that it was made clear to the Consortium that this was a one-off, special agreement just for Princes Street. From TIE's point of view, it may have made the Consortium more opportunistic – but it is difficult to see what else they could have done. There could have been a total impasse if they had to go back and start re-examining the entire contract. I have no idea what the outcome would have been in that scenario.

April 2009 – post-PSSA

505. Following the PSSA, there appear to have been further discussions amongst the Legal Officers at the Council:
- 505.1 There was an email, dated 7 April 2009 and titled "*Edinburgh Tram; Strategic Options and DRP*", in which Colin Mackenzie (CEC Solicitor) made certain observations on the dispute between TIE and the Consortium and raised certain concerns (**CEC00900419**) for the benefit of other Council Officers.
- 505.2 By email dated 9 April 2009 (**CEC00900404**) Colin Mackenzie and Nick Smith circulated a report on the dispute between the

Consortium and TIE (CEC00900405). The report noted that there were presently 350 Notified Departures in process. The disputes could be grouped into a number of different categories, including who had responsibility for design management and evolution. The Consortium were taking the view that all changes to design were TIE's responsibility. The report noted (at pg 1-2): "*The main problem here stems from the fact that design was not complete at Financial Close*".

506. I did not see these documents at the time that they were prepared and I do not believe I was aware of any of these concerns in any detail. It is highly concerning to discover the extent of the lack of knowledge the Council appeared to have on the contract and the fact that delivery within the funding envelope (of £545m) appears much more doubtful than I would have thought at this time (April 2009). Around that time the Princes Street dispute was over and we were all celebrating the fact that everything was 'back on track'. I was unaware that there was still so much underlying concern within the Council Officers and those who would have been giving advice to the more Senior Officers such as the heads of departments.
507. It is difficult to say whether these concerns should have been raised with councillors through Senior Officers such as the Council Solicitor or Chief Executive. We were not informed of just what was going on. I suppose the hope of Council Officers was that matters could be resolved by the time they had to do their next report. Everybody knew how important it was that we remained within the funding envelope. It is easy, with hindsight, to say that if there were these rumblings underneath then they should have been brought to the surface but, at this time (April 2009) nobody envisaged just how delayed the project would be.

508. There is a limit to how much information councillors can take in, especially if it is an internal discussion looking at options. The main thing that surprised me about this was the awareness at some levels of just how lacking in knowledge the Council was. It also appeared that the TMO had not been given the kind of information that he should have been given.
509. I know that when Alastair Maclean joined the Council, in his role as the Head of Legal Services (which replaced the Council Solicitor post), we did tend to get more legal information than we had prior to that point. Prior to his arrival, I think there was probably fairly limited involvement from the Council's Legal Services group.
510. Alistair Maclean came to councillors at one point. He was open in what he was telling us and certainly did expose what he saw as difficulties with the contract, which I do not think we had really been made aware of until then. Until he joined the Council, possibly there was nobody in the Council who was fully familiar with the contract. It is perhaps not surprising that a new person coming in meant we were given more information but it is very difficult to recall whether, in 2009, Legal Officers came to meetings or not.
511. Had these concerns been brought to councillors' attention, I think they would have raised questions about why the Council was not more aware of the contract. While TIE had been left to deal with all of the procurement and contracts, at the end of the day, the Council was the promoter of the project. I probably would have been very uneasy had I been aware how little was known. I think I would have wanted to find out more about why they were not as aware as they perhaps should have been of what was in the contract. I would have wanted more information on the financial impact of what was clearly going on under the surface with the PSSA having to be put in place.

512. A report by the Directors of City Development (Dave Anderson, who had replaced Andrew Holmes) and Finance (Donald McGougan) to the Full Council meeting on 30 April 2009 (CEC02083772) makes a number of points:

512.1 There had been negotiations which had led to the PSSA for the construction of the Princes Street infrastructure works. This allowed the works to proceed on the basis of "*demonstrable cost*". The report did not spell out exactly what was meant by this. It did say, however, that this meant that the contractor would be paid on this basis should they uncover unforeseen ground conditions (at para 3.3, pg 2).

512.2 It claimed that this represented no further transfer of risk to the public sector (at para 3.3, pg 2). However, it appears to be an agreement to reimburse the Consortium for the costs that they actually incurred in carrying out the works, placing the whole of the risk of unforeseen and additional costs on the Council.

512.3 Similarly, while it noted that the matters that had arisen could impact on both cost and timescale (at para 3.2, pg 2), the report did not state that the practical effect of these disputes was that costs were rising and the budget limits would be breached.

512.4 There was a statement that work had been undertaken by the Council and TIE to consider the strategic options available (at para 3.9, pg 3). This had involved providing a range of cost and confidence levels for Phase 1a. These were not, however, provided. The report stated that (at para 3.11, pg 3): "*the range of numbers indicates the base case scenario remains that the full scope of the project can be delivered within previously agreed funding levels*". It is difficult to reconcile this with the other statements within this report.

- 512.5 In relation to timescale, it notes that TIE was conducting a review of the entire programme with the contractor with a view to reaching a revised commercially agreed programme (at para 3.13, pg 4). This clearly contemplated that there would be delay but the report did not state what the extent of delay was likely to be.
513. It was clear that there were going to be additional costs, although we had been told that this was still within the funding envelope. It was also clear that there was likely to be some delay. I have looked at the minutes of the Full Council meeting that considered this report (CEC01891440) (at pgs 8 – 12). The motion that the SLD proposed was accepted at that meeting. In that motion we asked for a report updating the business case which would have given us more information about the costings for the ETP.
514. I think our main feeling around this time was great relief that the Princes Street work had actually started. However, the fact that we asked for further information shows that we were not satisfied with what we had been told in the report. Very close to the beginning of the report, it uses the phrase 'demonstrable cost'. I believe that we were given a briefing which provided a bit more information about that, but I cannot remember the detail of it. It was largely to do with unexpected things that would be uncovered once they started digging. I think there was more information given to us, as councillors, than was actually put into that report.
515. I think it was now obvious that it had moved from a fixed cost. Rather than calling it a demonstrable cost basis for Princes Street, it was referred to as 'fixed cost plus' or something like that. It was quite clear that there was extra money being paid above the amount that we had been told was originally agreed but we did not know the detail.

516. We were still being told that the project could be delivered within the previously agreed £545m though it was very obvious that the contingency budget was being eaten into. Every time that we had briefings or presentations meetings regarding the ETP and its costs, we questioned the finances of it. We would have accepted the reassurance, coming from the relevant people that we were still within budget. Behind-the-scenes, there were emails going back-and-forth that made it clear that some people had found that the sums were not fully adding up. At that point it would really depend on exactly what information the people had who were telling the councillors that it was still within the limits.
517. The funding limits had not been breached at this time as there was still around £11m. It was correct that we were still within budget. At that point we were not told explicitly, although it must have been clear to us from the extra payments having to be made, that if this was replicated elsewhere then the costings would be in trouble.
518. I am not sure that Council Officers completely excluded the possibility that the limits would be breached. It must have been obvious to us that there was much less left in reserve than we would have liked. They may well have said that we were getting into difficult territory here - what we thought was a nice cushion on top of a supposedly fixed cost was in danger. It is difficult to say when Council Officers should make things clear. It is possible they raised this in briefings even it was not in the actual report itself.
519. The April 2009 report of the Directors of Finance and City Development to the Full Council (**CEC02083772**) (at para 512 above) mentions a strategic review of the project by TIE and CEC (at paras 3.9 - 3.10, pg 3).
520. I would have expected there to be continual reviews of the situation. With the PSSA, there was clearly a cost change. As the contractors had not

gone onto Princes Street when they were supposed to, there was delay of over a month. There was uncertainty over whether they could catch up, so it was important to continually monitor and review the programme. I probably was not aware of what exactly was being looked at, but I know they would have considered whether they should remove the contractor and get another. It was important that that was really an on-going process of review. The review was linked to the request the Council had made for a review of the business case for the ETP.

May to December 2009

521. An email was sent by Richard Jeffrey (Chief Executive of TIE), on 13 August 2009 (**CEC00679723**), to members of the TIE board (including Councillors Wheeler and Mackenzie of the SLD) to inform them about significant developments in the relationship between TIE and the Consortium. These were that the Consortium was not happy to start works on Shandwick Place unless this work was undertaken on a cost plus arrangement.
522. This email was just sent to TIE Board members. It was entirely a board matter and would not have been fed back to the rest of us because it would have been regarded as confidential. I do not know whether there was another version that went to other councillors. The contents of this email would not have been news to me because around this time I was made aware of the general shape of the problem though not its details. I cannot remember how I knew this but it was probably through Tom Aitchison briefing me.
523. What I understood to be causing problems at this time mirrored what was described in this email. I understood that the Consortium did not want to go forwards on a fixed price basis. I did not know the details at 13 August

2009 but I knew there was an issue with the Consortium not wanting to go onto Shandwick Place.

524. At this time, even although the PSSA had meant more money being paid out, the impression we still had was that TIE was on a firm footing and that they would be in a position to limit what the Consortium could ask for. The general tenor of statements from TIE was that that was the case. They thought the Consortium was making unreasonable demands. We were given the impression that TIE was still in control of matters and that the Consortium was making illegitimate claims.
525. The most obvious concern was that delay in starting work would delay the project even further. There was desperation to get the project finished.
526. The contractor not getting on with the work was sending out the wrong message to the city: it was experiencing all this disruption and nothing was happening. It got worse and worse, and for months the city was a mass of traffic cones, barriers and holes with exposed pipes in them. It was a very bad situation.
527. There would also have been an embargo in the West End area (including Shandwick Place), as the traders in that area were vociferous about the impact that the works were having on their trade. Money and effort was put into selling Edinburgh as being 'open for business', in that one could still visit all these shops and have a great Christmas experience.
528. In this respect, there was an earlier (March 2009) letter from a director of House of Fraser to Marshall Poulton (the TMO) on which I was copied (CEC00863479). This raised issues regarding the works, parking and transport within the city centre, and the effect it was all having on businesses.

529. I received an email from Tom Aitchison (CEC Chief Executive) on 19 August 2009 (CEC00669246). He stated that various issues had been discussed at a meeting of the IPG:
- 529.1 Marshall Poulton reported that a Tram Operations Group meeting had led to a strong view that Princes Street should be reopened to bus traffic in November 2009.
- 529.2 Tom Aitchison was of the view that, given worries from retailers about poor performance and the Christmas period, CEC should be prepared to meet their request.
530. I am reasonably certain that buses did return to Princes Street at the end of November 2009 but this was not solely my decision. I agreed to the process whereby that would be initiated but it was not up to me to direct Lothian Buses to return to Princes Street.
531. We had a lot of discussion with the city centre businesses and retailers at that time, as it was very important that we retained the support of businesses and organisations. There was quite a strong lobby from the city centre businesses. Gordon Drummond, referred to in the email and the Managing Director of Harvey Nichols, was chair of a traders group at that time. We also had what was called a City Centre Stakeholder Summit. There was a lot of pressure to do everything that we could to ensure that they did not continue to lose money over the Christmas period.
532. The City Development Department, whose Director was Dave Anderson, looked at the logistics of doing that. My view was that we should do it, and should do our best to accommodate the wishes of the retailers despite the delay issues.

533. The wishes of retailers were not easy to accommodate because they themselves were drawn between wanting to have good access for shoppers during the Christmas period and wanting the works finished as quickly as possible.
534. There was quite a lot of campaigning set up to support the businesses. Some people were opting to go to Glasgow for Christmas Shopping instead. Quite a lot of effort went into getting across the message that the city was open (such as one campaign called "*Edinburgh Sparkles*"). Large amounts were spent on signage on the outskirts to convey this. I think it was right to do this. There was an anti-tram message that the tram was just being built for a few shops and visitors to the city and was not meant for the general public.
535. Most of the discussion with the city centre stakeholders was through joint meetings, usually attended by myself and Councillor Buchanan (Economic Development Convener, SNP). I believe there were also people from the City Development Department there, but I do not think TIE were involved. The meetings were really an opportunity for us to hear the views of businesses, which in general was welcomed. We were trying to be as open as we could, mitigate things, letting them know we were hearing their pain and asking them to put up with it given what they would be getting. The rerouting of buses along George Street led to an improvement in business on that street, and we were lobbied by George Street retailers to permanently maintain the routes along there.
536. I have been asked whether decisions like the embargos and allowing buses back onto Princes Street, at the end of November 2009, led to further delays in the ETP.
537. I suppose the embargos and allowing buses back onto Princes Street at the end of November 2009 must have led to further delays in the ETP.

However, by the time a lot of this was happening the project had come to a standstill anyway. I am not sure to what extent it affected things. The timeframe was already being affected by a real impasse between TIE and the Consortium where works were eventually just abandoned all over the entire city. It would be difficult to attribute responsibility for delays even if the Consortium had been working as they were expected to be. Quantifying the effect of these decisions would be difficult.

538. I am sure there were discussions between TIE and the Consortium about mitigating delays, but I do not know what they were suggesting or offering at that time.
539. I did not personally pass feedback from retailers onto TIE – that would have been done through Marshall Poulton. Others would no doubt have informed TIE of what the city had decided to do.
540. For the 20 August 2009 Full Council meeting, there was a report to the Full Council by the Directors of City Development and Finance (Dave Anderson and Donald McGougan) (CEC00308517) which contained comments that:
- 540.1 This was the first report to Council to state that the Phase 1a of the ETP (Airport to Newhaven) could not be delivered within the funding envelope or budget of £545m (at para 3.12, pg 3).
- 540.2 A revised programme (timetable) and commercial baseline had also not been agreed (at para 3.5, pg 2).
- 540.3 Utilities diversion works had given rise to additional costs for measured works and programme slippage. This was said to be due to “*unexpected ground conditions*” including the discovery of underground chambers (at para 3.8, pg 2).

540.4 TIE was invoking formal contractual dispute mechanisms. TIE had taken the opinion of counsel (an advocate or barrister) but given the given the nature of the process and the complexity of certain issues it was unreasonable to expect that all adjudication outcomes would be decided in TIE's favour (at para 3.11, pg 3).

540.5 Most significantly, the Directors noted that, in light of the disputes it was not possible to forecast accurately the budget outturn (ie the likely end costs) (at para 3.12, pg 3).

541. In relation to the ground conditions, it is certainly not unusual in historic cities to uncover unexpected structures. We were shown things like photographs of skeletons and the underground chambers that had been found. In one location they found over 300 skeletons and wooden coffins. At Haymarket, there was an enormous underground cellar which was assumed to be some sort of air raid shelter, and a number of very old chambers.

542. I do not know precisely what was done by way of investigation, but I would imagine that it would be as you would expect in any big infrastructure project with boreholes to assess what was under the ground. We probably did not realise just to what extent there were going to be cables and pipes and so on found where they were not supposed to be. We always knew that the utilities had not been properly mapped.

543. We were always told that there was a lot of risk as regards the MUDFA programme. It would have been impossible to have had everything mapped and, even if boreholes were sunk, there could be something between the boreholes that emerged later. I think many of us would have thought that this was probably one of the biggest risks in the whole project.

544. I would be very surprised if the utility companies had given any assurance that the data they held was accurate. They had almost certainly found, when fixing burst pipes or broken cables, things that were not where they were expected to be. I do not know whether TIE had sought assurances from them.
545. In terms of the DRP mentioned in the report (at para 540.4 above), I must have been aware in August 2009 of the second tranche of disputes because we were kept informed. It was also obvious that work was not being done and that there was obviously a dispute going on. I am fairly certain I would have known about the rough areas on which the dispute centred. However, once more, we were never given detailed information for fear it compromised TIE's position and this was maintained throughout the whole process.
546. I do not think I ever saw a Queen's Counsel's (QC) opinion on this stage of the disputes, though I would have known about it since it was mentioned in the report. I do not know whether the Council directed TIE to get counsel's opinion. It was becoming clear that DLA was still giving TIE advice on the disputes, as DLA had drawn up the contract. Perhaps it was reasonable at this stage to get a more objective assessment. There would have been an argument that DLA should act for TIE as, having drawn up the contract, they knew it best.
547. I know that the fact the DRP was being done by the same lawyers as were involved in this contract certainly arose as a concern at one point. It was not necessarily at this point. I can remember Councillor Mackenzie talking to me about it and asking if I knew this background.
548. I think at this time we were still being told by TIE that the prospects were good. It later emerged that their idea of what was meant by 'winning on the issues' was not the same as most people would understand it to

mean. I think it was briefings from TIE or the Council that gave us that impression and provided that information.

549. As I discuss later in this statement (at para 670 below), my views about TIE's prospects of success changed when it became obvious that they were losing the arguments.
550. In terms of the finances of the project mentioned in the report (at paras 540.1 and 540.5 above), it was clear by now that there was a serious danger that the £545m would not be enough. It caused concern and, as occurred all through this process, we were continually getting briefings and presentations. Our group got a presentation. I believe it was from Richard Jeffrey (TIE Chief Executive). I think all the groups would have taken up the offer. We were told that there was a serious danger that the £545m funding envelope was under threat. We asked a huge number of questions around this time. We must have been aware by this time about how many disputes there actually were.
551. Regarding the references to financial contingency planning **CEC00308517**) in the report, it mentions (at para 3.14, pg 3) the contingency options that were being considered at this time. These included leasing back the trams and prudential borrowing. Prudential borrowing was a very favourable way for councils to borrow and got better rates than market borrowing. Many other options were looked at. Bond issuing was something that was looked at around this time, and was mentioned to us by the Council Finance team. We questioned the Finance Officers and wanted to know what would happen.
552. It was clear that we did not want that money to come from direct services (ie cuts to frontline or core functions) or from Council Tax payments. Originally there was a lot of hope that Council would receive a huge amount of money in developer contributions, but development halted in

Edinburgh, as elsewhere, because of the global financial crisis. It had all pretty much fallen through.

553. By August 2009, it was quite clear that development in the city had largely halted. This was particularly for housing development and the Leith Waterfront area, a big brownfield site that had all sorts of ambitious plans for it, and for which the tram (which at that point extended to Leith) was an important factor. The contributions that had been hoped would be received from developers were now in question. Development never went completely quiet in Edinburgh to the degree it did in other places. A major factor in Henderson Global Infrastructure (“HGI”) going ahead with their plans to redevelop the St James Centre area was that there was going to be a tram close to the site (the shorter line was not being discussed at this stage). I was told that their board had essentially stopped development in every other UK city, but Edinburgh remained on their agenda because they were going to have a tram going ‘to their door’.
554. Regarding whether the £545m funding envelope should have been revised down to take account of the fall in development activity, I do not think so. The raising of the Council’s £45m was separate. The Council had agreed that we would raise that amount. The fact that it was becoming clear that it might be difficult to raise did not enter into the calculations about the ETP. There was not any thought of revising that amount.
555. Prudential borrowing would have played a part in raising any extra money. In the end, the Council did use prudential borrowing for the project and it actually turned out to be at a much more favourable rate than was expected. We had been given figures about how, for instance, £1m in prudential borrowing would affect the revenue account of the

Council. We certainly were always aware that borrowing was one possibility.

556. At this stage, although the £545m was under threat, funding had been based on delivering the whole of Line 1a (Airport to Newhaven). The updating calculations that were being done were based on the tramline going to Newhaven. It would not have been appropriate at that stage to have arbitrarily made a decision to stop the line short. It was not seriously on the agenda at this time and we were not being asked to take a decision on whether the project should stop before the whole of Line 1a was delivered.
557. Regarding the reactions this report produced amongst the SLD and other political groups on the Council, obviously everybody was concerned about it. But there was no decision taken as to what should be done about it other than that all of the workstreams currently underway continuing. There were no motions or amendments against the report in the minutes of the Council meeting of 20 August 2009 (CEC01891434, at pg 14), which suggests that there was no discontent.
558. At this point, in August 2009, I do not think anything indicated that any of the groups were seriously opposed. We had all hoped that we would have the tram running on time and on budget. However, we were also all aware that there were plenty of other projects that had been over-extended in terms of both time and costs. There was always that possibility with a big public infrastructure project.
559. In November 2009, an *“Overview of Adjudicator’s Decisions”* was provided by DLA to the Council Solicitor (CEC00479382) which related to decisions dated 16 November 2009 by Bryan Hunter on the disputes relating to the Gogarburn and Carrick Knowe Bridges..

560. I did not see this document at the time. However, during the latter part of 2009 I was getting weekly reports on the tram. By the end of December 2009 I knew that adjudicators had favoured Infraco's position more often than TIE's position.
561. This was described very much on a win and lose basis. We were told that TIE was not having to accede to what the Contractor had been seeking and, therefore, that TIE had been winning more disputes than it had been losing. I was not actually seeing these decisions at the time. They were internal to TIE. The information we were getting was from TIE or through Council Officers.
562. In late 2009, TIE were still being quite bullish about it. My impression was that they thought that this was a glitch and they were still on the right side of the argument.
563. There was a ministerial briefing note for Stewart Stevenson MSP, Scottish Transport Minister, prepared for him by TS prior to a meeting with Richard Jeffrey on 25 January 2010 (TRS00005132). This briefing note refers to an earlier, 2 December 2009, meeting between myself, Richard Jeffrey and the Minister (at para 3, pg 1).
564. I have no record or recollection of the discussion on this occasion. I had quite a lot of meetings and phone calls with Stewart Stevenson during my time as Council leader. In general, the ETP was on the agenda though there were other matters we discussed. Where the ETP was to the fore, he always stressed his desire for the tram to be in place as quickly as possible. He would remind me that the Scottish Government funding was set at £500m and there would not be a penny more than that. I never doubted that and knew that we were not going to have access to any additional grants.

565. I do not remember the Minister ever mentioning TS involvement at this stage. It was only much later (when Sue Bruce became Chief Executive at the very beginning of 2011) that there was much discussion about Transport Scotland's role or lack of it.
566. The only role that I knew TS had was being involved in TIE early on in its life and as the body through which the £500m was passed to the Council. From around the time the money was granted, TS had deliberately limited its role in TIE and taken a 'back seat' role. They presumably continued to monitor the funding and how it was being used but I knew very little about the role. They did not make themselves known to councillors and they did not come along to any of the briefings we had. During almost the whole time that I was on the Council, I do not remember ever having any communication from TS.
567. I think the Scottish Government were probably not too concerned about the budget. They knew that their involvement financially was limited to the £500m and that it would be up to the Council to find the rest. Their main concern was reputational - people coming to the country's capital city were seeing what was not happening. I think they were more concerned about the delays rather than the financial consequences to the Council. Some Ministers, including Stewart Stevenson, were particularly keen to see trams running in the streets.
568. Regarding additional support from TS, I do not remember any offers coming from Stewart Stevenson about involving TS.
569. Regarding suggestions that the project would cost in excess of £600m (at para 516 above), I do not remember anybody mentioning those sorts of figures.

Events in 2010

January to May 2010

January 2010

570. There was correspondence dated 8 January 2010 (CEC00473789) in which Nick Smith (CEC Solicitor) sent Alastair Maclean (CEC Head of Legal) a document entitled "*Tram-Potted History*" (CEC00473790). The email noted:
- 570.1 *"... dissemination of the actual history here could cause serious problems and we definitely don't want to set hares running."*
- 570.2 *"...be very careful what info you impart to the politicians as the Directors and tie have kept them on a restricted [information] flow."*
571. This email would have been sent shortly after Alastair Maclean joined the Council as the Council's Head of Legal Services (the Chief Legal Officer which was no longer called the Council Solicitor at this point) in December 2009. It appears to be an introduction to the ETP prepared for him by one of his staff. I had not seen this document prior to it being produced as part of the Inquiry.
572. I have some comments:
- 572.1 The lack of Council input at the start of the ETP is highlighted.
- 572.2 There is recognition of the lack of unbiased legal expertise that the Council had until late in the ETP.
- 572.3 It shows how early the disputes started. While the first dispute that councillors really became aware of was the Princes Street dispute, this makes it clear that the disputes started much earlier.

- 572.4 The lack of communication between TIE and the Council was very striking. TIE seems to have been very slow in informing the Council of various matters.
- 572.5 The cost estimates are also striking, with maximum costs already said to be £640m at this point. This was nearly half a year before a June Full Council meeting where a 10 percent contingency, taking the budget to £600m was hinted at (as I discuss later in this statement at para 630 onwards below).
- 572.6 I do not think I knew that the designs were less than 40 percent complete at the time of the Infraco contract's signing. If I had been asked to put a figure on it, I would have thought they were 90 to 95 percent complete.
573. There was a lot of information in these documents that I was completely unaware of (as the note says "*members only have a small knowledge of the above*"). They may also explain why, at some stage, Alistair Maclean did share with me his concerns about the contract and the conflicted legal advice. They highlight a great deal about the situation which councillors were not aware of.
574. Regarding whether I consider that the Senior Officers (Chief Executive and Directors) or TIE were keeping councillors "*on a restricted [information] flow.*", at the time we were aware that our information was limited. Questions that we asked might not be answered and requests for further information might be denied. As councillors, there were certainly times where we were told that legal or confidentiality explanations were used to keep us in the dark. I am fairly certain that this restriction on what we were told applied across the body of councillors.
575. That certainly seemed to be the approach of TIE but I do not know whether that was the policy or approach of CEC Directors as well or what

those Directors knew. Between the two, however, it is clear from these emails that we were being kept on a very restricted information basis.

576. An opinion was drafted by Richard Keen QC, dated 14 January 2010, on the interpretation of the Infraco. TIE had sought this from him (CEC00356397). It has been noted that this was the final version provided and was substantially complete. The opinion was provided to the Council Solicitor and legal team on 12 April 2010 (CEC00356396).

577. The opinion makes the following comments (at para 13, pg 9):

577.1 TIE did not take full and proper account of the wording which appeared in the last three lines of paragraph 3.4 of Schedule 4 which provided: *"for the avoidance of doubt, normal development and completion of designs means the evolution of design through the stages of preliminary to construction stage and excludes changes of design principle, shape and form and outline specification."*

577.2 The effect of this wording was that: *"Changes of design principle, shape and form and outline specification"* would constitute Notified Departures and would entitle the Consortium to seek further payment under Schedule 4 of the Infraco.

578. I do not remember getting a briefing on this opinion, but I do recall our Transport Convener, at some point, telling me that legal opinions suggested that TIE was not on the firm ground they had asserted.

579. It is easy to say now, with hindsight, that action should have been taken sooner particularly when it appeared that some people knew that things were not quite as they should be. However, TIE had a legal team in which they presumably had faith, so I do not know what prompted TIE to seek this opinion at this time. Probably it was the fact that they were

getting adverse adjudications and DLA had been, I think, assuring them that everything was ok on that front. Presumably it was a case of things were not going the way they had hoped so they thought they ought to get a different opinion on the situation.

580. As to whether the Council should have taken separate advice before this point, it is again easy to say now that perhaps they should have. However, at the time I presume that Council Officers felt that advice given to TIE was enough. Certainly the story coming from TIE was that they knew what they were doing and they would soon get onto a winning streak even if that was not happening just then.
581. My assumption is that the contract had not been drawn up carefully enough in the first place. It was a bespoke contract and so not every clause (or even any of them) would have been fully tested. It may have been quite open to different interpretations. It should not have been this way.
582. There were emails amongst the Legal Officers and CEC Directors in January and February 2010 seeking independent advice for CEC from a firm of solicitors, Dundas and Wilson (**CEC00479797** and **CEC00480029**).
583. I did know that Dundas & Wilson had been involved in giving legal advice for the Council. I knew that TIE would not find it straightforward to dismiss the Consortium or part of it, and that was their thinking at that time. It was obviously important for the Council to have legal advice on whether that would be possible. I think, by this point in early 2010, Alastair Maclean was taking a fresh look at things inherited from the previous Council Solicitor (Gill Lindsay) who had left shortly before.
584. Regarding whether I or other councillors were invited to be involved in the legal aspects, I was not and would not have expected to be. This was

for the Council's Legal Officers. Up until this point, DLA had been advising the Council but they were also advising TIE. With the various DRPs not going the way that TIE had told us to expect, it was the right time perhaps for the Council to take its own legal advice.

February 2010 Budget Meeting and finances

585. In early February 2010, there was a chain of emails, including an email sent to myself and Councillors Phil Wheeler (SLD), Steve Cardownie (SNP), Iain Whyte (Conservative) and Andrew Burns (Labour), on 8 February 2010 (CEC00492018). This began with an email sent by a member of the public, Alison Bourne (see at para 149 - 150 above), and expressed concern that Council reports prepared in advance of the Council's budget meeting on 11 February 2010 made little mention of the financial position of the ETP.
586. From May 2009, Councillor Phil Wheeler, who had been the Transport Convener, replaced Councillor Mackenzie as the Finance Convener. Councillor Mackenzie became the Transport Convener.
587. Every year the Council sets a budget in February. We did have a rolling budget, in that the Council sets a three year budget, but it was refreshed and re-examined every February. Usually decisions are made over two Full Council meetings. One would deal with the main headlines of the budget and the other would deal with grants to organisations and the like. The February Full Council meeting was generally referred to as 'the budget meeting' and it would be unusual for there to be much else on the agenda.
588. Regarding whether the budget meeting in February would look at matters like contingent funding or any shortfall in funding, it would not. We knew what money there was in the budget and it was really a case of allocating that budget to different headings. Prior to the Scottish Government's

2007 decision to freeze Council Tax, there would also have been a lot of discussions on the level of Council Tax. The February 2010 budget meeting was not really looking at the issues that Alison Bourne discussed in her email (at para 585 above).

589. The budget meeting in February was solely to set the Council's revenue and capital budgets for services for the next year and there was no item on the agenda that would have allowed for strategic decisions to be taken on the ETP. In any event, it was a sort of separate, discrete project because the huge bulk of the funding was coming from outside the Council. There was enough information for councillors to make strategic decisions on the budget, both capital and revenue elements, but there was not information on the ETP. The money to be allocated to the ETP would have been part of the prudential framework within the Council's finances. This was a separate area that was looked at a different meeting. In most years, there was a Treasury Management Strategy set for the Council, and there was a report every year that would include the affordability of borrowing.
590. The prudential framework was a means of borrowing through which councils could achieve big projects for buildings, infrastructure and so on. As I discuss later in this statement (at paras 792 - 794 below), when there were discussions around halting the project, it seemed that funding would not be available for the termination option. I am not certain whether prudential borrowing funds came through the Scottish Government or through Westminster.
591. The Treasury Strategy was an annual report to Council which included a large element about the affordability of borrowing. The Treasury Strategy was produced by the CEC Finance Department, and there was one Finance Officer who seemed to be the expert in this area and how the Council could best make use of its money. It looked at how CEC could

invest money and from where it could borrow it, making sure that it was all legitimate and affordable because clearly there is a revenue impact when you borrow money. I believe this report on the Treasury Strategy would have gone to the Finance Committee, though any councillor could ask to be briefed on it if they wished. If the Treasury Management Officer had said that the prudential framework could not be used I would have been worried but he never gave any indication that that was not going to be a feasible way forward. I do not think there were any concerns about Prudential borrowing not having enough headroom to cover this.

592. Repayments of borrowing by the Council would come from the revenue account, so we had to be sure that there was enough space in there to actually pay back the money. That was provided for in the Treasury Management Strategy. The framework covered the amount that you could borrow; ensuring CEC had the means to pay it back.
593. In terms of the borrowing limit, I believe there was a technical HM Treasury formula used to decide how much you could borrow as a council. At some point, there was a concern that the prudential rules might change and that might make things more difficult. The changes might have affected the limit on the amount that councils could borrow or the purposes for which the money could be used. If the rules had changed, I do not think the purpose would have been an issue because it was quite clear that this was a major infrastructure project. In the event, the rules did not change.
594. A council did not necessarily have to borrow up to the limit. It would look at projects and consider how important they were. Given that the majority of the Council was in favour of the ETP, it had been agreed that this was a project worth borrowing for.

595. It was clear that – even if the project was limited to £545m – there was going to have to be substantial prudential borrowing (or other funding, such as bonds).
596. There was a proposed response to Alison Bourne, dated 9 February 2009 and prepared by Alan Coyle for councillors (CEC00492018). Alan Coyle was an experienced Council Officer in the Finance Department, with close responsibility for the ETP.
597. I was not copied this part of this chain. My view on seeing it now is that it was a reasonable response. I think it gave a sufficient basis for Councillor Wheeler's reply. Essentially this was that it was too early for us to have actual figures for exactly how much funding would be needed.
598. Part of Alison Bourne's email (at paras 585 above) concerned the unexpected works at Russell Road and TIE's alleged failure to provide clear sites to the contractor. I knew that there was an issue at Russell Road and that it was to do with the sites not being ready for infrastructure work. I did not, however, know the detail.

Operation Pitchfork

599. An email was sent by Alan Coyle (CEC Finance) to Donald McGougan and Dave Anderson (CEC Directors of Finance and City Development respectively) on 4 March 2010 (CEC00474750). There was an attached briefing note (CEC00474751) regarding what was called 'Operation Pitchfork'. There were three options: (i) termination of the Infracore contracts; (ii) a partial conclusion of the project; or (iii) continuing with the works and trying to solve all the disputes later. The briefing note estimates the costs of the ETP, at that point, at between £644m and £673m (at pg 3).

600. I believe that all of this correspondence was shown in confidence to the TPB. I was not involved in the TPB or in the detailed discussions about this. I heard the term 'Operation Pitchfork', but I did not have any detailed knowledge of what it was about. Council Officers and TIE members did not come to me, at this time, to discuss the three options. This is the sort of information that I presume they would have kept confidential. They did not want the Infracore to know what they were thinking about and what they thought the costs and so on might be. I do not think councillors were at this time being told just how seriously TIE were thinking of these various options and there was no sense of crisis.

601. It has been noted that these estimates of between £644m and £673m (at para 599 above) were not reported to councillors in a report in advance of the 24 June 2010 meeting of the Full Council (**CEC02083184** - which I discuss later in this statement at para 630 onwards below). As far as I know, the options and cost estimates were not discussed with any councillors except, potentially, those on the relevant boards.

Letter from the Consortium

602. A letter, dated 8 March 2010, was sent by Richard Walker (of BB and the Consortium) to Tom Aitchison (CEC Chief Executive), Donald McGougan and Dave Anderson (CEC Directors) and Councillor Gordon Mackenzie (SLD, Transport Convener) (**CEC00548823**). The letter notes (at pg 2) that TIE had sought to insist that it had signed a fully fixed price lump sum contract when, in Mr Walker's view, the pricing assumptions and the adjudications on the interpretation of those pricing assumptions indicated that this was not the case. The letter (at pg 5), makes mention of many notified changes, excess spending of £100m and the serious possibility of continuing legal disputes.

603. While I was not included on the list of recipients for this letter, I believe I saw it at the time it was sent. I think the Chief Executive may have shared it with me. I cannot remember whether I discussed it with Councillor Mackenzie. Other members of the SLD group or group leaders may also have been given summary information about the letter, though I doubt they would have seen it. My views on the letter would have been that it was concerning, particularly the assertions about extra costs and delay, the number of outstanding notified charges and the impasse between TIE and the Consortium.
604. I doubt very much that anything would have been done directly in response to the letter. It would certainly have been discussed with Council Officers. But it should be borne in mind that, at this time, we were getting a rather different picture from TIE and we were being told not to believe what the Consortium were saying about anything. There was a real impasse between TIE and the Contractor and TIE and CEC were supposedly still standing side by side.
605. I certainly would not have shared this letter with TIE. If anybody had shared it with TIE it would be the Chief Executive, but I do not know if he did. The letter would be dealt with through the most senior Council Officer that it was addressed to, and in this case that was the Chief Executive. I do not think that TIE contacted councillors and sought to respond to this letter.
606. I did not consider meeting with the Consortium at this time, though at various times I had considered and discussed this with Council Officers. Their view and my view was that the Senior Officers were dealing with TIE and it would not be helpful to meet up with the Consortium. It was something that was always there at the back of my mind. However, as I have already discussed (at paras 278 and 288 above), the role of a councillor is not to be involved in operational day-to-day matters so it

would not have been appropriate or helpful at this time to have met with him due to the on-going legal issues.

607. It is difficult to remember precisely what my views were at this time on TIE's strategy for resolving the disputes. It had not, as far as I can recall, been suggested by Council Officers that TIE were not doing their job properly or that there was anything amiss.

April 2010 update to Councillors

608. I sent an email to Labour Councillors Andrew Burns and Ian Perry, dated 9 April 2010, discussing a tram project briefing note I had put together for councillors (CEC00235026). As I noted: *"It has been a bit of a nightmare pulling together the few facts that tie, legal, financial etc would actually allow to be committed to paper."*
609. At a previous Full Council meeting in March 2010, Councillor Cardownie (SNP, Deputy Leader) had asked for a synopsis of where we were with the project. There was a feeling that the material needed to be drawn together to produce a lay person's guide to where we were. I had said to the councillors that I would produce that briefing note. It must have been at the March Council meetings that the request had been made.
610. There is a near final version of that briefing note (CEC00234967) which is referred to in the email (at para 608 above). While I often did a Council Leader's report, this briefing note was unusual in being particular to this single issue. It was intended to provide an overview of the ETP rather than a high powered technical discussion, and would have been distributed to all of the councillors. There was some comment about disputes, but it did not deal with the content of Richard Walker's 8 March 2010 letter (at para 602 above) in depth as I do not think we had the full information to assess it.

611. The SLD was still in coalition with the SNP on the Council. The coalition relationship was much as it had been at the start. The SNP still, in most respects, formally opposed the ETP. I do not know why Councillor Cardownie requested this breakdown of the ETP at the March 2010 meeting. It may be that he felt that he had not mentioned the Tram for a while and wanted to say something.
612. The briefing note was checked by the Chief Executive and by TIE to ensure that there were no breaches of confidentiality.
613. I did actually write the briefing myself, and it took quite a while to compile all the information. I had to have all that information checked to ensure it did not state anything that was considered inappropriate, confidential or inaccurate. As a result, it was a fairly anodyne briefing note. It was a bit of a nightmare pulling it together due to the confidentiality concerns. I probably knew a bit more than was actually in there. Confidentiality affected our ability to give a clear view of the facts we did have - and we were not given all the facts ourselves.
614. In my email of 9 April 2010, I discussed Councillor Cardownie's legal challenges (at para 608 above). I do not know what these legal challenges were though they may have related to Freedom of Information (Scotland) Act ("FOISA") challenges and whether or not information could be freely released. I was reflecting the concerns of the Council Officers working in the Corporate Communications team, as Steve Cardownie had a habit of going and speaking quite freely to the press.
615. Councillors repeatedly questioned why we could not get more information. Members of the public, Alison Bourne for instance, often tried to get information through FOISA requests. TIE's general view was that matters were either commercially or legally sensitive, and they refused to release information. When TIE received FOISA requests, the

requestor could then go back to the Information Commissioner to find out why they had been refused or documents had been heavily redacted. TIE would need a good reason to satisfy the Information Commissioner.

616. That so few facts "*could be committed to paper*", as I note in my email in terms of TIE, Council Officers and legal advisors, was largely due to TIE. Senior Officers might also say when they gave us information, that it should not be widely disseminated. Presumably TIE had legal advice that meant information was always referred to as 'commercially and/or legally confidential'.
617. Regarding the amount of information councillors received and its effect on their decisions, it is a bit of a 'chicken and egg' scenario in that if we did not have the information, it is difficult to say how it affected the ability to take informed decisions. The decisions that we took were informed enough. If we were not content that we had enough information to allow us to take a proper decision, then we would always ask for more information. We questioned what we were told, but at the end of the day, councillors rely on the professional advice given to them by Council Officers – who were informed by TIE.

TIE's response to the Consortium

618. In an email dated 19 April 2010, Richard Jeffrey wrote to Group Leaders including me, Ian Whyte (Conservative), Steve Cardownie (SNP), Andrew Burns (Labour), and Steve Burgess (the councillor who must have held the Greens' rotating leadership at this point) setting out TIE's position on the main matters in dispute (TRS00010706). It noted a number of points:

618.1 In relation to the contract: "*there is disagreement over what is or is not included in the original 'fixed price' contract*"; and "*the contractor is refusing to get on with the works in an attempt to*

coerce us into agreeing to change the form of contract onto a 'cost plus' contract."

618.2 Richard Jeffrey would not allow the city to be "held to ransom".

618.3 In relation to the adjudication decisions: *"It is true that we did not get all the results at adjudication we would have liked, however it is also true that the results do not support BB's extreme view of their entitlements either. I would like to be able to fully brief you on these adjudications, but they are confidential under the contract and to do so would put tie in breach of contract."*

619. I cannot recall what I thought at the time. This obviously gave a very different view to that of Richard Walker in his letter on behalf of the Consortium ~~(at para 618 above)~~ ^{JAD} (Not referred to directly at 619). [§] In a sense, Richard Jeffrey's email was TIE's rebuttal, coming a month later, to that letter. Now we had both sides of the story.

620. The two sides were almost entirely inconsistent. About the only thing they seemed to have agreed on was that delays in the utility works had affected the Consortium's capacity to get started. Richard Jeffrey said this had been addressed. The contradiction came down largely to whether this was a fixed price contract or not, and what could / should not be included. The fact that there were two diametrically opposed views was concerning. It was clear they could not work together.

621. I am fairly certain that, by this time, I was thinking that the Consortium did seem to be winning a lot of the disputes. Quite clearly an independent adjudicator was seeing the Consortium's reading of the contract as being more correct than TIE's reading of the contract. I think that by this time I must have been pretty concerned that TIE's belligerence was not founded in good fact.

622. Regarding legal advice taken by TIE (in the email at para 618 above), it is possible that I did see some of the legal background but I do not think I would have been shown the detailed advice. It was probably around this stage, April 2010, that I knew various legal firms had been instructed. I do remember getting a briefing where we were given some information on legal opinions, though I cannot remember whether it was a briefing to individual groups or whether it was a Group Leaders briefing. Gordon Mackenzie, our Transport Convener, was at one stage involved in discussions on legal advice with the Legal Officers. He was going to speak to the Council Solicitor and various others. He may have been the person who told me that the Council was seeking its own advice at about that time.
623. As I have already discussed (at paras 509 - 510 above), Alastair Maclean seemed to act as a pair of 'fresh eyes' on the issues whereas Gill Lindsay had been with CEC for a long time. He was very good at briefing and very responsive. However, it was at a time when perhaps anybody in his position would have been giving us more information because there were these disputes going on.
624. I think the impetus for CEC's independent advice was the difference between what Richard Jeffrey was telling us and what Richard Walker had told us a month earlier. Clearly, there had to be some objective view of it and it was around this time that it probably seemed particularly appropriate to get a somewhat more objective opinion than we were getting from TIE.
625. In terms of the adjudication decisions themselves, we were always told that it would breach the contract if the decisions were shared with anybody other than TIE or the Consortium. I do not think I ever saw the decisions. We were given the headlines of what they said, which, at this time, was still TIE's interpretation.

626. What Richard Jeffrey said in his email, including the relative win/loss rates in those adjudications and the success that TIE had enjoyed, made it quite difficult to assess what was going on, as we were getting two entirely different views. That presumably motivated the Council Officers to seek their own advice - previously DLA had been acting for both CEC and TIE. The relationship was becoming a little one-sided. CEC was still supposedly standing "side-by-side" with TIE but TIE did not seem to be sharing as much as they should, especially regarding the "fixed price" agreement, which by this time, was seen as not so "fixed price" by the evidence being produced in the form of adjudication. I am sure Council Officers felt as frustrated as we did about the differences of opinion between the Consortium and TIE.
627. I am fairly certain that we did request copies of the adjudication decisions but we were told that it would breach the contract if anybody other than the parties to the contract, TIE and the Consortium, were given them. It was a very unsatisfactory state of affairs, but we accepted it. The decisions were also likely to be very technical and it may be that the headline figures and reasons were sufficient for us. However, we were getting very different headline views from each side. It may be that councillors who sat as board members of TIE were given sight of the detailed decisions, and they sometimes said that there was information they could not share, but they were bound by their duties to the company (as I have already discussed at para 42 above).

Project Carlisle Meeting – April 2010

628. Emails were sent by Richard Jeffrey to Council Officers and certain councillors (**CEC00387018**, **CEC00247389**) in July and August 2010. These appear to relate to a series of discussions, beginning on 21 April 2010 in Carlisle, in which TIE and the Consortium attempted to negotiate a solution to the impasse. These negotiations explored the possibility that

the tram would only be built to St Andrew Square for a guaranteed price and with a new completion date.

629. I did not see these emails at all. I had heard the term 'Project Carlisle' but did not know what it was about. I do not remember any other discussions around the line being cut short – my understanding at that time was the ETP would still be delivered down to Newhaven.

June to December 2010

June 2010 Full Council Meeting

630. There was a report prepared by the Directors of City Development and Finance for the Full Council Meeting on 24 June 2010 (**CEC02083184**).

This report notes:

630.1 *“The essence of the 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...”* (at para 3.3, pg 4);

630.2 *“Whilst there have been disputes on design-related matters, as summarised above, it is normal in any large construction project for the scope of the project to change in marginal ways, for a variety of technical and commercial reasons”* (at para 3.10, pg 5);

630.3 *“The outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties.”* (at para 3.12, pg 5); and

630.4 The full scope of Phase 1a (Airport to Newhaven) could not be delivered within the £545m available and it was prudent to plan for a contingency of 10 per cent above that due to the uncertainty around the programme and the cost of the project (at para 3.40, pg 9).

631. As with all reports to Full Council of this type, the councillors had been briefed about its contents in the weeks before the meeting. My view was that it was very disappointing that there were such adverse impacts on the budget, scope and programme of the project and that the relationship between TIE and the Consortium was so bad.
632. The Infraco was still being described as a "*lump sum fixed price*" agreement, with the caveat that subsequent changes could lead to increased costs. By now it was obvious that the contract would not have fitted the average person's view of what a lump sum fixed price contract was. I do not know why it was being described in this way by Council Officers at this stage; they may have considered the 'rider' sufficient.
633. At the time of the FBC (Final Business Case) in October to December 2007 (at paras 292 above) and prior to the signature of the Infraco in April to May 2008 (at paras 330 - 396 above), I think we were not adequately advised of the potential for the project scope to change in material ways or the impact this would have on costs or the sufficiency of the risk allowance. I suppose there is a question as to who was actually aware of this and could have told us at those times. I do not know what Council Officers or TIE knew. I can remember discussing with fellow SLD Councillors the extent to which the Consortium appeared to have clever lawyers and the extent to which the Consortium had been aware of the huge potential for getting more money out of the contract.
634. In mid-June 2010, reports to Full Council came from or were signed off by the Directors of City Development and of Finance. I do not know whether, by this point, they were aware of things that we were not aware of yet. With hindsight and the information provided for this Inquiry, there were some people in the Council who appeared to have knowledge of matters long before councillors were informed of them.

635. Regarding the risk allowance in the project, I do not think we were given detailed information on whether it had been exceeded by this point. The report says that it would be prudent to plan for a contingency 10 percent higher but the Council Officers were not actually asking for that amount at this moment in time (at para 3.20, pg 9 of **CEC02083184**).
636. There was a bit of spin about how TIE were portraying the results of the DRPs (described as "*finely balanced*" at para 630.3 above). Even at this stage they were saying it was finely balanced which I think is a slightly dubious way of describing it. I am not certain whether I noticed this at the time or only in the case of reviewing this report, but there seems to be a rather desperate spin to make what I would have seen as a loss into a gain. At one point (at para 3.5, pg 4), the report mentions (in bold) the reduction of the claims made by the Consortium from £18.2m to £7.6m and describes that as a saving to the public purse of £10.6m. In reality, this could have been described as a cost to the public purse of £7.6m. They were describing as a saving what could easily have been described as a loss.
637. By this point we were aware, and it is highlighted in this report, that the outcomes of the DRPs were really rather unknown and it was thus very difficult to quantify the true costs. The risk about the disputes was the main source of extra costs at this time. We knew that there was a risk, but the information we had was that this risk brought the likely costs up to £600m not that it took it over that.
638. Regarding planning for a contingency of 10 per cent above the approved funding level of £545m, this was disappointing but certainly prudent if the advice we got was that that was necessary. We were all very aware that it was not unusual for most big public infrastructure projects to entail extra costs (for instance, the costs of Scottish Parliament had increased in price by ten times in about seven years).

para 3.20
should be
para 3.40

639. At this time, it was described more as a 10 percent contingency than a doubling of the Council funding. It was a forewarning that a funding increase might be necessary. We had hoped to deliver the full Line 1a (Airport to Newhaven) within the £545m, but we had to accept that this was now in doubt. The fact that the Council Officers were not actually asking for an increased budget at this point (at para 636 above) suggested they thought there was still room for manoeuvre. Whether TIE believed its own rhetoric about winning disputes, and costs not therefore increasing as much, is open to question.
640. Regarding whether I considered it likely that the whole of Phase 1a (Airport to Newhaven) could be built for £600m (the original funding envelope and the 10 per cent contingency), the advice that councillors were given in this report suggested that that much could be built for £600m. However, we knew by this time that a programme of incremental delivery was being looked at. That might have meant that trams did not go the whole way in the initial period. I cannot remember if incremental delivery was discussed in detail at this point. Truncation of the line came in as an option at a later stage as well. Full Council reports were the ones that the Council was asked to take the decisions on, and we could only take decisions based on the information we were given.
641. While the report noted that approval of the 10 percent contingency was not yet being sought, I am sure that Donald McGougan, the CEC Director of Finance, would have immediately got his people working on how we would find that extra money. We would have to be assured at some point that the money was available. Donald McGougan (who also sat on the TPB) would probably have been even more aware than councillors were of exactly what the situation was.
642. The press had access to Full Council meetings (except for B Agenda items, see para 370 above) and the Evening News certainly sent

journalists to meetings. It would surprise me if there had not been a report about the costs increase and contingency at this time. As Council Leader, I do not remember any particular press interviews or other approaches at the time.

643. I do not believe there was any communication from the Consortium following the meeting to contradict the figures that had been put forward. Richard Walker's March 2010 letter (at para 602 above) had previously indicated they believed there to be an excess of around £100m but they did not directly address the contingency provision in this report.
644. Regarding the fact that we were told about cost overruns and difficulties after the event, councillors are not supposed to get involved in operational matters and I think it was right not to give daily updates on this very fluid situation (with the way the DRPs were working out). The figures would no doubt change from day-to-day and I cannot see that the situation could really have been handled differently. I do not think that councillors should have been informed of these matters at an earlier stage.
645. This report would have been based on information that the Council Officers got from TIE. TIE would have seen this report I am sure.
646. I have been asked whether, at this time, I detected any divergence in the perspectives of Council Officers and TIE staff on the state of the project.
647. I do not know what interaction there was between Council Officers and TIE at this time. Generally speaking, there was the 'one family' approach (at para 456 above) that Richard Jeffrey was particularly keen to put forward. The intention was to portray TIE and the Council working hand in hand and what TIE did being supported by the Council.

August – December 2010

648. There was a note prepared of a 20 August 2010 meeting between Council Officers and TIE representatives to consider TIE's Project Carlisle counter-offer (**CEC00032056**). The document notes:
- 648.1 A range of costs of between £539m and £588m for a route from the Airport to St Andrew Square and a range of between £75m and £100m from St Andrew Square to Newhaven, giving a total range of £614m - £693m (at pg 2);
- 648.2 These estimates were essentially a re-pricing exercise for the completed design (which was thought to be approximately 90 per cent complete) with the intention of giving TIE certainty (at pg 4); and
- 648.3 That all of the pricing assumptions in Schedule 4 of the Infraco contract would no longer exist (at pg 4).
649. While I knew that discussions were going on behind the scenes to try to resolve matters, I did not know any of the details of Project Carlisle including the details of TIE's counter-offer.
650. There was an email, dated 21 August 2010, in which Tony Rush (a consultant to TIE) (**TIE00296193**) discusses an approach by me to the Secretary of State for Scotland (Michael Moore) concerning the risks faced by public authorities in large infrastructure projects. That email seems to have been motivated by a letter prepared for Councillor Mackenzie (as discussed in an email lower in that chain).
651. I did not ask for this letter to be drafted and was unaware of it, though it is possible Councillor Mackenzie may have discussed the issue with me. My *modus operandi* was to draft letters myself and ask for comments on them from relevant officers. I did not send any letter to the Secretary for State on this topic. From looking at the email, I do not think the matter went any further. I did meet with the Secretary for State on a number of

occasions. He expressed a personal interest in seeing the tram completed, but this was not a matter over which the UK Government had any say or had any role in funding.

652. Coming to October 2010, in a letter (TIE00301406), dated 13 October 2010, the Consortium wrote directly to councillors giving their views on the dispute:

652.1 The Consortium advised that, of the nine formal adjudication decisions issued, it had had six decisions in its favour, there were two split decisions (with the principle found in favour of their argument) and there was one decision in favour of TIE.

652.2 The Consortium advised that it had no objection to having the adjudication decisions disclosed to councillors so that they could make their own judgments.

653. The letter was a sign of the extreme frustration that the Consortium were feeling about the lack of progress. The information in the letter was yet again revealing a different side of the disputes. TIE was always very keen to portray the Infraco group in general and BB in particular, as being extremely difficult to work with and as unnecessarily belligerent. This was showing a different side to them, which we had seen previously.

654. I am sure that this letter would have caused me to go back to TIE asking for further information, and the response would have been that TIE was not willing to show us the decisions for fear of breaching the Infraco. Any request for the sharing of information would also have gone through Legal Officers. I do not remember being offered copies of the decisions by either TIE or the Legal Officers.

655. I do not think the Council was in a position to force TIE to disclose the decisions even as its shareholder. I do not see that the Council could ask

TIE to breach the contract even if BB was willing to do so. The contract was between TIE and the Consortium. Eventually the decision was taken that TIE was not a helpful mechanism to deliver the ETP (in 2011) but at this point, TIE was still viewed as an arm's length company with a remit to deliver the ETP for the Council. The Council had got TIE to do it because the Council itself did not have the capacity to do it.

656. It would surprise me if the Council's Head of Legal Services did not ask TIE to see them, but I do not know if he did.
657. I do not think we ever saw the decisions and I do not know whether TIE board members might have. If the legal advice suggested that we could not see them, then I cannot judge whether TIE should have breached the contract or not, but it was their decision not to. In the end, I do not know precisely how much a councillor who was not a contract lawyer, civil engineer or accountant would actually have got out of the detailed adjudication. All we really needed were headline figures and reasons, and that information did trickle out. From time to time we got reports on how many of the disputes were being found in TIE's favour and how many were being found in the Consortium's favour.
658. Even if we had all the information, we might well have made the same decisions. We felt that we had enough information at various stages to make the decisions that we did. Where we did not have enough information we asked for further reports; on quite a few occasions the recommendations that came out of Council meetings asked for an update of the financial situation or more information about certain points.
659. I have been asked what my understanding was of the way the decisions had played out up to the time of the receipt of this letter.
660. I think by this time it was clear that everything was not going the way TIE was implying. I had discussions with Councillor Gordon Mackenzie, who

was getting a little more information through his role on the TIE Board. Without breaching confidentiality, he did indicate that TIE was being very bullish about things that it actually should not have been bullish about.

661. Regarding the attitude of Council Officers towards TIE in early October 2010, I think the 'one family' approach was to the fore until around November 2010. At this point, it was still very much a case of speaking with the same voice and having to show solidarity in public.
662. An email, dated 10 October 2010, was sent by Mike Connolly (TIE Media Advisor) to councillors in response to media coverage and giving a sense of where TIE thought it stood (TIE00463778). There is an obvious contrast to what was being said in Richard Walker's letter to councillors three days later (at para 652 above).
663. Mike Connelly mentions negative coverage, which there was throughout the ETP Project. There were periods of extreme negativity and misleading figures (the source of which we could never determine).
664. There was certainly a sort of growing awareness that the relationship between TIE and the Consortium was not working out at all well. TIE was telling us that the Consortium was impossible to work with and that we could not rely on what Richard Walker told us. Richard Walker was giving us a completely different picture. People simply had to judge the situation as best they could at the time.
665. The letter (and the situation as a whole) was not really used to put political pressure on the Administration. Everybody, save the SNP was still keen to see the project completed. Opposition politicians would always say they would have done it differently, but there were no constructive ideas. There is nothing from Full Council minutes at the time to suggest anything but agreement that the ETP should continue. There

was no public discussion about TIE being removed from the project, or to suggest that TIE was the real cause of all the issues.

666. I cannot specifically recall any response to this 13 October 2010 letter (at para 652 above) from TIE and I am sure I would have discussed the letter with the CEC Chief Executive, but I do not remember what was discussed or decided.
667. A report was prepared for the Full Council meeting on 14 October 2010 (CEC02083124). This was again prepared by the Directors of City Development and Finance. The report noted:
- 667.1 That it was prepared in response to the Council motion of 24 June 2010 requesting an update of the Business Case for the ETP, including details of the capital and revenue implications of the options that were being considered and changes from any of the original assumptions involved (at para 1.1, pg 1).
- 667.2 TIE and CEC had undertaken contingency planning work which had identified funding options for up to £600m, though *"[d]ue 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"* (at para 3, 1, pg 8).
- 667.3 There was not, however, any update on the total costs estimate for the ETP, despite the numbers mentioned in relation to Project Carlisle being known to Council Officers (at para 648 above).
- 667.4 In terms of the disputes: *"[t]he overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties"* (at para 2.50, pg 7).
- 667.5 Termination of the contract was one option that was being considered and on which extensive, on-going legal advice was being sought (at para 2.52, pg 7).

668. When this report was presented to councillors, we were generally dissatisfied with the level of detail and the information provided. By this point, we were all very frustrated as various figures were being suggested in the press and we did not have figures to rebut what was being said. TIE was still telling us that they were false claims. There was a general feeling of frustration about the amount of information we had. A SLD motion was passed that meant that Group Leaders and Transport Spokespersons would be given access to a full update of the Business Case, subject to signing an undertaking not to disclose commercially sensitive material. This was to give privileged access to some councillors if it could not be made publicly available. The further information we were seeking was anything that would help provide a fuller picture of the Business Case, which we felt we needed at this time.
669. I cannot remember whether it was Council Officers or TIE representatives that were responsible for presenting this update to the Council. It would normally have been Council Officers, and TIE would seldom appear at Full Council meetings. It is possible that TIE representatives attended some of the briefings beforehand. With the two perspectives that we had now heard from TIE and from the Consortium, there were a lot of questions asked in briefings and we expected a lot more information from the Council Officers. That was the reason for the amendment to their recommendations, asking for further information. We wanted to know more about the costs of the various options including termination.
670. By this stage it was quite clear that the DRPs were not really finely balanced and that the scales were tipped in the Consortium's favour. I think it was the information I received in response to the Richard Walker letter and through updates that caused me to change my mind over the course of 2010.

671. The legal advice related to councillors was, I believe, generally coming from Alistair Maclean (CEC Head of Legal). I cannot remember any external advisors at this stage. The advice would have been put in such a way that councillors without legal training could understand what it meant. I do not remember having any difficulty in understanding it. If any councillor did have difficulty understanding it, they just had to ask the Legal Officers what was meant.
672. I would need to review the major reports relating to the ETP, but I believe that this was the first time that councillors were given information on the termination of the contract. In terms of shortening or staging the construction of the line, from the time that we knew that the £545m funding envelope was likely to be breached, then those became a possibility. It was not referred to generally, prior to this point, as being truncation; it was more that the project would be delivered in stages. However, it was not until later, after the mediation at Mar Hall in March 2011 (at para 759 onwards below) that there was a frank discussion of how far one could get for so much money. I do not think there was mention in this paper about shortening the line, though it refers to "*incremental opening*" (at para 2.9, pg 2 of **CEC02083124**). Whether that really meant a shortening of the line or a staging of the project depends on how long there was between the first stage and the next stage.
673. At the June 2010 meeting, Council Officers had signalled that additional funding was needed but did not request it be formally approved at that time (at para 639 above).
674. I do not think there is any formal request for the additional funding in the October 2010 report. The report itself notes (at para 3.1, pg 8) that Council Officers still could not positively make a statement about what the ultimate costs would be. However, I think the fact that there were so many disputes outstanding, and that there was still a stand-off between

the Contractor and TIE, meant it was clear that it was going to cost more than we had originally thought.

November 2010

675. There were a number of documents from the CEC Legal Team in November 2010:

675.1 An email, dated 4 November 2010, in which Alastair Maclean (CEC Head of Legal) stated that CEC would *instruct "our own independent analysis of TIE's position by CEC's QC"* and that McGrigors had been appointed to lead the Council's legal review in place of DLA (CEC00012984).

675.2 Emails dated between 22 and 30 November 2010, in which Alastair Maclean expressed certain concerns about TIE and the legal advice received by TIE (CEC00013411, CEC00014282 and CEC00012450).

"22 and 30"
should be "2
September
2010 and 30"

675.3 An email, dated 30 November 2010, in which Nick Smith (CEC Solicitor) expressed his personal view on the performance of TIE and DLA (CEC00013550).

675.4 An email (CEC00013441), dated 24 November 2010, to Alastair Maclean from Richard Jeffrey which addressed a number of issues in the legal background and stated: *"if the [C]ouncil have lost confidence in [TIE], then exercise your prerogative to remove [TIE] from the equation."*

676. I had not seen these emails prior to them being disclosed as a part of the inquiry. I was aware, in general terms, that independent legal advice had been sought. I knew that there was some concern about TIE's capacity to sort the disputes out, but I certainly was not aware of the detailed issues

that are raised in these emails – particularly the one from Nick Smith (at para 675.3 above).

677. To begin with, there was the 'one family' message but, as the relationship between TIE and the Consortium deteriorated, I think it became very apparent to Alistair Maclean that it was not acceptable for the Council to continue using the same legal advisors as TIE.
678. By this point there had also been some talk that TIE were perhaps not the best means of getting the ETP delivered. There was a feeling that TIE might be at the core of some of the problems. In that case, it would certainly be wise for the Council to get their own legal advisors. My understanding was that it was because there was potentially an issue about TIE and the Council standing directly together.
679. When DRP decisions showed that TIE were not winning where they thought they would, then there was clearly a problem with DLA's advice. Even more so if they were advising the Council as well. It all fed into a general sense of dissatisfaction and queries about the legal advice. The Council did call in specialists in construction law to assist.
680. From what I can recall, getting a QC's opinion was very seldom done. I can recall one child social work matter in which the Council sought external advice, and this was noted in reports to councillors. It may be that it happened more frequently but was not reported to councillors. In terms of whether seeking this opinion constituted some kind of 'red flag' to councillors, by this point we were all aware of the issues involved and it seemed like a wise step.
681. There were rumblings of discontent on the Council side about the 'one family' approach at about this time. Having seen some of the internal emails, it is quite clear that some Council Officers felt that the 'one family'

approach was very one sided and advantaged TIE. By this time, we were being made aware that there was a loss of trust.

682. I think different Council Officers would have expressed different views to me at different times. There were a group of Senior Officers (Dave Anderson, Donald McGougan and Tom Aitchison) who were most involved with the ETP, and I would have had a number of meetings each week with them. They were, for most of the project, keen to say that the Council had to stick with TIE and that there were certain things councillors should not say publicly to damage that. By this time, however, I had the sense that attitudes were shifting.
683. By November 2010, Tom Aitchison was coming close to the end of his term as the Chief Executive of CEC. He was eventually to leave the Council in December 2010, and had already announced he would be retiring. Sue Bruce was his replacement. I was heavily involved in Sue Bruce's selection, as the Council Leader is always the chair of the interview panel for Senior Officers. While she was not formally to start until 1 January 2011, she spent a lot of time within the CEC in December 2010 getting to know what the issues were and speaking to people. I had quite a few meetings with her prior to her formal start date, but most of her briefings would have come from Tom Aitchison and the other members of senior management.
684. By the last quarter of 2010, I was beginning to lose confidence in TIE and felt that TIE were a large part of the problem in the standoff with the Consortium. Some of this would have come from what the Consortium had been telling us, some from being informed that the DRPs were not going TIE's way and some from being informed that there were very different readings of the Infraco. That was a more general understanding of the situation as I did not have the benefit of the information contained

in these emails (at para 675 above) and the much larger range of issues they outline.

685. Most of our councillors were not heavily involved in the ETP with the exception of myself as Council Leader, our Transport and Finance Conveners (Gordon Mackenzie and Phil Wheeler respectively by this point) and those councillors that served as board members. I think most councillors got their information on the issue from that group of 'leading councillors'. Their views that TIE appeared to be part of the problem would be shaped by what was being conveyed to the group. I had the sense that Councillor Mackenzie, who served on the board of TIE, had lost confidence in it by the last quarter of 2010.
686. There was a great deal of activity occurring around the ETP in the second half of November 2010, both internally (within the CEC) and externally (in its relationships with the Scottish Government and the Consortium). There was some overlap between these. I deal first with those external aspects before turning to what was occurring within the Council in this second half of November 2010 (at para 708 onwards below).
687. A number of documents relate to the Council's dealings with other interested parties in November 2010:
- 687.1 David Mackay (TIE Chair) resigned at around this time and, on 5 November 2010, Richard Walker wrote to councillors on behalf of the Consortium (**CEC00013012**). He stated that the resignation was not conducive to progressing the project or to resolving the dispute between TIE and the Consortium and urged CEC to distance itself from comments made by David Mackay.
- 687.2 A letter from the CEC Chief Executive to Richard Walker, dated 15 November 2010, reiterated that the Infraco was between TIE

and the Consortium but suggested that Senior Officers would be available to meet with the Consortium on a 'without prejudice' basis (CEC00054284).

- 687.3 An emergency motion, tabled by me, which was passed at the meeting of the Full Council on 18 November (the minutes of that meeting are CEC02083139). The motion recorded (item 23, at pgs 21-22) that the Chief Executive and I had met with John Swinney MSP, the Scottish Government Cabinet Secretary for Finance on 16 November 2010. It was also believed that John Swinney had met with the Consortium about this time.
688. David Mackay resigned sometime at the beginning of November 2010. I think that his resignation was a surprise, and we were all taken completely unawares. I do not have any recollection of David Mackay telling me about it before the event. I believe he may have spoken to Councillor Mackenzie about why he was resigning, but I do not know if Councillor Mackenzie had more advance notice than the rest of us. We had a good relationship, at times, with the Editor of the Evening News, and he would often forewarn the Corporate Communications team within the Council of the paper's headlines. I suspect that my knowledge of it came not long before the headline came out.
689. David Mackay, at the time he resigned, made some rather unfortunate comments about his views on BB (about them being a "*delinquent*" contractor) which obviously led to Richard Walker's response (at para 687.1 above). The whole thing played out in the papers because BB brought a Court action against David Mackay (and possibly also TIE), there was a lot of to-ing and fro-ing around that resignation and who said what, when and why.

690. Regarding the meeting that Tom Aitchison (CEC Chief Executive) and I had with John Swinney on 16 November 2010, it is difficult to remember precisely what we discussed. I had quite a lot of meetings with John Swinney over the course of the project, and also some informal discussions after quarterly COSLA Leadership Board meetings with ministers (at para 55 above). From the timing of this meeting, I have no doubt that we discussed the ETP situation and mediation was one of the main items for discussion.
691. John Swinney, when I met him, was always very keen that we should reach an end to the disputes. He was keen to see resolution by whatever means possible. I think he did offer the services of someone from TS – I believe it was Ainsley McLaughlin. He suggested that Transport Scotland might come in to help, and they did become involved not long after that.
692. The idea of mediation had been in my mind for quite a time. I had been receiving a surprising number of emails from various interested parties in the city who offered their services as mediators. For instance, the German Consul General said that BB and Siemens were very eager to talk to me. I suppose he had an interest in that these firms, both German, were being painted in such a poor light by everything that TIE said in the press. The idea of mediation had been in the background until November when, after several days of discussion, I decided that it was the only way to break the impasse and so had to be done then.
693. I had discussed with John Swinney that I thought mediation was the only way forward. Every other option seemed to have been exhausted, and there was an obviously deteriorating relationship between TIE and the Consortium. In the crudest terms it needed 'heads knocked together'. I recall that John Swinney was very keen on the idea that formal mediation with an appointed mediator might be the best way forward. He did not suggest that the Council should step in directly to TIE's place.

694. I do not remember the ETP cost overruns being discussed with John Swinney at that stage. I think the main thing that was in everybody's mind at that time was to get the project moving and to clear the city's streets of all of the works, fencing and so on. Based on my other meetings with him, if any of the financial matters were discussed, John Swinney would have been absolutely clear that no more than £500m was ever going to be provided by the Scottish Government.
695. I do not remember John Swinney mentioning anything about his meeting with the Consortium. I understood that the Consortium were also keen on mediation, while TIE was not at this point.
696. By mid-November 2010, everybody was getting increasingly worried about the lack of progress. Up until that point, I had taken the advice of TIE that I should not meet with the Consortium (with the exception of the early 2009 meeting with Richard Walker)(at paras 432 - 435 above).
697. Both myself and the Council Officers came to the view that things should change at the same time. This can be seen from Tom Aitchison's letter (at paras 687.2 above). Tom Aitchison and I had several discussions about whether it was a good idea for Council Officers or councillors to meet with the Consortium's representatives, and whether that should be done separately or together. This seemed the appropriate time to meet them, whereas earlier it was felt that it might have compromised the relationship between TIE and the Consortium and hampered the way in which the dispute was being run.
698. I do not think TIE's response was ever formally recorded, but I know that Richard Jeffrey's response was not favourable. I cannot remember whether he came to see me or whether I had a phone call from him, but his initial reaction when he heard about the emergency motion that I was tabling was that he did not think that it was a good idea.

699. I do not know whether the Chief Executive of the Council spoke to him, but for some reason he did quite quickly come to the view that some intervention was necessary. I think he found it difficult, as many people do, to understand how the Council worked. People do not understand how to deal with councillors and Council Officers. Perhaps the Chief Executive told him that he had no real ability to ask me to have the motion withdrawn.
700. I made it clear right from the beginning that any meeting I had with the Consortium was to listen to them. I did not have any information that I could have given away to the Consortium.
701. I do not know what TIE's preferred strategy was prior to the Council making these decisions to engage with the Consortium and support mediation. They might have continued as they were. The ETP was at a standstill, so maybe a bit of realism set in and they understood that things had to change and that this was at least worth trying as a last ditch effort. I presume their view was that they would continue enforcing what they saw as their correct interpretation of the Infraco.
702. The idea of the emergency motion had been in our minds for some time before the Full Council meeting on 18 November 2010 (at para 687.3 above). The reason it was an emergency motion was because it was formulated after the agenda for the Full Council meeting had been produced. In those circumstances it is labelled an emergency motion.
703. The emergency motion was discussed with the SLD Group before it was submitted, and was raised with the other political groups. The usual practice was to send a copy of the emergency motion so they did not see it for the first time at the Full Council meeting. I do not remember whether I had discussions with any other Group Leader about the merits of the

motion, but they certainly had sight of it beforehand. In the event, it was accepted by them all.

704. Regarding whether any of the other political groups had been intending to submit motions on the ETP (including seeking more information or mediation) at this meeting, there were none that I knew of and there was no counter-motion tabled. I think they must have felt, as those in my group did, that it was time for something more radical than had been happening up until then. Mediation does not sound very radical, but it was certainly a move away from what had been happening in the preceding months. I do not think that there was any dissent on the motion, even from the SNP (who had been opposed to the ETP).
705. Mediation was not an area that I knew a great deal about – though in a few weeks I learned a great deal about professional mediation – so there was no strategy worked out in detail. The first thing we had to be sure of was that the Consortium would agree to it, as there is no point going into mediation with unwilling parties. We knew from informal discussions that they were keen to do anything to try to move forward. That was evident, for instance, in the final paragraph of Richard Walker's 5 November 2010 letter (**CEC00013012**, at para 687.1 above).
706. The mediation strategy was certainly not TIE willingly suggesting mediation. To a large extent the support for the idea came from the Senior Officers, mainly from my discussions with the Chief Executive. The feeling was that we needed to do this, and that it was the Council that now needed to be taking the lead in this. From this time onwards, the Council started taking over the contract (through novation). TIE played a backseat after mediation. I think this was a final expression of exasperation that TIE had shown itself unable to resolve the difficulties itself.

707. It is very difficult to say whether the Council should have met with the Consortium earlier on to either better understand or resolve the dispute. Until all the options to resolve the dispute had been investigated, it was probably not the right time. Up until that last quarter of 2010, I think the view was that it would all somehow be resolved between TIE and the Consortium. The offer to meet or discuss matters more directly with the Council had been raised by the Consortium and others from time to time. We had given TIE every opportunity to try and resolve their differences and it was not working. It seemed the appropriate moment to go down this other route.

708. Regarding how matters in November 2010 were being dealt with internally within the Council, there are several relevant documents:

708.1 An email, dated 13 November 2010, sent by Alastair Maclean (CEC Head of Legal) to Tom Aitchison (CEC Chief Executive) and Jim Inch (CEC Director to Corporate Services)(CEC00013289). This email mentioned a meeting with me and Councillor Mackenzie to take place on (Monday) 15 November 2010 and provided a paper updating the legal issues around the ETP as an attachment.

708.2 The accompanying paper (CEC00013290) noted that Alastair Maclean had *"real concerns as to the quality of the factual information coming from [TIE]"*, that *"CEC has limited factual information"* and was *"solely relying on [TIE] and TEL for the provision and accuracy of that information"* (at para 7.3, pg 3).

pg 3 should
be pg 3/4

709. I cannot remember that meeting. It occurred in the lead up to the Full Council meeting on 18 November 2010, (at para 687.3 above) and I would often have meetings and briefings before it. It was not necessarily because something was on the agenda, but because I would potentially

be asked questions on the ETP at the Council Leader's question time section. I do not know what was discussed but, given the timing, it would almost certainly have been an update related to the Full Council meeting that week.

710. In terms of Alastair Maclean's paper, I do not recall having seen this at the time but I did know of some of these concerns – probably from Alistair Maclean. I knew that there were concerns about the information that we were being given in terms of the quantity, quality and accuracy of the information. Obviously that was very worrying and put into question all that TIE had told us and whether information had been given to us in a timely manner. I do not recall directly questioning TIE about this at the time though.
711. I think I must have known of the options open to the council, including terminating the Infraco. My view would have been that terminating would be a very unwelcome last resort. I was keen to keep the Consortium on board as far as possible to either start the process anew or work within it in some other way. Hence the emergency motion at the Full Council meeting (at para 687.3 above).
712. I knew there was legal advice that, although TIE seemed very keen on termination, it did not seem to be a viable option on grounds of both costs and legality.
713. Regarding whether I was told what the Council's QC's opinion (at para 675.1 above) had said, I do not remember. It may have been that the advice that it was legally questionable to terminate the contract actually came from TIE itself. I think they were very keen on the idea but that their external legal advice had told them it was going to be a lot harder than simply 'fobbing off' the Infraco. However, that could equally have been

the Council's legal advice that had been imparted to TIE and then relayed back to me.

714. I think the legal advice that was given made everybody realise that termination was not the way forward. The actual decision would have been TIE's decision. It is a difficult relationship between the Council and an arm's length company but at the end of the day, as one of the two parties that signed the contract it must have been TIE that took that final decision that it should not be terminated.
715. Regarding where the centre of decision-making was in terms of the ETP at this time, officially it was still with TIE but the Council was taking more of a role. This is evidenced by my motion asking for the mediation, by Council Officers meeting with the Consortium and by my meeting with the Consortium.
716. It was only after the mediation that the decision about what to do about the ETP and about TIE was taken. I note that Richard Jeffrey, in one of the emails referred to earlier in this statement (at para 675.4 above) did suggest that the Council knew what it could do to TIE. I do not know how seriously that was ever discussed at that time and I felt that was just him being a little bit on the defensive about his position. I do not remember the Council's formal powers over TIE being spelt out. A note was produced for the Council Monitoring Officer (Jim Inch, Director of Corporate Services) by Alistair Maclean on 7 November 2010 (CEC00013342). It records that, on 16 November 2010, Richard Jeffrey advised Alastair Maclean of certain serious concerns he had in relation to events at the time the Infraco contract was agreed.
717. I am not sure whether this letter refers to one of two Monitoring Officers involved in the ETP. There was the Council's TMO, who was Marshall Poulton. I do not know whether his remit extended to this.

718. There is also a Council Monitoring Officer (“CMO”). The CMO was generally responsible for ensuring that the Council adhered to proper standards. It would be part of their job to ensure that all councillors adhere to the published “*Standards in Public Life*”, and if cases were taken up by the Standards Commission then the CMO would have some input at that time. Most councillors probably did not have much cause to deal with the CMO. But, for example, a councillor who was considering whether they had to declare an interest in an item coming up at Council, might asked for input from the CMO.
719. I do not think that the CMO is being referred to here. It would not be the CMO’s role to get involved in looking at what appears to be very much an internal matter for TIE or with DLA as TIE’s advisors for the infrastructure contract. I assume it means the Tram Monitoring Officer rather than the CMO, and I am not sure exactly what processes and remedies were open to him. It seems to me that, having been made, these allegations should have been investigated.
720. I was not aware of these concerns. I was quite horrified by the allegations when I read them. While these were just allegations, I have always had a question at the back of my mind about whether it was lack of capacity that led to the contract being drawn up so poorly or whether there were other problems. The implication in this note was, if these allegations were proven to be true, that something rather more sinister than just incompetence was at work.
721. There was a report to the meeting of the Council IPG on 17 November 2010 (CEC00010632). It noted that a range of cost estimates for the different scenarios was being produced (item 5, at pg 4). The draft estimate for completing the whole of Line 1a (Airport to Newhaven) varied between TIE’s estimate of £662.6m and the Consortium’s estimate

of £821.1m. Cost estimates, as they stood, indicated that the project to St Andrew Square could be delivered for between £545m and £600m.

722. I had not previously seen this report as it was for the Council Officers' internal meeting. There was never any suggestion of councillors or the Council Leader joining this group as it was an internal operational group and operational matters were not something councillors became involved in.

723. Regarding the extent to which councillors were aware of the figures mentioned in that report, I cannot remember if these precise figures were shared with us in November 2010. The figures for the St Andrew Square option were made available to us though I do not think it was at this time.

724. I do not think there were discussions, in the period November to December 2010, about how councillors and the Council Leader could be brought closer to the ETP and kept better informed. It was only about this time (from the emails above) that Council Officers were actually becoming aware of the fact that they were not as well informed as they should have been. I do not recall there being ever any discussion about giving more information to councillors, other than perhaps the councillors who sat on the boards related to the ETP. There was no question of councillors being given as much detail as is in this sort of report or planning group, though when we asked for more information we got it.

December 2010

725. There was an exploratory meeting between Council Officers and Consortium representatives on 3 December 2010 (CEC02084346). Present at the meeting were Alastair Maclean (Head of Legal) and Donald McGougan (Finance Director) on behalf of CEC, with the Consortium represented by Richard Walker of BB and Antonio Campos of CAF.

726. I was aware of this meeting and was given the transcript of it ahead of a meeting that I had with the Consortium on 13 December 2010. I do not remember being given much feedback on the meeting by Alastair Maclean or Donald McGougan. The transcript was essentially verbatim and they were there largely to listen.
727. Because I had a meeting coming up with the Consortium, it was helpful for me to know the Consortium's position. My intention in going into that meeting was that I would listen, and so I noted what had been said but drew no conclusions.
728. Much of what Richard Walker said in the 3 December 2010 meeting was pretty much identical to the meeting that I had in February 2009 with him (at paras 432 - 435 above). Much of his commentary was actually identical to what he had been saying nearly two years earlier.
729. On 13 December 2010, I attended a meeting with the representatives of the Consortium. I was accompanied by Donald McGougan (CEC Finance Director) and Tom Aitchison (Chief Executive). A minute of that meeting was taken (**CEC02084349**). TIE representatives did not attend.
730. The discussions that took place at the meeting are recorded in the minute which, while not a verbatim transcript, covers the meeting accurately. The core reason for the meeting was to get a view of the likelihood of the Consortium cooperating in mediation, and the extent to which they really want to deliver the project. It also served to get their view of the dispute, of the issues and of TIE. It was a general meeting to assess the Consortium's side of things. It was mainly around mediation and getting assurances that the Consortium really wanted to continue with the contract and were serious about delivering the ETP.
731. Since TIE representatives were not in attendance, the meeting also served as a way to judge how their relationship with TIE was. It was

important that this was a meeting without TIE present because I do not think either side would have given a very full answer if they had been asked what the relationship was like in front of the other one. As can be seen from the minute (at pg 2), I asked them to elaborate on that. They were clearly finding it very difficult to work together, there was an underlying mistrust between the two and TIE's interpretation of the contract differed a great deal from that of the Consortium.

732. The meeting was reassuring and led me to believe that the Consortium seriously wanted to continue working on the project and would go into mediation with a view to making it work. I got the impression Jörg Schneppendahl (Siemens) and David Darcy (BB) were both fairly high up in their organisations, and they certainly said they spoke for their companies. It also reinforced the view that the relationship between TIE and the Consortium was by now completely untenable. They just could not work together and it would have to change. I had the impression that the two sides were barely talking to each other. I thought it was very useful to get that understanding because, following the emergency motion, it gave a reassurance that the mediation would be entered into by the Consortium with a fairly open mind.
733. I cannot remember any response from TIE to this meeting, though I would imagine that they were sent the minute of the meeting or some update about it.
734. It was also quite important to have that meeting to let the Consortium know that the Council, the councillors as well as Council Officers, were desperate to get the ETP moving along. Mediation was going to be the only answer to the standstill that had been reached. There was no work being done. From comments that I received after the meeting, from the German Consul General, for example, the Consortium welcomed the opportunity to speak directly with us because they felt that they had been

kept at a distance. That was true, in that they had been told to take matters up with TIE. The Consortium seemed very appreciative that the meeting had gone ahead and I certainly found it very useful to actually get their view of the situation.

735. There was a report prepared by the Chief Executive for the meeting of the Full Council on 16 December 2010 (CEC01891570). This report provided an update on the refreshed Business Case and appended a (redacted) copy of that document (at pg 7 onwards). The report and Business Case noted that

735.1 Mediation discussions involving the Council and the Consortium would commence early in the New Year. By their nature, these discussions had to be conducted on a confidential basis and that it would not be possible to report in detail on the mediation process until it was completed or decisions emerged which required Council consideration (at para 3.4 – 3.5, pg 3).

735.2 A line from the Airport to St Andrew Square was capable of being delivered within the current funding commitment of £545m (at pg 10).

736. The report was prepared in the aftermath of an IPG meeting on 1 December 2010. The 'action note' for that meeting (TIE00896611), which I have been referred to as part of this Inquiry, noted that the Chief Executive wished the report to be "*high level*" and "*focussing on strategy rather than detail*".

737. This report was presented at the Full Council meeting on 16 December 2010. The minutes of that meeting (CEC02083128), record that an amendment (proposed by the Labour Group) was passed which included a requirement that the refreshed Business Case be reviewed by a public

transport consultancy with no previous involvement in the project (item 13, at pgs 20 – 23).

738. The refreshed Business Case document appended to the report said that the airport to St Andrew Square could be delivered within the £545m, but it was actually still headed "*August 2010*" so it appears that it was not an 'updated' report. This was December 2010, and we knew that there were still a lot of unknowns regarding the on-going disputes and the mediation. My view was that it was optimistic to think that it would still remain within the £545m from the information that we had, even if we did not know how the disputes and mediation would play out.
739. As our decision, at the Full Council meeting, was to seek more information, councillors knew that we did not have enough information. It is quite clear from the IPG action note (at para 736 above) that it was a deliberate decision to make it as high level as possible. There was certainly enough information to reach the decisions that were taken.
740. The minutes of the Full Council meeting (at para 737 above), show that the SNP Group did not go along with what was proposed. They put forward Amendment 2, reiterating their opposition to the ETP and stating that they had no confidence in the information provided. We accepted Amendment 1, proposed by the Labour Group which sought the consultancy report. The SLD, Greens, Conservatives and Labour all voted for Amendment 1 and the SNP voted against that amendment.
741. Councillors were not directly consulted on the approach to mediation. It was made clear from the beginning that mediation was going to be behind closed doors, and that it would be up to the Consortium, TIE and the Council to decide on the precise form that mediation was going to take. December 2010 was Tom Aitchison's last month as Council Chief Executive and Sue Bruce became the new Chief Executive from 1

January 2011. I had several conversations with Sue Bruce about mediation. There was also some discussion about who should participate, and I was involved, at a very low level, in deciding this. We discussed the fact that there would not be councillors involved in the mediation talks. It was left up to Council Officers, the Consortium and TIE to decide who would be an acceptable person to lead the mediation. All the details about where it was held and who was involved were left to Council Officers to deal with.

742. The emergency motion of November 2010 (at para 687.3 above) which accepted the principle of going to mediation, was the only Council decision on it. The next time the ETP really arose was once the Settlement Agreement had been reached and we were updated on what had happened. During the period when mediation was taking place, March 2011, it was kept behind closed doors and we did not get any formal feedback about what was happening. Having taken the decision to go to mediation it was left to go through that process.
743. Regarding discussion as to the financial limits that would be placed upon what came out of the mediation, I do not remember there being discussion at Full Council. In any event, we could not place limits around the mediation as that was entirely up to those who were involved in it. These attempts at dispute resolution did not have a 'desired result' and so we, as councillors, had no idea what was going to come out of mediation. Of course, what emerged was a considerably greater cost than had been spoken about up until then, but we always knew that there were going to be more costs because of the disputes. If the Infraco's reading of the contract was correct then they were going to be due a lot more money. All along the hope had been that it was going to be delivered within the £545m funding envelope, but it was clear by now that

was not going to be possible. The figure that we had in mind, at this point in late 2010, was the £600m that was mentioned in a previous report.

744. At this point there was no decision taken or discussion as far as I can recall about a settlement not exceeding a certain sum. That would have been pre-empting the result of mediation. The mediation was going to address how to deliver the ETP, better working relationships and what was going to be delivered for how much money. That was all left to the mediation process to deal with.
745. As Council Leader, I had some discussions with Sue Bruce (CEC Chief Executive) about the generalities of the mediation and, of course, there was no need for me to tell her that she should be trying to get the best deal possible.
746. I have been asked why the Council requested a review of the revised business case by a specialist public transport consultancy with no previous involvement with the ETP.
747. By this time, there were obvious concerns about the quality of information from TIE. As such, it seemed an appropriate time to bring in a specialist public transport consultancy with no previous involvement in the ETP. They would be going in with an open mind.
748. I believe this review was ultimately carried out by a consultancy called Atkins, who were leaders in the field. There was a report which I believe would have been brought back to Council. I think it took some time to do, even if it was just a 'desktop exercise'. By this I mean that the report was based on a review of such matters as modelling tools and appraisal methodology that had been used in preparing the business case – it was not a full-scale review that might have involved interviews with key figures and sampling ground conditions etc.

749. By the time of the February 2011 budget, the mediation had not taken place and there were still a lot of question marks over how the disputes were going to be resolved. I am sure that, all along, the Council Officers in the Finance Department would have been monitoring the figures as they do for all Council spending.
750. The decision about what would be done with TIE did not occur at this point, and only really came out in the aftermath of the mediation. At this point, there was no discussion as it might have been pre-empting what might or might not happen at mediation. One of the results of the mediation was that it was clear that progress was not going to be made under the previous contractual relationship between TIE and the Consortium. The decision was taken that the Council would take direct control of the contract, and the work that had previously been done by TIE would be put out to a consultancy, Turner & Townsend ("T&T"). T&T would do the project management.
751. In terms of scope, it was not clear at the end of 2010 where the tramline would go to in the city. There was a very hectic time period including a special meeting of the Council in June to September of 2011. It was not until then that it became absolutely clear as to what was happening with the project following the mediation. We still had the Council reports telling us that it was being referred to as the "Airport to Newhaven" line although the issue had been raised if it could be done in a staggered fashion.

Change in Council Chief Executive

752. I do not know what took place between the outgoing Chief Executive and the new Chief Executive, or to what extent there were handover notes or discussions. I know that Sue Bruce did spend a lot of time finding out about the issues regarding the ETP. There were obviously Senior Officers involved that knew a great deal about the project, but I am not

sure to what extent they were involved with her in that handover. Sue Bruce struck me as someone who comes into a job and is absolutely committed to finding out as much as she could about everything so as to start with a good bank of knowledge.

753. A new Chief Executive coming in was an ideal moment to have the mediation and get things going in a different way.

754. For councillors, once a Chief Executive leaves the Council then our focus would be on dealing with the new Chief Executive. As far as Council Officers were concerned, I do not know if Tom Aitchison made himself available to speak to them after he left.

2011 to completion of the ETP

Early 2011

755. There was a 'Highlight Report' prepared for a meeting of the CEC Chief Executive's IPG on 21 January 2011 (CEC01715625). The report noted (at pg 8):

755.1 Both Nicholas Dennys QC (instructed by CEC) and Richard Keen QC (instructed by TIE) had advised that the best option was "to seek to enforce the contract until grounds of termination could be established as a result of a failure to perform the works", which option *"would also place [TIE] in the strongest position with regard to any mediation/negotiated settlement"*.

755.2 It was *"unclear to what extent there [had] been a rigorous approach by [TIE] to enforcement of the contract pending the outcome of [the Project] Carlisle negotiations and the focus on the termination option"*.

755.3 As at January 2011, TIE *“appear to be in a weak position legally and tactically, as a result of the successive losses in adjudications and service of remediable termination notices which do not set out valid and specific grounds for termination”*.

755.4 The Consortium was thought to be extremely well prepared.

755.5 In terms of a negotiated resolution: *“there was a desire commercially and politically to move towards mediation notwithstanding [TIE’s] (apparently) relatively weak tactical and legal position. That is likely to have a financial implication with the Infraco as the party in the stronger position faring rather better out of it than might otherwise have been the case. Against that there are financial and other costs involved in allowing matters to continue.”*

756. I had not seen this document prior to the Inquiry but some of the comments appear familiar to me. I think they must have been conveyed in the information on legal advice that we were being given at about this time.

757. At some point TIE’s legal position was discussed with councillors, but it is difficult to recall whether it was in January 2011 or later. There were briefings for councillors on the various options and the views on those options. Usually those briefings were related to a forthcoming Council paper. The passages in the report (at para 755 above) about mediation and TIE’s relatively weak position were not spelt out at this stage, but we did learn that TIE was in a much weaker position than they had led us to believe. The decision had already been taken to go to mediation. The idea of mediation was to listen to both sides and work it out, not to give one side or the other the upper hand. Hence, even if we had had this information I do not think it would have changed the situation.

758. Occasionally, Alistair Maclean would give me, or a small group of others, a briefing and sometimes he would be part of a group of people giving us a briefing. That information would be given at around the same time to the other groups.

Mar Hall Mediation – March 2011

759. Mediation talks took place at Mar Hall in Glasgow in March 2011.
760. I did not have any direct involvement in either the preparation or the talks themselves. Sue Bruce kept me in the loop about what was happening, but it was always made very clear that the mediation was strictly behind closed doors.
761. Prior to the mediation, there was a meeting with the German Consul and Dr Keysberg (of BB) who, because of weather had not been able to make it to the previous meeting (at paras 729 - 732 above). I think Dr Keysberg just wanted to give reassurances about the willingness of the Consortium.
762. All the decisions about who was an acceptable mediator, who would participate in the discussion, and ultimately the talks themselves were behind closed doors. Until I saw the Settlement Agreement a considerable time later, I did not get the details of what had resulted. I did not ask for it, even though I would have liked it. I respected the fact that I was told that they were highly confidential talks and that nobody would be given information about them.
763. There were no boundaries set by the council. It was left entirely up to the mediation process and the hope was that people would talk and that something would come out of it, which indeed it did. I am sure that Council Officers, TIE and the Consortium, all went in with their own ideal solution at the back of their minds. From the Council's point of view, the

ideal solution would have been to deliver the tram right down to Newhaven within the £600m. We knew that was unlikely to happen but there were no restrictions put on what the outcome might be.

764. It was assumed that the mediation would be at the highest level. In the Council's case, it was the Chief Executive and Senior Officers who attended and the companies had their top people there. It was supposed to be a very high level mediation. People were there with the power to take decisions.
765. Right at the beginning of the mediation process, I thought that as Council Leader I could maybe have a role to play. I soon disabused myself of that idea. The idea was certainly looked at before the mediation, but we decided that it was not right to involve a political element. That would have been unnecessary at that point. I felt comfortable that the appropriate people were there and that they were in the right position to basically give up a week of their time to deal with this.
766. I do not think that any of the other councillors thought it was appropriate to be involved directly in the mediation.
767. In the Council's case, any resolution had to eventually be ratified by Full Council. However, given that we rely on the professional expertise of the Council Officers, they would put the case to us at the end of the process and so it was left entirely up to them. The Consortium had top representatives in their companies attending – people who were in a position to take decisions without having to wait for a board meeting to ratify what they were doing.
768. I did know that the Chief Executive had previously worked with an engineering specialist, Colin Smith (of HG Consulting), and she felt that he would be ideal to assist. He had dealt with this sort of situation before and she would find it helpful to have him involved. I left it up to the Chief

Executive to decide how many and who she would have in her team for the mediation. She had already made her mind up that this was what she wanted to do, but she made the case to me as to why this person's experience would be ideal. Having an engineering specialist was important, because the Council itself did not have that expertise.

769. John Swinney had offered help from TS. The main name I remember is that of Ainslie McLaughlin, who was experienced in big construction projects. It was felt that he would have useful input and I am pretty sure he was involved in the mediation.
770. I believe I did get the appropriate level of information about the mediation. It was important that the mediation should be 'unsullied' by political mischief making, which it would have been if there had there been political input into it. This was early 2011, and the local elections were coming up about a year later. At this point, the atmosphere in the Council changes a bit and there tends to be a bit more antagonism regarding anything that can be used as a political football.
771. I do not think there was any obvious means to express views regarding the mediation. Any group could always ask, usually through the Group Leader, to discuss a matter and there was no restriction on a councillor raising a matter with the Chief Executive or anybody else. If they felt that there was something they wanted mediation to deal with, they would have had that opportunity to express it, but I think most people would probably have respected that we had to trust our Council Officers to deal with that.
772. We expected an option on the way forward to come out of the mediation. The main thing, from the councillors' point of view, was wanting to see something actually happening on the streets rather than impasse. The actual detail of the outcome would come back to Full Council. Once it

came back to us, it would have been up to the Council to decide whether to accept that the outcome was the right way forward or not.

773. It took some time between the actual mediation and the approval of the outcome by the Council. It was quite a few months before the actual Settlement Agreement was completed. It was maybe late June or even later. This was not exactly a rewrite of the contract, but it set out the guidelines for the way forward. There was that early feedback but it was some time before the detail of the agreement was laid out. Given that the original Infraco had so many interpretations, it was important that the Settlement Agreement was something that everybody involved agreed with unambiguously and which was loophole free.

Post Mediation – March to July 2011

774. Between the end of the mediation session (in March 2011) and the 16 May 2011 meeting of the Council which I discuss (at para 775 below), there was some limited information available about the situation. In my regular meetings with the Chief Executive, I asked her or she volunteered what had happened at the Mar Hall mediation. I remember Colin Smith coming along to some meetings with her and giving information from his point of view. There was some information available, but it was not put into the public domain.

775. There was a report prepared for the Full Council, dated 16 May 2011, prepared by Dave Anderson (Director of City Development) (**CEC01891505**). This updated councillors on the outcome of mediation and progress with the ETP. It noted:

- 775.1 Priority works would be done under a Minute of Variation (MoV4) pending a final agreement reflecting the full terms of settlement (at para 3.6, pg 2).

- 775.2 Detailed design and costing work was on-going to produce a budget for the line from the Airport to St Andrew Square (at para 4.1, pg 5).
776. I do not think we were given any figures about the particular sums agreed upon at Mar Hall or that level of detail. Those details are not in this report. It was really just giving the headline outcomes and the fact that work had actually started. There was also an important aspect, which had not really been discussed in Council previously, that there was remedial work needed on Princes Street. It was obvious to everybody that there was an issue with the way that the tracks bound into the road. BB agreed to remedy that at their own expense. This report mentions that and the fact that work had started on some of the key priority areas, but there were no actual figures mentioned regarding this. The figures became part of the Settlement Agreement itself.
777. I do not think councillors were given an impression or idea as to how much the ETP was likely to cost. We may have been given rough figures in briefings beforehand, and I would be surprised if I had not been given some kind of indication. I would certainly have known that there was more money involved. In part this was due to the confidential nature of the discussions that had taken place. Later, at the end of May 2011, we were given access to information about the figures. To get that information, we had to sign a confidentiality agreement lasting five years. The information was not made public. This report (to Council on 16 May 2011) would have been a publicly available paper as it was prepared for the Full Council meeting.
778. There was a report prepared by Dave Anderson (Director of City Development) for the Full Council meeting on 30 June 2011 (CEC02044271). That report:

- 778.1 Noted that, in the initial procurement of the Infraco, there had been a period of almost 12 months between the preferred bidder stage and the award of the contract and that they led to significant negotiations including about the risks arising from incomplete design work (at para 3.22, pg 5).
- 778.2 Noted the fact that disputes were evident from an early stage and had involved testing the two parties' interpretations of the contract. These contractual difficulties were exacerbated by utility diversion delays, slow completion of design work and difficult ground conditions (at para 3.25, pg 5).
- 778.3 Set out the options for resolving the difficulties faced by the ETP (at para 3.31 – 3.47, pgs 7 - 10).
- 778.4 Ultimately recommended that the Council complete the line from the Airport to St Andrew Square/York Place (at para 8.1, pg 20).
- 778.5 Estimated that option would cost between £725m and £773m depending on the amount of risk allowance (at para 3.42, pg 8).
779. My view at that time and for the ensuing period was that the best and only option was to go to St Andrew Square/York Place. These were effectively treated as one option, with the tram ultimately going to York Place. The figures indicated that this was the only logical option and the only way to give any certainty as to the future of the ETP. It would minimise the reputational damage to the Council and it created the interchange between buses and heavy rail, although the tram stop was not ideally placed for Waverley Station. It also gave quite a good BCR return. There was, of course, disappointment that that was as far as it was going to go at that stage, but it seemed to me that that was the best way forward. I got a lot of emails and correspondence at this time, and this option was the one supported by all sorts of environmental groups,

transport organisations, businesses in the city, and even the Evening News.

780. In terms of the views of the political groupings on the Council on the options, there were several meetings on the best options for the ETP and there were different decisions that came out of each of those. I think that, at this meeting, there was agreement that St Andrew Square/York Place was the best place. I cannot remember what the attitude of the SNP was at this time.
781. In terms of the Director's detailed recommendations (at para 778.4 above), while I agreed that proceeding to St Andrew Square/York Place was the best option, we did not agree to all of his recommendations. I have reviewed the minutes of that meeting of the Full Council (**CEC02083232**). We asked for a further report on as to how the funding would be provided, for more detail on the risks regarding utilities in the Haymarket to St Andrew Square section, and for the open for business programme (supporting businesses through the disruptions) to be refreshed (at item 22, pgs 22 - 30). We did not just accept the recommendations as stated, asking for quite a bit of further work to be done about risk, funding, and business support.
782. The initial view was that it was very disappointing that a truncated line at a higher cost was what was on offer. During the week preceding this meeting, there would have been various presentations to the political groups about how the report had been arrived at. There had been plenty of opportunity to ask questions beforehand as to how it had reached this point. There had been quite a lot of external diligence on the estimates. The report (at para 778 above) mentions an audit by Atkins (at para 3.59, pg 12 of **CEC02044271**), there had been external diligence by McGrigors, and a company called Faithful & Gould had looked at it.

These produced reports looking at the Business Case, the engineering side and the legal side of the ETP.

783. I think the fact that there had been all this external work commissioned on the way forward gave us a greater feeling of confidence in the figures. As a result of mediation, the whole atmosphere around the project changed for the better.
784. I think that I saw presentations on the information and I do not think this would have been the case had the work been commissioned by TIE internally. This process was more open than we had seen prior to the mediation in March 2011.
785. Regarding the confidential appendices to the report (at para 778 above) that may have been provided to councillors to assist them with the contents of the report (at para 3.39, pg 8 of **CEC02044271**), I do not recall what exactly was provided nor why it was considered confidential. If they were appended to the report, they would have been put on the B Agenda (at para 370 above). It is not clear whether copies were actually distributed at the Council meeting or whether the appendix was available in a private room at Waverley Court, but the report suggests to me that it was appended to it. They would have been handed in and shredded (or that was the expectation at least) at the end of the meeting.
786. I think everything became more open following mediation. This was particularly so when TIE were removed from the equation and the Council became directly responsible for the contract. It made it much easier to get information. There was definitely a big change after mediation.
787. At this time, we probably felt that we had enough information to come to an informed decision on this report and the options set out in it. The report contains quite a lot of detail even without looking at the additional

appendices. It was enough to reach the decision that we reached, though, in a motion that the SLD proposed, we asked for some further information. Overall we were given enough information to reach the decision that we did. This report laid out very clearly what the options were and what appeared to be the best way forward. Any questions we had on the report would have been asked and answered in the meetings each group had prior to the Council meeting. Certainly I felt that there was quite a sea change in the amount of information and the amount of detail in the reports. I think I had more confidence that what we were getting was not being supplied as previously via TIE. By this time I had come to the conclusion that we were not necessarily getting the full picture from TIE. I think there was a feeling that this was better quality information and more of it.

788. I felt that I was more confident that what we were now being given was a fuller picture than perhaps we had been given before. However, it was only through our experiences over the ensuing years since the financial close (in May 2008) that we realised that we had been painted a rosier picture than perhaps was appropriate to paint.
789. The interest or other costs of borrowing on the large sums that CEC would need to borrow was mentioned in the report. One section gives an indication of the funding and what would be required (at paras 3.48 – 3.56, pgs 10 – 11 of **CEC02044271**). Council Officers were reviewing options for additional funding and looking at potential borrowing. That would mean having to look at the interest on the borrowing, which would come from the Council's revenue account (as opposed to its capital budget). This was addressed in the presentations we had before this meeting. It was obviously something that was of concern.
790. The position of the Scottish Government had not changed – funding was £500m and no more. However, the Scottish Futures Trust (mentioned at

para 3.56, pg 11) had been relatively recently set up by the Scottish Government. This was a different source of money to the initial transport funding grant source that CEC had bid for. It was suggested as a way that local councils could get funding for big projects and was talked about in relation to schools and libraries (and was used by CEC for community libraries in Drumbrae and Craigmillar). The Scottish Futures Trust, as a funding avenue, might have been highlighted by John Swinney at some point. We were aware that it might be a possibility, but in the end, it was not used.

791. There were claims that terminating the ETP outright would be more expensive than building it to St Andrew Square/York Place (as discussed in an email by a member of the public to Dave Anderson of CEC in May 2011 - **TIE00687940**).
792. There were some groups in the Council (and there was later a proposal) taking the view that the whole project should be terminated. That was not just more expensive, but there would be a huge revenue cost to termination. I recall a figure of around £161m as the revenue cost of terminating. The £161m estimate of the costs of termination was largely, I believe, to do with the costs of paying the contractors for the termination. That would have meant there would be nothing to show for the entire project (apart from the MUDFA utilities works that had been done). By this point (June 2011) there had been over £400m spent on the project. All of the reasons for wanting the ETP in the first place, the environmental, social and economic reasons for it would have also been unfulfilled. There would have been huge reputational damage to the Council.
793. There were a whole series of reasons that made termination, in my view, not a viable prospect. The main reason that it was not viable was that the £161m estimated cost in revenue was not money that we could borrow

through the prudential borrowing framework. This was because the prudential borrowing framework was only for infrastructure projects bearing results – it was not possible to borrow against a termination. Hence, the money would have come directly out of the Council budget. We were still within a period of frozen Council Tax. It would probably have been a near 100 percent rise in Council Tax if we had tried to raise those funds through revenue gathering.

794. Alternatively, it would have meant horrendous cuts to Council services. As the SNP and Conservative Groups called for termination at a later point, the SLD Group asked the CEC Director of Finance to detail what cuts of that magnitude would mean in terms of lost services. We received pages and pages of cuts to schools, libraries and other community services. Virtually every area would be cut.
795. To my mind, the financial implications ruled out termination as an option.
796. At the time, I thought that it was going to be more expensive to terminate and I still think it would have been. There was also the fact that you were getting nothing for it. The initial figures councillors were given did not show a huge capital difference between cancellation and the minimum amount required to go into St Andrew Square/York Place. However, the fact that you would get absolutely nothing for it and could not use prudential borrowing for the difference would have made it, at the time and with hindsight, a huge mistake to terminate the contract.
797. I am not sure to what extent developments like those at Edinburgh Park and Gogar depended on the ETP. There was already a lot of development at Edinburgh Park and the Royal Bank of Scotland ("RBS") was already at Gogar, so I am not sure to what extent new development took place there because of the ETP. Had the decision been taken to terminate, I think that the St James Centre project (at para 553 above)

might well have been lost. One of the reasons for the ETP was that the tram was going to encourage development in various areas of the city.

798. The other issue on termination would be in relation to the tram vehicles themselves. CAF, the Spanish company that provided the tram vehicles, were essentially 'innocent bystanders'. They did their job developing and producing the tram vehicles on time and to the quality that was required. We would have been left trying to sell them with the risk that nobody wanted them.

August & September 2011

799. In terms of the final decisions in respect of the scope of the ETP and the settlement, the months of August and September were important. There were two important Full Council meetings which I discuss below:

799.1 A Full Council meeting was held as scheduled on 25 August 2011; and

799.2 A special Full Council meeting was called for 2 September 2011.

800. A report was prepared by the Director of City Development (Dave Anderson) for the 25 August 2011 Full Council meeting (TRS00011725). This report responded to councillors' requests for further information following the previous June 2011 report (at paras 778 and 781 above). It provided a further update on the ETP and noted:

800.1 There was a requirement for funding of up to £776m for a line from St Andrew Square/York Place involving a base budget allowance of £742m plus a provision for risk and contingency of £34m (at para 3.11, pg 3). Faithful and Gould had worked with Council Officers in validating the base budget for the proposed works (at para 3.5, pg 2).

- 800.2 Additional funding of £231m was required. This would need to be provided by prudential borrowing at an estimated annual expense to the Council's revenue of £15.3m over 30 years (at para 4.2, pg 15.). If applying a discount rate, the total value of the additional borrowing would, as of 2011, be £291m (at para 3.30, pg 7).
801. This report was considered at the meeting of the Full Council on 25 August 2011. The minutes of that meeting (CEC02083194) note the report and contain a number of competing motions on the ETP (at item 3, pgs 4-14). The Council decided (by a majority vote) to support a proposal by Labour that the tram run to Haymarket rather than St Andrew Square/York Place.
802. I thought the decision that was taken at the 25 August Full Council meeting to build the line only from the Airport to Haymarket was absolutely disastrous. The SLD's motion was to take the tramline to St Andrew Square/York Place. There were a whole series of amendments, and the Greens supported the Liberal Democrat motion after several votes. However, the SNP abstained and Labour and the Conservatives had the numbers to defeat the motion and support the Labour proposal. It still angers me that the entire project was put in jeopardy because of politics ahead of the local council elections in May 2012. All along, the Labour and Conservative Groups had said they supported the ETP. I heard from councillors from both groups, who thought that they were capturing the mood of the city by saying it would only go to Haymarket. They were very quickly seriously disabused of this idea. There was an outcry at the decision, and they received strong condemnation in the press and in the emails they received, which I saw copies of, from businesses and other stakeholders in the city.

803. Straight after the 25 August 2011 Full Council meeting, I had an emergency meeting with Sue Bruce and various others people as to what we were going to do. Stopping at Haymarket meant a service that would be permanently loss making and would require continued support. In terms of capital costs, going to Haymarket was not going to cost a lot less than going to St Andrew Square/York Place. A service to that point would become profitable, though not immediately. The decision to stop at Haymarket was to my mind a very foolish decision. Very quickly thereafter, a special meeting of the Council was called. This was held on 2 September 2011.
804. I have been referred to the report prepared by Sue Bruce, CEC's Chief Executive, for the 2 September 2011 Full Council meeting (CEC01891495). The report recorded that TS had indicated that it did not believe a line to Haymarket would comply with the terms of the grant, and that TS would withhold the remainder of the grant that had yet to be paid (£72m). This would necessitate further borrowing by the Council and servicing that from revenue (an additional £4.8m per year for 30 years) (at paras 5 - 6, pgs 1 - 2). The report recommended going to St Andrew Square/York Place (at para 14, pg 3).
805. At the special meeting on 2 September, the decision to go only to Haymarket was reversed. The minutes (CEC02083154) of that meeting record the Chief Executive's recommendations and the Council's decision to ultimately continue the line to St Andrew Square/York Place (at item 1, pgs 2 - 12).
806. My feeling was one of great relief that sense had finally prevailed and that the line would now progress to St Andrew Square/York Place. That vote was possible because the SNP group decided not to 'sit on their hands'. When it came to the final vote in a long series they decided to ultimately support us, giving us the numbers to have the 25 August 2011

decision reversed. It is very difficult to have a Council decision reconsidered and then reversed. There had to be material changes in the situation as normally we could not go back to a Council decision within a year of that decision originally being taken.

807. We needed to have something in writing that showed there was a material change. There was a general outcry when the Haymarket decision came out, as I do not think anybody had expected that option to be adopted in the Council meeting.
808. One of the things we had to do was to make sure that the Scottish Government understood, as they did anyway, that it was not a sensible decision and that it really had to be reversed.
809. The TS letter (mentioned in and appended to Sue Bruce's report) was treated as the material change allowing us to reconsider the 25 August 2011 decision. It was extremely useful, in reopening the decision that TS decided to write to the Council. I know there were Ministers behind that decision.
810. TS's objection was that the Haymarket option was not delivering what they thought they were helping to deliver, which was a service that would make a profit after the first years. TS would have been well aware that the Haymarket service would have required an on-going subsidy from CEC of about £4m every year in order to keep the service going. They had not signed up to giving Edinburgh a grant to provide a tram project requiring an on-going public subsidy. In that sense, their decision was correct. It was never anyone's understanding when applying for these big public transport grants that they would provide a subsidised service for a city or an area.
811. Going to St Andrew Square/York Place was going to make it easier to go further in the future. This was because the St Andrew Square/York Place

option was, after the initial period, going to make a profit which could feed into the future development of the tram system. But I think the main consideration was that the Haymarket option was going to be a loss-making service and was not going to cost much less in capital terms than the alternative.

812. A report (**CEC01727000**), dated 19 August 2011, was prepared by Faithful and Gould (consultants), addressing the budget for the ETP post-settlement. A confidential summary of this report was provided to councillors with the August 2011 report from the Director of City Development (at para 800 above).
813. I cannot remember whether I saw this report, but I think it may have been shared on a confidential basis. It is quite a detailed technical report, so it was not likely to have been made available at a Full Council meeting. The Director of City Development's report itself states that a confidential schedule of findings would be shared with councillors (**TRS00011725** at pg 4, paragraph 3.16) and I believe that would have happened. Although it says that Siemens' costs were highly inflated, as were the Infraco costs, the conclusion of the report is that it would be almost impossible at this point to change contractors. If I was aware of the precise detail of it that would probably have been the conclusion that made more impact on me.
814. To disentangle the two contractors (BB and Siemens) from the contract would have been extremely difficult. The figures that came out were arrived at after the mediation process, so I do not know to what extent Faithful & Gould's reading of the situation was correct. There was a strategic decision to be made as to whether to go ahead or not. The Consortium was on site, had materials on site, knew the situation, and knew what they were working with and so to decide not to keep them on would

be very difficult. It is acknowledged in the recommendations that this was basically the only way.

Settlement Agreement – September 2011

815. A Settlement Agreement was entered into on 16 September 2011 between the Council and the Consortium which, ultimately, resulted in a reduced tramline (from the Airport to York Place) being built for a total capital cost of approximately £776m. As recorded in a later (January 2012) CEC Report (CEC01914665), a confidential appendix was provided with the June 2011 report from the Director of City Development (at para 778 above) with that containing the essential terms of the Settlement Agreement. The Settlement Agreement was also sometimes referred to as Minute of Variation 5 (“MoV5”).
816. I thought it was a good deal in the circumstances. We were desperate to get things moving and that is what happened. It seemed to me as good as we were going to get. The CEC Chief Executive had been given authority to enter into the Settlement Agreement (I think this was given in June 2011). The finalised Settlement Agreement was in much the same terms as what we had seen in June 2011.
817. Councillors would have had briefings before the Full Council meeting. There was a Council meeting on 30 June 2011, which detailed the result of the Mar Hall talks and we knew that there was going to be a Settlement Agreement. By the time it came to that meeting all of the councillors would have had an opportunity to ask whatever questions they had and so at that meeting (in June 2011) it was the finalised scheme that we agreed to support.
818. Regarding back-and-forth over the terms of the Settlement Agreement between the Mar Hall Mediation (in March 2011) and its conclusion in September 2011, as far as I am aware it was mostly to make sure that

the Settlement Agreement was a legally sound contract. The terms themselves had been agreed at the mediation between the parties. Any back-and-forth was between the lawyers, the Council Officers and other principals who had been involved in the mediation process.

819. I do not recall the confidential appendix setting out the essential terms of the Settlement Agreement, but that would have been our opportunity to get an overall picture of what the Settlement Agreement actually said. I am not sure whether everybody got sight of the full Settlement Agreement, but I was able to go to the Council Offices at Waverley Court where there was a data room with full details of it. This would not have been the Settlement Agreement as such, but it would have been its headlines. I am not sure whether it was open to every councillor or whether it was open only to Group Leaders and Transport Spokespeople, but there was certainly an opportunity for councillors from every group to look at it in more detail. This type of data room arrangement (also involving the signing of a confidentiality agreement) was something that was only used on a few occasions during my time at the Council (between 1997 and 2012).
820. I recall that the Settlement Agreement was an extremely detailed document. It had a lot of financial information in it, and some of the figures were not particularly understandable to somebody who was not fully immersed in it. I think that, for most councillors, what was in the appendix to the Council report (at para 1118 above) was the main basis for understanding what was going to happen. The key was getting the Consortium back to work.
821. Following the mediation there was certainly more contact with the Consortium than there had been before. For example, all the members of the Consortium (BB, Siemens and CAF) sent representatives to appear on the platform with Sue Bruce and myself in a public forum for members

of the business community. This was a sort of public meeting by invitation (but it was fairly open) held at the City Chambers. That was the first time, to my knowledge, that the Consortium had ever actually appeared side by side with the Council in a situation like that, where they had to fend off questions from a crowd of city business people and retailers. There was no regular contact with councillors, but the Consortium was quite keen to make it clear that they were now working with the Council.

822. I do not think there were any realistic alternatives to the Settlement Agreement. I do not think the Consortium would have accepted anything else.
823. Councillors all knew (I do not know whether it was explicitly stated or not) that without the Settlement Agreement work was not going to go forward. It would have made a mockery of the mediation process if there had not been an agreement when everybody took that as being the best way forward. Any advice we were given would have been that we should accept the Settlement Agreement if we wanted the ETP to go ahead. That possibility was always open, councillors could have disputed it and not agreed to go ahead with it, but in the circumstances I think there was no realistic alternative. I am sure that councillors were aware of that either from the papers or from briefings that they would have had beforehand.
824. I think, for all of the political groups on the Council, there was a general feeling of getting matters moving. It was costing more than we would like, but if that is what we had in the circumstances, that is what we had to take.
825. One of the main concessions that the Consortium gave during mediation was agreeing to go in immediately and remedy the faulty work on Princes

Street. It is arguable they would have had to have done that anyway, but they would not have had to do it for nothing. I am sure they would have argued it was not their fault. From the Council's point of view, the main thing was just getting the project moving again and that is what was achieved. I am sure there must have been some bartering over the price and scope of work but no councillor was privy to those discussions.

826. As I have already discussed (at paras 791 - 795 above), the cost of terminating the contract was prohibitive. Continuing involved a lot more money than we had originally been told it would cost but I think it was justified to carry on with the project.
827. Regarding stakeholders in the city, they were desperate for the project to go ahead. The views coming from the Small Business Forum, the Chamber of Commerce, the University of Edinburgh and other large bodies would certainly have influenced some councillors. Most of these groups had been in favour of the ETP and so they wanted to see the project come to fruition.
828. In terms of public reactions, and ward constituent reactions in particular, I had very little feedback. I had one or two constituents who quite often wrote to me and to the press, who were very much in favour of the ETP. I imagine the city centre councillors probably received more comments due to the direct effect.
829. I think for most people it was a reaction of relief that things were underway again. However, even to this day there are those who say that the project should have been stopped. These were the people who said it should never have started in the first place and who were not aware of the costs involved in termination. For some it was just a gut reaction, whether in favour or against, and there were obviously both types of people present.

830. This was also about the time that TIE was replaced by the Council as the involved party. This was largely as a result of the Mar Hall mediation and the Settlement Agreement. It was felt that TIE was unhelpful given the impasse there had been between TIE and the Consortium prior to mediation. Due to that, TIE was disbanded – though that happened a bit later in 2011.

Post Settlement – September 2011 to Completion

831. There was a briefing note prepared by personnel at TS dated October 2011 (TRS00012622). This note refers to:

831.1 An announcement made on 14 September 2011 that the grant to the ETP would be re-instated and that Scottish Ministers (through TS) would oversee the project.

831.2 The Council having appointed external project managers, T&T, to assist with the project and its governance, and TIE being wound down.

I had not seen this briefing note prior to the Inquiry providing a copy to me.

832. I did not have much direct contact with TS either before or after the Settlement Agreement. After the Settlement Agreement, TS played a much more obvious role. Throughout the project, they must have been at least keeping some sort of watch over how the money was being spent. However, what their previous role was (between the award of the £500m grant in mid-2007 and settlement) was not at all obvious to me.

833. I had much less contact with John Swinney and Stewart Stevenson MSP (Transport Minister) after mediation because things did begin to run smoothly. I still did meet them occasionally but that was mainly through my role on COSLA. As can be seen from the briefing note, John Swinney

was not at all happy about TIE and felt that he had been misled and misinformed by them.

834. Regarding the role T&T played in the ETP following the Settlement Agreement, I did not have direct contact with them but I know that they were essentially appointed as project managers and performed the role that TIE had previously played. I presume this worked quite well, as otherwise they would have come to councillors' attention more. In essence, they took over TIE's role.
835. There are minutes of a Full Council meeting held on 24 November 2011 (CEC01891428). At that meeting, I was questioned by Councillor Lesley Hinds (Labour) on the prospect of an inquiry into the ETP (Question 4, at pg 26):
- 835.1 Councillor Hinds noted that I had written to the Scottish Government requesting an inquiry, asking whether I had had a response and asked whether I would circulate any response to councillors.
- 835.2 I confirmed that I had received a letter from the First Minister (Alex Salmond MSP) confirming that the Scottish Government would be "*delighted*" to have an inquiry into the problems surrounding the project.
- 835.3 A copy of the First Minister's response, dated 18 October 2011, was included with the Council minutes (at pg 27).
836. To put matters in context, I had written to the First Minister in September 2011. That initial letter was in response to earlier comments made publicly by the First Minister that there should be an inquiry. My letter was not suggesting there should be an inquiry, but responding to the First Minister's comments and advising that the Council would be happy to participate. The First Minister's letter of 18 October 2011 was simply to

confirm his initial view that an inquiry should be held, and to welcome the Council's co-operation with that. It was not me writing to the First Minister requesting an inquiry.

837. I felt that an inquiry was necessary to try to establish what had gone wrong with the project and, more importantly, what were the reasons for that occurring. I think it was clear that the root of the problem was the Infraco itself. To my mind, it was quite important to try to establish how and why this contract had come into place. The ETP was not, as I have already discussed (at para 638 above), the worst public project as regards costs and delays. However, there was a general feeling that there should be an inquiry which was shared by the First Minister.

838. In terms of what it was hoped an inquiry would achieve:

838.1 My view was that it was the Infraco that was the main issue at fault. As such, the inquiry should try to ensure that, when contracts are drawn up for such projects in future, they should be more watertight and more fit for purpose than the one that was produced seemed to be.

838.2 It should also make sure that the delivery mechanism was appropriate. At the time when TIE was set up, the Council thought that TIE was the appropriate body to deliver the project. It turned out it was not.

In all, the purpose of an inquiry would be to establish how this sort of project should be dealt with, from its inception right through to completion.

839. Sue Bruce, stated around this time that she did not believe an inquiry would be helpful at that time, and the focus should be on completing the project.

840. I absolutely agreed with this view. The project would have to be complete for an inquiry to properly assess the situation. You could not start an inquiry until the project had actually been delivered because there was still potential for further issues to arise. Equally those involved in the project needed to get on with it and not spend time responding to the requirements of an inquiry.
841. Another reason for not holding an inquiry in late 2011 was that the Council was only five months away from the local elections. Any inquiry would have become a political football, with Labour and the Conservatives blaming the SLD and the SNP. The Council would also have entered what was known, colloquially, as the 'purdah' period prior to elections. This is a period in which there could be no involvement, by either Council Officers or councillors, in any matter like this. It would have been impossible to have had an inquiry at that time.
842. There was a lot in the press about holding an inquiry. There were some, mainly bloggers, who were demanding that 'heads roll' immediately. However, I think most people would have understood why it would not make sense to have an inquiry when the project had barely got going again. As it turned out, the First Minister called for the Inquiry once the project was finished.
843. Following the Mar Hall Mediation and the Settlement Agreement, works progressed to complete a tramline from the Airport to York Place. This opened to paying passengers on 31 May 2014.
844. The main changes were introduced as a result of the Mar Hall mediation and the Settlement Agreement is very difficult to recall in detail.
845. In general terms, however, there was an absolute sea change in the relationship between the parties involved in the project: TIE (which was to disappear), the Council, the Consortium and TS. The actual

relationships between all of them changed, and it is quite clear that the project was better managed after mediation and the Settlement Agreement. There was a new timetable for completion, costings and means of resolving disputes. Where work had previously stopped, staff were mobilised and work actually restarted. That began on Princes Street, where the Consortium was doing remedial works to get the tracks in the right place. Another major change was T&T taking the place of TIE as the Council became the contracting party and contracted out project management to T&T.

846. Councillors had never been involved in project management and they never would be, because this was very much an operational matter. There was an All Party Oversight Group ("APOG") established, which I chaired, and councillors participating in that received papers that kept us up to date. What did not change was the fact that, from the beginning, councillors were not involved in the day-to-day management. That continued to be the case and quite correctly so because that is not what the role of a councillor is.
847. The APOG was an all-party group of councillors, and we had some input on decisions that were made after the mediation and Settlement Agreement. I cannot recall exactly when it was established. There had previously been a subcommittee, the TPS of the TIEC, but that played a different role. The APOG was an official committee of the Council.
848. The APOG was open to those who were particularly interested in the ETP. That largely consisted of Group Leaders and Transport and Planning Spokespeople. It was quite a big committee, and any other councillors could come and sit in though voting was restricted to members of the committee. I do not remember many decisions going to votes, as it was generally done by consensus.

849. We got a lot of presentations at each meeting and an opportunity to ask questions of those involved. Some of the input that the APOG had was more to do with decisions on street works, pavements and that sort of thing. The City Centre Councillors were quite heavily involved in looking at the design of what was happening in their wards. We had input, and councillors (the City Centre Councillors particularly) were getting information from heritage groups and the city centre businesses as to what they wanted to see. For example, it decided that granite setts would be used in the World Heritage site and we asked to see samples of all the various materials. We were also able to comment on things like the traffic diversion signage before it was produced; previously it had sometimes been unhelpful. Having people look at it in addition to the engineers who were designing it was, I think, sometimes helpful.
850. It was not a particularly strategy focused group. It was more of an opportunity for some councillors to get more information about what was going on which they could then feed back to their groups.
851. I have been asked whether councillors were encouraged to be more closely involved with the project, including with the independent certifier, Colin Smith, following the mediation.
852. Regarding whether councillors were encouraged to be more closely involved with the project following the mediation, the whole relationship changed. Colin Smith frequently came to presentations that were made to groups, and all groups had an opportunity for people to ask questions. From the Council's point of view, he brought in knowledge of big civil engineering projects which the Council Officers themselves had been lacking. That had been the main and principal reason why TIE was set up, because the Council itself did not have the capacity. In this post-mediation period, Colin Smith brought in that skill and knowledge and was quite happy to impart it to people.

853. Council Officers were there right from the start of the ETP to answer questions from councillors and carry out their other responsibilities in relation to the project. However, as has become clear from looking at some of the internal documents provided as part of the Inquiry and from some of the ministerial comments (at para 833 above), it was quite clear that TIE were not keeping the Council as fully informed as they should have been. The main difference was that the project was not now one step removed, and so it was much closer to councillors which enabled them to get information.
854. In terms of reporting by Council Officers, that continued much as before. Following the mediation, fewer reports probably came up to Council meetings because things were going smoothly. In some ways, there was less need for councillors to be constantly informed about the project. As Council Leader, I was no longer having practically daily updates on the fact that things were not happening. However, reporting continued as before to Full Council meetings, and groups could ask for briefings at any time.
855. Briefing on the ETP would, as it had before, form part of my regular meetings with the Chief Executive and if there was something happening she would usually report on it. It was not necessarily at dedicated meetings, and was often just part of the weekly briefing. If there was a report coming up to Full Council on the project then there would be a bit more activity in order to keep all the groups informed.
856. After the Settlement Agreement was in place, there may have been smaller, internal things that needed sorted out and I am sure there were moments of angst on both the Consortium and the Council's side. However, from the point of view of a councillor looking at it, it certainly seemed to go very much more smoothly than before. Previously there had been crises practically every week, whereas after the settlement it

fell into place as just one of the many issues that were a part of the business of the Council.

857. The changed relationships meant the previous state of confrontation was replaced by compromise, and there was a palpable feeling of trust that had never been there before. Prior to mediation, TIE were always trying to paint the whole Consortium, but BB in particular, as the 'bad guys', stating how they had done awful things in several different countries and they clearly did not trust the Consortium. Equally, the Consortium clearly did not trust TIE. With TIE removed and the Council closer to the project; there was considerably more trust between the parties.
858. Regarding TIE, I know that people were paid their redundancy and the offices that TIE had occupied at City Point were vacated at about this time (late 2011). They effectively disappeared and were no longer part of the project. The detail of how that was worked out was something that, as a councillor, I would not be involved in. COSLA's offices were at Roseberry House, close to TIE's, on the tram route. This meant that councillors arriving from all over Scotland were faced with the barriers and chaos caused in that area, as must TIE's staff. It was a great relief to see work recommence at that area.
859. I think it was assumed that there would be a public inquiry at some point and that investigation of TIE's performance would be part of that inquiry. I do not think there was the capacity to start investigating what had gone wrong there. I do not know whether internally anything was done, but I do not remember hearing any suggestions of an investigation or review.

2012 Elections and departure

860. The ETP probably was a big issue in the run up to the May 2012 local government elections; although by the time of the elections it was quite

clear that things were happening to move the project along. It was one of the issues and some political parties tried to make a point of it.

861. In terms of the 2012 elections, I stood for re-election as a councillor but in a different ward from the one I had held since 1997. There were two SLD candidates in my original ward (each ward elects multiple councillors). My colleague in that ward had been a councillor there for about ten years longer than I had. We did not want to have a selection battle between us, so he stood in that ward and I became the SLD candidate in a different ward in another part of the city. We had taken a decision to stand only one candidate per ward because of our very low national poll ratings. I was not really expecting to get in and I was not returned at the 2012 elections.
862. The reason that I was not expecting to get in had more of a national dimension. The Liberal Democrats were not doing well at that time as we were in a very unhelpful (and unwelcome to many of us) coalition in Westminster. That affected our chances and was much more important on the doorstep than the ETP. I do not think I ever had the tram mentioned on the doorstep, though it might have come up at hustings.
863. The result of those 2012 elections was that a coalition between Labour and the SNP achieved a majority and became the administration on the Council.
864. Because these were democratic elections, there was no certainty about who would be in office. There is no real handover between the leadership, but the continuity of the Council Officers is important. There always is continuity because Senior Officers are never appointed immediately before an election. They play a huge role in making sure that the incoming administration is up to speed with everything.

865. As the SNP were involved in the new administration, there would have been some continuity there. That would be more dubious in respect of the ETP. The fact that, over the preceding five years, the SLD had re-introduced the committee system (at paras 11 - 19 above), meant that councillors who were re-elected had as much knowledge as they possibly could have about what had been happening. The Administration that I had led was much more open and transparent than what had gone before, so every councillor had the opportunity to get the same information whether they were opposition or administration councillors.

Project Management and Governance

866. In this section (and the following ones) of my statement, I move from discussing the history of the ETP chronologically to discussing particular aspects of the project such as governance, design and costs or the involvement of particular organisations such as TIE and Audit Scotland. I then provide some final comments.

General approach to governance

867. Regarding the respective roles and responsibilities of CEC, TIE, TEL, the TPB and TS in relation to the ETP, I have already made a number of comments in this statement about governance but, in headline terms, I would summarise it as follows:

867.1 The Council was the promoter of the project and it was through the Council that TIE got the Transport Scotland money. It was also the 'funder of last resort'.

867.2 TIE was an arm's length company owned by the Council, which was expected to procure the project, manage it and bring it to fruition from the stage of the Parliamentary Bills being laid right

through to passenger service. This of course was not the case but that is how it was meant to be.

867.3 TEL was to provide an integrated bus and trams service. Lothian Buses' involvement came through TEL.

867.4 The TPB (Tram Project Board) I took to be the main governance body involved in the ETP overseeing the work of TIE. I know when it was initially set up there were no councillors on it but at some later stage it did have elected members on it. What I am not sure is quite when that transition took place. It had Council Officers on it and it had professionals from other sectors on it as well. It was the main governance body.

867.5 TS were the supplier of the Scottish Government funding and their role was to be satisfied that their money was being suitably spent. I know their role changed – they were quite heavily involved with TIE to begin with, but once the £500m had been awarded they seemed to take a back seat until after mediation when they reappeared.

868. The only body that I had concerns about at any time was TIE, and mainly related to the Infracore and probably only from the time in 2009 when I met Richard Walker of BB and he presented a different view of issues. In terms of senior personnel, I did not really know any of the senior personnel in any of the organisations well enough to have concerns about them. I was not seeing how they were working on a day-to-day basis.

869. I am fairly sure that I would have discussed those concerns with the CEC Chief Executive. I did not actually think that TIE should be got rid of or that there were people in TIE that I was not happy with. One concern was when David Mackay resigned very hurriedly and I felt made some

inappropriate comments. I probably commented on this to the Chief Executive, but it was not a case of reporting that I had serious concerns because I was not in a position to judge whether the views that I was beginning to form had any real basis in fact.

870. I think that, at different times, Phil Wheeler and Gordon Mackenzie (who were both SLD Councillors, acted as Transport Convener at different times and who were members of the TIE and TEL Boards) may have commented about TIE. They knew more about the individuals within TIE and were in a better position to be able to make a judgement on it. I recall that we did share a general unease, particularly around the time of the major disputes. The fact that the Consortium appeared to be getting the upper hand in the disputes led us to question whether it was poor advice that TIE was getting or something within TIE itself.
871. The Labour Councillors were obviously interested in what was happening with the project, given that they had set it up. I do not remember any comments or concerns expressed by people in the other groups.
872. Regarding the governance arrangements for the ETP, including whether each of these bodies were able to, and did, exercise effective governance and control over the project, I find that very difficult to judge. I was not on any of the relevant bodies and so was viewing it from a distance. The TPB was perhaps the main body, but I did not see its minutes so do not know whether they were asking the right questions or doing the right things.
873. It is obvious that it was a pretty convoluted arrangement. Over time we had a number of incredibly complex diagrams about all the different boards, subcommittees and other bodies and who was on them. The more complex a governance scheme, the more difficult it is both to judge

it and for it work effectively. That was certainly simplified after mediation by taking away some of the layers, mainly through removing TIE.

874. The fact that this was a very complex governance set-up was cited in Audit Scotland reports and in Council reports. I found the TIE/TEL relationship quite confusing. It did change over time, and it was not until after the Mar Hall mediation (March 2011) that it became clearer, though, even then, there was a plethora of meetings of various bodies on the go.
875. It might have been easier throughout if there had been fewer bodies involved so that you did not have to have these very complex diagrams showing what the roles and responsibilities were, particularly as some of these changed.
876. It was known right from the beginning how complex the structure was, and a proposal under discussion from around the time of the contract sign-off, or perhaps earlier, was that TEL would become the main operating mechanism and the main way that tram/bus interactions and planning would work. There was discussion about its complexity. There was also a point where it became clear that, when the TPB had first been set up, it did not actually have power to do what it was supposed to or a proper relationship with either the Council or TIE. I believe that was resolved around this time as well.
877. Regarding the responsibility for rectifying the governance structure, the work of figuring out the details of the simplification / rectification arrangements probably would have fallen to the Corporate Services Section of the CEC.
878. I have looked back over the Council minutes for the relevant period, and there were quite a few instances where we sought amendments to Council Officer's recommendations asking for greater clarity on relationships. The SLD Group initially opposed the setting up of a

company along the lines of ENTICO (later TIE) to deliver the Council's Transport Strategy as inappropriate and an abrogation of responsibility (see the minutes of the meeting of the Full Council on 18 October 2001, **CEC02086750**, at pgs 11 -12). When TIE was first formed, I have found references in Council papers noting that we had actually asked for the relationships between the Council, TIE and various bodies to be made much clearer. Examples of this can be found in the minutes of the Full Council meeting on 25 June 2003 (**CEC02083549**, at pg 15) and the minutes of the Full Council meeting on 24 February 2005 (**CEC02083529**, at pgs 5 – 8).

25 June
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26 June

879. All of the various constituent bodies had some responsibility for the ETP being delivered on time and within budget, but at the end of the day it was TIE to whom the Council had given the authority to deliver the ETP. This was an arm's length company that had been set up precisely for the purpose of delivering the LTS, in the first instance, and various transport projects. Of those projects, the ETP ultimately became their raison d'être so it was their job to deliver it on time and within budget. After the contract was taken over by the Council (post-mediation and settlement in 2011), it became the Council's job (through T&T and other consultants).
880. Regarding who I consider was ultimately responsible for scrutinising or supervising TIE, from the point of view of the finances presumably that would have been TS. From the perspective of oversight, the Council as funder of last resort clearly had the task of making sure that their arm's length company was doing what it should have been doing.
881. There are two documents discussing the governance of the ETP:
- 881.1 A briefing note prepared for the CEC Chief Executive (then Tom Aitchison) by the Director of Corporate Services (Jim Inch) in July 2007 (**CEC01566497**). This noted that it was *"vital that more*

rigorous financial and governance controls are put in place by the Council..." (at para 4.1, pg 8).

- 881.2 A report prepared by Dave Anderson (Director of City Development) for the Full Council meeting on 25 August 2011 (TRS00011725) dealing with financial and governance implications of the ETP. It noted that: *"the existing governance arrangements for the Tram project are complex [and] have not been effective."* (at para 3.47, pg 10). There was a need on the part of the Council to revise them to: *"ensure effectiveness, accountability, probity and integrity going forward."* (at para 3.49, pg 10).
882. Regarding the conclusion in the later August 2011 report, I think it is fair and follows on from what I noted about the overly complex arrangements.
883. Regarding effective governance arrangements, concerns and recommendations had already been discussed earlier in Jim Inch's 2007 paper (at para 881.1 above). Some of what was suggested in Jim Inch's 2007 paper was implemented. The most important recommendation was probably putting the TPB on a proper footing, and that was done. It was accepted throughout, and mentioned in many papers, that when the time was right the TIE/TEL relationship would be addressed. Some of these concerns had been addressed. I do not know what discussions had been going on internally among Council Officers, and I do not know why it was decided at that time to address the matter.
884. In terms of the issues of political scrutiny (ie by councillors), I do not think they were adequately addressed until after the Settlement Agreement in 2011 when we had a fairly clear relationship involving the Audit Committee and the TOG. Prior to that, it had been a combination of Full

Council, PSC, TIEC and the TPS. As far as direct councillor input was concerned, it had been a lot more complex.

885. Regarding why had it had not been introduced earlier, I looked through the Council papers between the date of this note (2007) and 25 August 2011 Full Council meeting when the new arrangements were finally put in place. In that time, aspects of governance were addressed at least 11 times in papers to various bodies. So it was not that this had not been addressed, it had just not been addressed efficiently and effectively enough until 2011.
886. The main responsibility for ensuring that effective governance arrangements were in place for the ETP lay with a combination of the senior management team within the Council, of which the Chief Executive was the head, with the changes implemented through councillors deliberating on these reports. The practice was for papers on governance to come to Full Council for deliberation with briefings and questions beforehand, but the actual background work was done by Council Officers as they produced the reports.
887. Regarding the report of Dave Anderson to the Full Council on 25 August 2011 (above at para 881.2)(TRS00011725). The proposed new governance arrangements for the ETP were set out in an appendix to that report (at pg 23).
888. The original proposal (of June 2011) had proposed a separate audit committee for the ETP but it was decided that the existing Audit Committee had room in its agenda to deal with this. A project delivery group was set up as well. It was still very complex and there were still a lot of different bodies that were involved. That scheme was what ended up being implemented.

889. The main improvement arising out of the August 2011 governance changes was that the project owner was now the Council. It made it clear that it was now responsible for the delivery of the project. The lines of communication, although still complicated, were much clearer and the new structure allowed for more obvious lines of accountability. It did now seem to me that the right people were in the right forums for informed discussion to take place.
890. A further set of documents sets out the governance structure agreed by the Full Council at its meetings on 25 August and 2 September 2011 (CEC01890123), including the APOG.
891. I think APOG was really a means of simplifying communication. Prior to this, much of the information that was being given to councillors was communicated through briefings to individual group meetings, reports to different committees and reports to the Full Council. The APOG provided a forum for cross-party members to receive quite detailed presentations on various aspects of the project. I am not sure that it benefitted the delivery of the project in a huge way, but it had an effect on some of the details of the project
892. The project was now being delivered in a much more sensible way than it had been previously as a result of the Council taking more direct control of it. That would still have happened without the APOG, but its existence allowed for quite detailed presentations to be given to a group of councillors. Those councillors would then feed that back to other members of their political group or to constituents, and councillors probably felt better informed than if they had been getting separate presentations to different groups. From the point of view of the Council Officers involved, instead of potentially having to go to five different groups to give presentations this became the main forum for information

sharing. I am sure it allowed them to get on with delivery of the project instead of delivering information about the project over and over again.

TIE

893. Prior to TIE's abolition, CEC's oversight and control came through input from Council Officers and councillors on both the TIE Board and the TPB. I think the TPB was, prior to mediation, the main means of exercising oversight and control. The Council's TMO also played a part. From the councillors' point of view, membership of the boards allowed them to look at what was happening and have some oversight of it. Then there were, of course, papers that came to Full Council and those mainly dealt with endorsing or agreeing Business Cases.
894. I do not remember there being much discussion of the operating agreement between the Council and TIE or the Council's role as TIE's sole shareholder, other than when there was discussion about the TPB's legal position (at para 876 above).
895. In terms of TIE's personnel and management, I did not know enough about any particular employees to really comment. The people occupying these roles came and went. I did not know those involved in TIE in the early period. I probably never met more than about a handful of TIE employees. As a councillor, I was not involved in the day-to-day workings of TIE and so I did not have any knowledge of individuals' behaviour or performance. I did have concerns but they were not related to any particular individual.
896. I do not know whether TIE's staff and management had sufficient expertise or experience. In hindsight, it is easy to question their ability and/or the ability of those who were instructed to provide them with assistance (ie consultants and lawyers), particularly regarding the contract.

897. I do not know how CEC Senior Officers received their information and updates, but presumably they got a lot of information through membership of the various boards. For councillors who were not on the boards they got most of their information from Senior Officers in reports and at briefings and presentations. Councillors who were on the relevant Boards would have received their information more directly from TIE, assuming that the Board members were given full information and I cannot comment on whether that was so.
898. TIE had been set up as an arm's length company and most of the Council's arm's length companies work or worked reasonably well and the information that is passed to councillors is accepted to be as full and accurate as necessary. Within a year of TIE being set up, the SLD Group on the Council did seek a report on the lines of communication between TIE, elected members and Council Officers. This is recorded in the minutes of the 26 June 2003 Full Council meeting (CEC02083549)(at item 22, pgs 14 - 15). We were always a bit unsure about whether the reporting lines were adequate. However, it was not until much later, when such a different picture emerged from the Consortium's side, that there were serious concerns. Having read a lot of the internal communications as part of the Inquiry, it is quite clear that there were concerns amongst some Council Officers that TIE's reporting to the Council was not as full or as accurate as it should have been.
899. The only external piece of information that probably would have led me to think that TIE were capable was the fact that TS gave the £500m grant for the project. I would not have thought that TS would have willingly given that £500m if they thought that the Council or its arm's length transport company did not have the capacity to project manage the project. I would have thought that Council Officers, when TIE was set up,

must have thought that it had the experience and expertise in project management that the Council itself did not have.

900. Instructing an organisation (e.g. a firm of civil engineers) with an established track record of project managing major infrastructure projects to assist was done later in the project with instructions to HG Consulting (Colin Smith's practice) and then to T&T. I do not know at what point the Council Officers became aware of failings in TIE's project management. If they were aware of them, then it was something that should have been raised with councillors. It was not something that, as councillors, we would have intervened in or questioned unless we had been given information to suggest that TIE was unable to deliver on its aims. We would need to have been told that TIE was not doing what it is supposed to be doing. Until after mediation, I did not have knowledge or information about TIE to suggest that there was a need to do anything other than to continue with them.

TIE's previous projects

901. A report was produced by TIE, dated 14 September 2007, and titled: *"Ingliston Park And Ride One – Lessons Learned Report"* (CEC01465362). The report noted (at pg 3) the following lessons learned for the project:

- *"No clear definition of roles and responsibilities between tie and CEC"*
- *No check processes in place for design*
- *Responsibility was given to Halcrow for the day-to-day management of the process and light touch management employed by tie*

- *Extension of existing consultancy contracts for new commissions needs to be properly evaluated to ensure that this is appropriate"*

902. I knew that the park and ride schemes, as part of the LTS, were within TIE's remit as delivery of the LTS was part of the original reason for founding TIE. I was not, however, aware of this report. Nor was I aware of any concerns about the Ingliston Park and Ride or the specifics about TIE's delivery or non-delivery being brought to my attention. There was a general issue about the fact that, prior to 2007, the Council had not delivered on the park and ride schemes that it had said it was going to produce.
903. I have been referred to an article from the Sunday Herald, dated 12 July 2009, which discusses TIE's role in the project management of the Stirling-Alloa-Kincardine ("SAK") Railway (CEC00784171). The article reported that TIE had been removed from the project in 2007 following concerns from TS, costs overruns of more than double the budget and a three-year delay in project completion.
904. I may have been sent a copy of this article by the Council's press team, but I do not specifically remember it. I did have some knowledge of TIE's involvement in the SAK project. There was discussion about whether TIE, as an arm's length company of CEC, should be involved in projects that were outwith Edinburgh, and whether they had the capacity to do these projects. However, I do not remember when that discussion took place or its conclusions. I do not remember any of the TIE personnel discussing their previous projects.
905. Looking at this article now, the comments from TS are surprising. If TS were so concerned about the SAK project, I am surprised they did not

raise this with the Council regarding TIE's ability to deliver the ETP. I do not recall anything being conveyed from TS to me about this.

TIE Bonuses and Remuneration

906. A report was prepared for the Full Council meeting on 26 June 2003 (CEC02083550). This reported on TIE's 2003 - 2004 business plan and referred to the introduction of a performance related bonus scheme for TIE staff (at para 3.22, pg 4).
907. I do not know what the internal thinking inside TIE was, but the report states that it was to compensate for differences between public and private sector salaries and to encourage performance.
908. I do not think there was anything in the report itself to suggest how the Council would exercise supervision or control over the TIE bonus scheme. It was at this meeting that the SLD Group asked for further reporting from TIE and Council Officers of their lines of communication, but that amendment was defeated by the Labour Administration (at para 898 above). This was at a time when there was a one party executive system in place in the Council and the Opposition's involvement was more limited.
909. I had experience with bonuses and remuneration in my role with EICC. I was a board member of EICC and sat on its Remuneration Committee with two others. That company had a bonus scheme, as they judged themselves against the hotel and entertainment trade business and it was a performance incentive to get more conferences to come to Edinburgh. I was not personally in favour of bonuses, but they had been introduced by EICC before I joined. In the case of EICC, remuneration decisions were private to that committee. In terms of the EICC, the CEC Director of Finance also acted as a financial advisor to that organisation.

pg 4 should
be pg 5

910. I was not aware of any details of the TIE bonuses. Decisions presumably went to the Remuneration Committee of the TIE Board. In the initial period of TIE's existence (up to about 2007, I think), we did not have any councillors on the board of TIE. I do not know whether any Council Officers or councillors, who acted as TIE Board members, served on the Remuneration Committee, but that might have been a way of exercising control.
911. There were a series of emails amongst Council Officers and representatives of TIE concerning revisions to the bonus scheme operated by TIE (**CEC00672873**, **CEC00672874**, **CEC00672875**, **CEC00673126**, **CEC00674778** and **TIE00034046**). These discussions took place between September and November 2009.
912. I was not aware of the internal discussions by Council Officers on the bonus scheme and I cannot specifically remember discussing these revisions. I have a vague recollection of bonuses having come up as a topic at some point.
913. I do not think that bonuses should have been discussed with me, because it is not the job of councillors to discuss matters that are private to the company's Remuneration Committee.

TIE Internal Governance

914. The post of Chief Executive of TIE became vacant around June 2006. Between around June 2006 and November 2008, Willie Gallagher acted as both Chairman and Chief Executive of TIE.
915. As far as I can tell, the appointment was actually approved on 24 August 2006 at a Full Council meeting (**CEC02083525**) (at item 21, pgs 16 - 17). At the beginning of that period (June 2006), as an Opposition Group Leader I was having fortnightly meetings with the Council Chief Executive

and we might well have touched on it – we generally would go through the agenda for Full Council meetings.

916. I cannot remember if there was any discussion on it but my view is that it was not a good idea. I do not think it is ever a good idea to have the Chairman and Chief Executive be the same person. However, the minutes did stress that it was an interim appointment and was only being done because they did not have time to advertise and fill the Chief Executive post at a critical time. I do not think that the Chair of a Board should be monitoring his or her own performance as the Chief Executive of the company, so my views would have been that it was highly improper.
917. The recommendations of the responsible Council Officer were that it should be done on an interim basis. The fact that it lasted until November 2008 contradicts the idea of it being a short, interim appointment.

CEC

General

918. Regarding the Council's oversight of TIE:
- 918.1 For Council Officers, it was through membership of the TPB, the role of the TMO and direct interaction with TIE.
- 918.2 For councillors, briefings and reports prior to meetings and the use of committees (first the TPS and then later the Audit Committee and APOG) would be the way that general members had that opportunity to have oversight. Councillors who were actually on the TIE or TEL Boards or on the TPB had a different role.

919. As I was not intimately involved in key meetings (of the TPB, TEL Board or TIE Board), I do not know how Council Officers or elected councillors behaved at the meetings, what they asked or what they said. The only concern that I had arose when it became clear that there was an intractable dispute between TIE and the Consortium.
920. As it turned out, the Council had not been able to control the project because it appeared to have been hampered by its relationship with TIE. It was not just TIE's relationship with the Consortium that caused problems. It also seems, with the information in documents I have seen for this Inquiry, that there were concerns within the Council about the quality, quantity and timeliness of the information that they were getting from TIE. As costs and delays escalated and it became apparent the Consortium were saying very different things from what we understood the situation to be there was certainly concern in my group and no doubt others about whether the Council was being kept fully and timeously in the picture.
921. I do not think Council Officers wanted the project to fail any more than most elected members. I have no doubt they did their best to exercise effective oversight and control, but with hindsight maybe they trusted TIE too much. In terms of councillors, we were reliant on advice and information from Council Officers and so if that advice or information was lacking then that obviously affected our (strategic) decision-making.

Councillors

922. Regarding whether the councillors who sat on the TPB and the company boards of TIE and TEL had sufficient experience and expertise to inform their decisions, it is difficult to say. The councillors were not there to provide professional experience or expertise. You had other board

members who were experts in the various fields involved. The role of councillors on a board is two-fold:

922.1 At one level, they are there to represent the Council's interests;
and

922.2 They are also there to ensure that the board works properly.

It can be quite a difficult situation where in one room you are supposed to put the organisation's interests first and then in another room you are supposed to put the Council's interests first.

923. I do not think I can judge whether they had the experience or expertise. Under the system of cross party representation, most groups would put their Transport Spokesperson and/or Finance Spokesperson on the board. This was because, from learning on the job as spokespeople, they would have some relevant experience if not expertise.

924. Other than putting somebody through a four year degree in engineering, I do not think you can provide training to give that background. The only training that is provided for elected members who sit on organisations' boards is training on the board's role that is provided by the Council. That training is to be sure that you are aware of the company's and board's responsibilities. I do not think that you would ever expect that a councillor sitting on a board should in any way have the knowledge about huge infrastructure projects that you would expect those who were appointed to the board for their professional expertise to have.

Committees

925. I think the arrangements made for councillors, in terms of committees and other structures were as effective as they could be. There was the TPS, which gave an opportunity for a more detailed look at some aspects of the project, and then later (post-mediation) the APOG. There was also

the Council's Audit Committee which was quite substantially involved in looking at the financial side of the ETP. There were Full Council meetings, functioning as the main forum where strategic decisions on the Tram were taken. Those meetings and the preparation for them work as best they can to make sure that councillors have the information they need to take decisions. Without starting from scratch and looking for an entirely different way to deliver this sort of project, I think in the circumstances the committees and other arrangements worked pretty much as they were supposed to.

926. I know there were queries at one stage suggesting that the TPS had not met as frequently as it should have done. There had been a smaller number of meetings than had been expected. It is arguable that the subcommittee should have had more information fed to it and, therefore, should have held more meetings. However, if there is not the information being provided to discuss at a meeting there is no point in having a meeting simply for a meeting's sake. I do not know whether the reason that there were fewer meetings was because the information was not getting through to the TPS and whether that goes back to what appears to be one of the roots of the problems: the poor communication between TIE and the Council.

Council Officers

927. I did not really have any concerns with Senior Officers and Council Officers. In general, councillors have to have faith in the professional expertise of their Senior Officers. Many of these Officers did change during the course of the Administration. The three most Senior Officers of the Council all retired during the ETP (see at paras 62 - 63 above).
928. However, there was nothing that made me think that they were not doing what they were supposed to do. I was not actually seeing them in the

context of interacting with the various parties on the boards of the different organisations.

929. Regarding special committees, governance arrangements or special working relationships between Council Officers and councillors being set up to supervise the project, this comes back to the role of councillors. Operational matters were the job of Council Officers and overall strategic decisions were made by councillors. On some issues there were (usually short-lived) cross party working groups set up to look at particular issues. But, because there were councillors on the various boards and there was the TPS, it was not felt necessary to have yet another forum. It would have just been adding another layer. Councillors always object to having more and more working groups set up. I do not recall any councillor ever seeking to have another layer of committee, working group or structure put in place.

Tram Project Board

930. I suppose in simplistic terms the TPB was the main means of governance for TIE. It had members of TIE and of TEL on it, and at one stage it had TS representatives and Council Officers on it. At various stages it had non-executive Transport Directors on it. By this I mean, external appointments of people who were not part of the daily running of the transport companies but who had some relevant skills or expertise. To begin with it had no elected members on it, but that changed. I think its role, remit and responsibilities were all tied up with being the main governance body for the ETP.
931. The TPB had lines of communication to both TIE and the Council, and presumably each of the wide range of people on it were reporting back to their originating body.

932. Because I was never on the TPB and never saw its minutes, I do not really know precisely how its role changed over time. Its powers were confirmed and, at that point, it became I think, a subcommittee of TEL. The proper lines of communication were confirmed at the December 2007 Council meeting. Previously it did not have direct lines of communication to other bodies within the governance structure.
933. Councillors on the TPB were not the 'eyes and ears' of councillors as a whole, they were just part of the membership of the TPB. They would not have reported back to the Full Council as that is not what councillors sitting on boards do. That is the job of Council Officers. I did not have any concerns about the TPB or its members, because I did not really have any day-to-day knowledge of the TPB.
934. A report was prepared by the Directors of Finance and City Development (Donald McGougan and Andrew Holmes respectively) for the Full Council meeting on 20 December 2007 (CEC02083448). This paper seeks approval of the business case for the ETP and a new governance arrangement (at paras 4.1 – 4.5, pg 2). Those were shown in Appendix 1 of the report (at pg 10). The TPB would be formally constituted as a committee of TEL (at para 4.2, pg 2).
935. The TPB itself had been set up previously, and this was merely formalising the arrangements. Its powers, duties and responsibilities were much the same as before. Council officers had realised that the TPB was not a legal entity, hence the decision that it should be formally constituted as a sub-committee.

TEL

936. TEL was created to deliver integrated tram and bus services for the city of Edinburgh. TEL was concerned with ensuring that timetables merged properly, that tram drivers were trained and that kind of task. I

understood their responsibility to be more on the actual operational side once the system itself had been created by TIE. The aim was for TEL to create what would eventually be a fully integrated system that was profit making.

937. A set of slide notes was prepared for a presentation to the TEL Board on 10 February 2010 (CEC00475229). These detail the history of TEL and its relationships with other organisations such as Lothian Buses.
938. The bringing together of the buses and trams was key. This integration was very important to the ETP, and so Lothian Buses were an absolutely integral part of it. I do not know the precise detail of the end-state. Lothian Buses would still exist and Edinburgh Trams would still exist, but the two would combine to provide the integrated service. It was not really a case of one taking over the other, more of working in harmony. They still retained their identities and own staff within the overarching company.
939. Regarding powers or responsibilities councillors understood to have been delegated to TEL by the Council or by Lothian Buses, I do not recall what I understood at the time and my comments may be coloured by my exposure to documents such as the TEL board presentation notes (at para 937 above) which I have seen as a part of the Inquiry.
940. There were changes in the relationship. Once the ETP moved from providing the physical infrastructure to creating the operational structure in which it would all work, then the TEL Board became head of the group. It was always accepted that the delivery of working services would require a different kind of structure to the period when the main focus was on delivering the infrastructure.
941. The contract (Infraco) was between TIE and the Consortium and these matters were all done within the relationship between TIE and the

Contractor. TEL did not have any input, at that stage, into these kinds of operational decisions.

942. I did not really have any concerns or impressions about the way in which TEL was operating overall.
943. A report and papers were prepared for the meeting of the TPB on 7 December 2007 (CEC01400187). The report noted (at para 1.2.2, pg 10) that the operating agreements were to be agreed by the Full Council on the 20th of December 2007. A governance paper by Graeme Bissett (TIE) and draft agreements were also provided (at pg 44 onwards).
944. I would not have seen these documents. Most of them were highly confidential, and they were not shared beyond the TPB.
945. TEL did survive the ETP. It no longer exists as TEL due to a name change, but I think it remained in place.

Lothian Buses

946. The position of Lothian Buses was not something that I was particularly aware of. There were probably some tensions at times within Lothian buses regarding suggestions from outside the company that, for the tram to pay its way, Lothian Buses should be sold off or all its profits diverted to supporting the tram service.
947. There were a few glitches in road planning that would have affected buses, but after the Mound closures there was a huge amount of traffic planning that went into future closures. I think Lothian Buses were kept informed about these matters and any operational concerns were dealt with.
948. In terms of the decisions made as to the running of the tram down Princes Street and its effect on buses, various options were considered.

There were suggestions ranging from buses running only on one side of Princes Street, to George Street becoming the main thoroughfare rather than Princes Street, to the pedestrianisation of Princes Street save for the tram. Lothian Buses was very involved in those discussions.

Transport Scotland

949. With hindsight, it appears that, once the decision had been made to award the £500m (see at paras 196 - 198 above), TS reduced its role and left the TPB (though they still received reports). Prior to that I think their involvement was considerably greater, and greater involvement resumed following the Mar Hall mediation in March 2011.
950. I was not aware of this drawing back of TS at the time.
951. I know that there was comment, by various people, that TS should have been more heavily involved. However, it was TS' decision and, at the time in 2007, they clearly thought that TIE had all the requisite attributes to deal with the ETP and so did not see that they had a role.
952. Their role really was to be satisfied that the money that they had given to the Council was used for the purpose for which it had been given. TS was concerned with ensuring that the £500m was used for the purpose for which it was intended. They were not involved in the project management as that was TIE's job.
953. I do not know whether TS was kept fully informed of the likely cost of completing the project throughout.

Audit Scotland

954. There were two reports on the ETP prepared by Audit Scotland:
- 954.1 A report entitled "*Edinburgh Transport Projects Review*" produced in June 2007 (**CEC00785541**); and
 - 954.2 A report entitled "*Edinburgh Trams – Interim Report*" produced in February 2011 (**ADS00046**).
955. The 2007 Report was produced prior to the Scottish Government having made the award of the funding. This was against the background of the (then new) SNP Scottish Government deciding whether it would fund the ETP and EARL. EARL was cancelled not much later, but the report must really have been for the Scottish Ministers to be sure the ETP would deliver under the grant provided.
956. I read these reports at the times they were issued. I cannot recall my views on them at the time. The June 2007 report shows that Audit Scotland were essentially happy with the general arrangements in place:
- 956.1 They thought that the cost and time targets had been arrived at using robust systems.
 - 956.2 They noted that the risk management plan was in place and seemed fine.
 - 956.3 They noted that the procurement strategy was in place to give some certainty over costs and to transfer risk to the private sector as far as possible.

Those were the headlines transmitted to us as councillors.

957. On the February 2011 report, there was nothing new in it as far as councillors were concerned. We already had access to the information that was in it through reports to Council.

The 2007 Report

958. Regarding whether, in terms of the 2007 report (at para 954.1 above), the report was presented as qualified in any way or AS defined what scope its investigation had taken, I do not remember there having been any qualifications. I think we were simply given copies of the report.
959. A section of the 2007 report entitled "*Our Review*" (at para 4, pg 4) notes that the report: "*does not provide assurances on the accuracy of the estimated project costs.*"
960. At this stage (mid-2007), it was impossible to give any accurate assurances about anything because there was still a long way to go before project close and because everything was suspended while we were awaiting confirmation of the £500m.
961. Regarding whether councillors were still relying on the conclusions of the AS 2007 report when it came to the approval of the financial close of the Infracore in March to May 2008, it was probably referred to in documents much later than this but just for the overall comments about the satisfactory general arrangements, risk management plan and so on. It is difficult to say it was 'relied on'. Its main purpose had been to satisfy the Scottish Government that the £500m would be used for the purpose for which it was intended. As far as the Council was concerned, this report, amongst other things, assisted in securing funding. From that perspective, the report served its purpose and the Council was awarded the £500m grant.

962. I do not remember the 2007 AS report being discussed by TIE in the run up to the close of the Infraco. I think that it played only a small part of the reporting to councillors prior to the approval to enter into the contracts.

OGC Reviews

963. Three Office of Government Commerce ("OGC") Gateway Reviews looked at the readiness of the ETP:

963.1 The first review was conducted in May 2006 (**CEC01793454**) and assessed the status of the project as 'Red', meaning that: *"[t]o achieve success the project should take action immediately"* (at pg 4).

963.2 The second review was carried out in September 2006 (**CEC01629382**) and resulted in an 'Amber' rating meaning that: *"The project should go forward with actions on recommendations to be carried out before the next review of the project"* (at pg 4).

963.3 The third OGC Review was carried out in October 2007 (**CEC01562064**) and resulted in a 'Green' rating meaning that: *"The project is on target to succeed provided that the recommendations are acted upon"* (at pg 3).

964. At the publication of the 2006 report, I was not in Administration so would have been unlikely to have been provided with a copy. The coloured indications are familiar from other Edinburgh projects such as the EICC extension.

965. Synopses of these reports were provided as part of the Council reports on the ETP in 2007, but I do not remember having seen the reports themselves. The third review would have been the most important as it came in October 2007, a time of critical decision-making for the ETP.

Public Relations and communications

In General

966. While it does not come under the heading of communications by TIE or the Council, there was a lot of information that I believe that the public learnt through headlines in the Evening News and other press. This had a significant effect on public opinion.
967. There were a number of other ways in which information about the ETP was communicated to the public:
- 967.1 There were press releases put out by TIE and the Council at various times;
 - 967.2 Media interviews were given by both councillors and Council Officers;
 - 967.3 There were meetings with stakeholders including local businesses and others (see at para 403 above);
 - 967.4 Any member of the public could write to a councillor or a Council Officer requesting further information.
968. In most cases, individual councillors would respond to queries put to them by members of the public, but there were quite often blanket emails to whole political groups or to the whole Council. In these cases, someone like the Transport Convener/Spokesperson for the group would be designated to find out the answer and respond on behalf of the group so as not to bombard the Council Officers.
969. Another way for members of the public to interact with councillors was through delegations to Full Council meetings where the ETP was on the agenda. There was a section of the meeting set aside to hear deputations about issues on the agenda, and that was the way that some

members of the public preferred dealing with it. It worked both ways, in that we had delegations from people who were very critical of the Tram, but we also had groups like Transform Scotland and Friends of the Earth who were very keen on the ETP. People were also free to raise the issue at surgeries that individual councillors held in their wards.

970. In terms of constituent questions that were referred to Council Officers, this would be a case of putting more technical questions to the relevant officers. For instance, on the ETP, I would have referred questions to Marshall Poulton, the Head of Transport (and the TMO). I would then feed his answer back to the constituent, though some Councillors might ask the Council Officer to respond directly to the constituent.
971. There are a series of emails between members of the public and councillors, councillors and TIE, TIE and members of the public and amongst communications staff at both TIE and CEC (**TIE00147176, CEC01298101, CEC01063375**).
972. Regarding, as between TIE and CEC, who was in charge of communicating with the public about the ETP, I do not know but imagine that the public would have seen the Council as the main player. There is perhaps a bit of a lack of understanding of the relationship between a CEC arm's length company and the Council itself. It was often the Council as a body or councillors that were criticised, perhaps wrongly, for things that TIE were or were not doing. That may have been because, for most of the ETP, there was the 'one family' approach. I think if you had asked members of the public, some of them would have known who TIE were and I know that a lot of the business stakeholders in the city were critical of TIE rather than of the Council itself. However, for general members of the public, I think they just assumed that they were the same thing.

973. The means of contacting TIE or the Council, and for getting information, varied at different times. At one stage, for groups of stakeholders like, for example, the Leith Walk businesses, there were weekly updates. There were also information boards at various times throughout the city trying to explain what was going on. TIE was providing the information for these.

CEC communications

974. The group within the Council responsible for dealing with PR was the Corporate Communications team. They would not normally be involved with individual queries; they were more focused on the information that was presented to the press or in combatting false information that had got into the public domain.

975. They were also involved at Full Council meetings. They would usually have someone present to note down the questions or issues that were being raised, particularly if there was a theme that ran through them like the Open for Business scheme not being effective.

TIE Communications

976. TIE had been criticised quite a lot, particularly by the Leith Traders, about the way that information was being supplied (see for instance, Alan Rudland's email of 22 October 2008: **CEC01141370**). I believe that led to the appointment of Mandy Haeburn-Little, who became their main public relations ("PR") representative from sometime in 2009 onwards.

977. CEC and TIE were supposed to be maintaining this 'one family' approach, so the messages from each should have been the same in respect of PR. However, with hindsight there was some contradictory information coming from TIE. I cannot think of any specific examples, although in connection with the Leith businesses there was mention of the Council saying one thing and TIE saying another thing. The emails

mentioned above also show some tension between the Council and TIE's PR team (see for instance, the exchange of January 2008: TIE00147176).

978. I did not have much interaction with the TIE PR team save for some publicity events. Most of my communication was with Lynn McMath at the Council, who would get the relevant information from TIE. They were supposed to be working very closely together.

Quality of Communications

979. There were some issues about communications with particular groups of people. Groups such as the Leith traders (see at para 398 above), sought better information, quicker provision of information and some assurances that this information would be reliable. They did not want to be told that a certain street was going to be closed on a certain day and then find that it was closed a week earlier.
980. There were times when it was particularly critical that communication with the public should work well, such as when the roads were dug up, all the cones and fencing were there and nothing was happening. At that time, however, everybody involved in the ETP was inhibited by commercial and legal confidentiality.
981. As it became increasingly clear that it was going to cost more and take longer, it was difficult to ensure that the public got told as much as they could have been. As councillors, we were limited by what we were told. It was not that we were trying to keep anything from the public; it was that we did not know.
982. It could have been better handled. There should perhaps have been just one body, rather than TIE and the Council both providing information. I am not sure how that would have worked and there was

always the confidentiality issue which did prevent full information going out. Certainly, it became better. TIE took steps to get professional, dedicated PR.

983. I think generally there was a lack of awareness of, in the first instance, the time it would take and that the number of hidden objects under the streets made things take much longer. That was not properly foreseen.
984. There was an action note from a Tram IPG (Internal Planning Group) meeting dated 1 December 2008 (CEC01069093). That document notes that I had met with Jane Wood, Chair of the organisation Essential Edinburgh and that TIE's communication with traders had been severely criticised.
985. Essential Edinburgh was a city centre management organisation covering a portion of the city centre, for businesses and traders with a turnover above a certain threshold. I had several meetings with Jane Wood, who was communicating concerns that I was already aware of from other sources.
986. In terms of what was done about the concerns, I raised them with the Council and with TIE – which is why it ended up on the agenda for this meeting. I listened to the concerns. What she said was true and the traders had quite legitimate concerns. Not all of those concerns could be put down to the ETP, as there were also the effects of the global financial recession. Nevertheless, I expressed those concerns to TIE.
987. A lot of these issues came about because things did not go to plan. A lot of that could not have been foreseen. A good plan was put in place fairly quickly to address these concerns. There was a general notion that there would be disruption, but the extent of it was much greater than it was originally thought because of the disputes that were going on over the

Infraco. As councillors, many of us were as involved as we could be at this stage with all these traders coming and giving us their views.

988. Most of the complaints at this point directly related to TIE as the project manager, and the core of the complaints was that the project was not being managed properly because work was not being done. Things were taking much longer than had been expected and there were issues with communication from TIE. It was probably around this time that communications became much more coordinated between the Council and TIE. There had been a bit of a disjointed approach because, for example, street closures are the business of the Council but streets were closed because TIE's programme said they should be. Things, as a result, gradually evolved into a more coordinated system.
989. In terms of when streets were closed, hoardings and fences put up and signs for the Open for Business strategy put up, there was a division of responsibilities. It was the Infraco's responsibility to keep the sites clean and tidy but I think it was a combination of the Council and TIE who put up the notices. The Council realised they had to take a lead role because of the complaints to councillors. The two sides did come together, though it took some time to implement.
990. The IPG note (at para 984 above) refers to a "*single Communications Plan*" needing to be developed. There was a more co-ordinated approach from this time on, though I do not remember seeing the plan itself if one was developed.
991. Regarding who was responsible for communicating with councillors in relation to issues raised by the ETP, eventually it did become clear though in most cases my contact was with the Council Officers. It is now clear that there were difficulties behind the scenes with people working together across the organisations (see at para 971 above).

Mitigation

992. An email was sent by Leanne Maberley (CEC Communications) to councillors, including me, on 16 May 2008 (CEC01231803). This email discusses disruptions to the Leith Walk businesses and the steps that CEC was proposing or taking to address these.
993. Leanne Maberley's email provides a list of some of the measures that the Council was taking in relation to the works, including business rates relief, business support schemes, information boards and refunds for permits. The issue of permits for tables and chairs was a big one, as people had to pay a fairly substantial amount to put out chairs and tables and obviously, these were not being used. There were also other measures like the Edinburgh Tram Ambassadors, whose job was to spread information. There were also steps taken to ensure that work sites were left more presentable.
994. The steps taken varied over time. From the Council's point of view, I think we listened to what the various groups were asking for.
995. I can recall very clearly that sometimes the messages produced by TIE, in this respect, were not as effective as they should have been. I remember posters whose messages were ambiguous ("*Get Around Edinburgh*"), ill-judged ("*Get up to Speed*") or which seemed to feed into or reinforce key critical messages about the ETP (ie posters seemingly targeted more at tourists than locals).
996. The Open for Business Strategy was really to try and encourage as much footfall in and around city businesses as possible. To take Princes Street as an example, there was an effort to ensure that people knew that the businesses were still operating as usual (even if you could not take your usual bus or route into town). It was to encourage both residents and visitors to not stop coming into Edinburgh because of the ETP. The

strategy included things such as window dressing, the tram information boards and also, on routes into the city, information about how you could get into the centre and where you could get to. It was reminding people that you could still get into Edinburgh even if it did not look particularly open for business.

997. I think TIE probably misjudged both the length of time and the level of the impact that the work was having, particularly in Leith Walk. I do not think TIE fully appreciated just how disruptive the ETP was going to be, and they probably did not foresee how these separate traders came together and made very forceful cases at public meetings and in other forums.
998. It was always apparent that there was going to be lot of disruption and that things would have to be done to try and alleviate the effect of it as much as possible. However, it was only over time that the various schemes were fully developed. I think that, until people saw just what was happening, it was really quite difficult to imagine just what effect it would have.
999. Some of the businesses complaining were very new, and it was at a time of global recession. Some of them may have been businesses that would not have succeeded in any event. I can think of one shop in Shandwick Place, which opened when there were already heavy disruptions. The owners knew what they were letting themselves in for, there was a lot of similar competition in that area and the shop disappeared very quickly. That is not to detract from the serious effect on many businesses.

Compensation Schemes

1000. There were a number of steps put in place to mitigate and compensate businesses in Edinburgh. These included Ratings Relief, the Small Business Support Scheme, the Discretionary Rates Relief Scheme and other measures such as the Open for Business strategy (at para 996

above). A number of those measures are discussed in an October 2007 email exchange between myself and the head of Edinburgh's Federation of Small Businesses (Graham Russell) which was also copied to TIE personnel (CEC01507257). This exchange included a suggestion, by Graham Russell, that the savings being reported by TIE (of £47m) be channelled into further support for affected businesses.

1001. In terms of rates, this was not something that was really within the responsibility of either the Council or of TIE. This was the responsibility of the Assessor of Rates, who has very strict, specific guidelines to apply and is quite limited in what he can do. You might feel very sorry for someone, but if the business' circumstances did not fit within the rules then there was very little that could be done. Graham Russell mentions meeting with the Rates Assessor in his email of 1 November 2007.
1002. I cannot recall the exact details of the Small Business Support Scheme. In outline, there had to be a relationship between the business and the works. Initially it only covered businesses who had works rights outside, but this was later extended to those within a certain distance of worksites (100 metres or 100 yards). This business would have to demonstrate their profits had been adversely affected by the reduction in footfall. They would have to produce figures and show that the reduction was a direct result of the works. The effect of the 2008 recession on businesses made this more difficult. There were also some cases, such as a furniture retailer in Leith, where it might be doubtful whether the impact was that great as there were not purchases made based on passing trade.
1003. The scheme was funded out of a heading in the budget that TIE operated under. This budget included an amount that was to be put towards helping other businesses. TIE had looked at what had been provided in other schemes (Dublin, Nottingham and so on) and they claimed that this scheme was more favourable.

1004. In terms of the savings of £47m and the reallocation of that money to compensation, as mentioned in Graham Russell's email (at para 1000 above), one can consider whether public expectations of the project's budget and compensation scheme were misguided.
1005. The £47m in savings referred to here were not savings as such. My understanding is that this represented the 'headroom' within the overall funding envelope of £545m – the difference between the £545m and the then Line 1a cost of £498m. I am not sure where Graham Russell got this figure from, but probably from a Council report. It would be premature for anyone to be talking about savings at this point.
1006. We tended to refer to the range of measures put in place as a "*business support scheme*" rather than a compensation scheme. That was because the main form of business support was provided by the Open for Business strategy. We also provided support through this marketing strategy for the city traders. There was also later an 'enhanced support scheme'. I cannot remember the exact detail of this but it involved more finance, a widening of the 'Open for Business' programme and appointment of town centre coordinators in City Centre, West End and Leith Walk (Graham Russell was later appointed to one of these posts). I know that it provided more support.
1007. TIE claimed that the range of steps they had taken was the best scheme of its kind, and no other tram project had matched it. However, perhaps no other tram project had failed to communicate the time that would be taken to do some of the work and that was the element that was so upsetting to people. I do not know what else was considered other than these measures. Many of the measures taken evolved as a result of emails and discussions with the traders themselves.

1008. In the aftermath of the Mar Hall Mediation (from March 2011 onwards), I believe that the reporting did include additional measures that were going to be taken. I cannot recall what was involved and what steps were taken.

Communications with businesses – Leith Traders

1009. An email, dated 30 November 2010, was sent to some councillors (including myself) by the head of the Leith Business Association (“LBA”). It sought a number of things, including:

1009.1 Reinstatement of the road layout, crossings and trees;

1009.2 Assurances in respect of future TROs;

1009.3 A new compensation package to assist traders irrespective of their size or rateable value.

1010. I do not recall what was done in relation to this email. This came at a time when the emergency motion for mediation (at para 687.3 above) was being considered. Given the stand-off between the Infracore and TIE at that point, I doubt whether there would have been immediate actions.

1011. There were quite a lot of reports coming to Council regarding what help was being given. There was a general understanding that concerns were legitimate. The last thing we wanted was to lose all support for the ETP because of people having to put up with situations where the roads were all dug up, left in a mess and no work was actually being done. I personally contacted TIE on many occasions to try and ensure that communications improved and that people were told what was happening. We also tried to ensure that the impact on pavements and streets was minimised. It did not always work well. At one stage, notices went up in Leith Walk saying “*Shandwick Place is open for business*”. They put the wrong notice on the wrong fence.

1012. Council Officers did attend some of the meetings with groups like the LBA or groups representing the city centre and the West End.
1013. I do not know how the reduced scope of the line was communicated to the businesses in Leith. There was some enthusiasm that the utilities had been comprehensively redone. In general, there was great disappointment that the tram was not going down Leith Walk because there had been disruption with nothing to show for it.

Calls for a referendum

1014. There are minutes of the meeting of the TIEC on 6 May 2008, which I attended (CEC01241182). That meeting received a deputation seeking a referendum on the ETP and other transport projects (at item 5, pg 2).
1015. I attended that committee meeting as the Council Leader (and Deputy Leader) is an *ex officio* member. This allowed us to keep an eye on what was going on. I tried to attend a lot of committee meetings as Council Leader, as it was important to have a good overview of what was happening in all the areas of the Council. While you can get some idea of meetings from the minutes, it is not the same as actually being there and getting a sense of its atmosphere and how the Convener handles matters.
1016. This was not really a formal call for a referendum – it was simply a deputation from someone who came along to a lot of meetings. The referendum request also covered more than just the ETP, and included other projects like EARL. A formal request would have had to have come through a motion or an amendment from a political group at a Full Council meeting.
1017. There was a more serious request for a referendum by the SNP later in the process, in around June or July 2011. I think they were running out of

'empty' amendments they could make to tram related decisions. It was not long after the Mar Hall discussions, and there were options which came up over a short period of time as to where the ETP was going to go to or whether it was going to be terminated altogether. The SNP did not expect it to gain support – I think they would have been absolutely horrified had the request been accepted.

1018. It was not the right time to have a referendum, and referenda are extremely expensive. The 2005 Congestion Charging Referendum (see at paras 154 above) had taken ten months to run. The CEC Chief Executive was asked about the cost and timescales required. By 2011, it would have involved, from memory, around £750,000 and would have required a few months to carry out. This was a lot of money, and it was too late as it would have caused even more delay. Also, of the 58 councillors in office at 2011, 46 had stood on pro-tram manifestos.

Costs overruns and consequences

Awareness of and reasons for the overrun

1019. It is difficult to remember exactly when I was told or aware that there were likely to be significant cost overruns. The 1 May 2008 Council report to the Full Council (see at para 343 above) did inform us that Line 1b (Roseburn to Granton) was under threat because of adverse movement in the cost and, by April 2009, Line 1b had been postponed due to the economic conditions and funding constraints.
1020. Although at that point the ETP was still within the £545m funding envelope, it was becoming clear that this was not going to be the final figure. By the time of the 24 June 2010 Full Council meeting (see at para 630 above), it was clear that Line 1a could not be delivered with the

£545m funding. My awareness of that would have come through briefings prior to the Full Council meeting.

1021. With hindsight, and possibly for quite a long time prior to that June 2010 meeting, there were internal discussions making it clear to some people that costs had overrun. Despite this, the councillors were still being told in many of these Council papers that the project was still within the funding envelope.
1022. We always knew there was some uncertainty on the costs, despite the fact we were being told it was a fixed price contract. The overrun started with the utility diversions, which cost more than originally planned as the scope vastly increased. The Princes Street standoff and the resultant PSSA also put the price up considerably. All of the disputes that took place increased the price. It was a combination of multiple things that brought about the overrun in costs.
1023. My understanding of how the overrun arose evolved over the course of the project. Different reasons were given for it at different times and the ones I have mentioned are the general ones I understood to be responsible.
1024. The ETP was not helped by the global economic downturn at that time. There was also the fact that, between 2010 and 2011, the city experienced horrendous winter conditions which brought the project to a total standstill. These were the worst winters in a very long time, with Edinburgh under snow and the ground totally frozen and unworkable. This would have impacted on the costs.
1025. At the core of it all was the fact that the Infracore entitled the Contractor to a lot more money than we had originally thought had been agreed.

1026. Before the Mar Hall Mediation, I would say that we were probably not kept properly informed of the risks of cost overrun. In terms of the risks, we were told that everything had been taken into account. I do not think we were ever specifically told that it would probably cost more. The cost overrun and the curtailment go together, because the curtailment meant the Council was getting less line than had been planned for a certain sum of money.
1027. The figures that were worked out during that mediation process (resulting in the Settlement Agreement) were much more clearly fixed.
1028. I think most councillors probably felt like I did; it became clear to us as time went on that the fixed price cost contract was becoming less and less fixed and it became quite clear that the risk was increasing. We were told once the £545m funding envelope had been breached but I do not remember getting any papers or reports prior to that detailing the risk of overrun or its extent. I do not know whether that was because nobody knew or because those that knew did not wish to share that information with us. Some financial figures were confidential in that, if the Council had broadcast publicly that it thought the project was now going to cost another £100m, the Consortium would have taken advantage of that information.

Financial consequences of the overrun

1029. There was a lot of consideration given to how the additional money that the Council had to put in after the Mar Hall Mediation would be found. There were presentations and reports to Council and external advice from various consultants. Some consideration was given to leasing the trams to other operators. A bond issue was considered, as bonds had previously been used by Councils for projects. This had not happened in

Edinburgh for a long time, if at all. We always knew that there was not going to be more Scottish Government funding.

1030. Every option was analysed to determine the effect that it would have on the rest of the Council's finances. Borrowing through the prudential framework was seen as the main option due to its favourable rates compared to the open market. It was always intended that the revenue cost of borrowing would be paid for from the ETP itself. There was a lot of thought given to the Council's financial strategy, and the Council Officers involved would be looking very closely at the effect on revenue expenditure on borrowing. The August 2011 report (see at para 800 above) involved discussion of the Settlement Agreement and a great deal of information about the various options. By that point it was clear more finance would be needed.
1031. As councillors, we were told by the Council Officers responsible that the Council's revenue could bear the borrowing and that it was containable without any detriment to services or to other projects.
1032. In figures for 2014, there is a revenue cost of £5.8m to cover the additional capital expenditure of £231m. I believe this is considerably lower than was thought due to changes in the Treasury Management Strategy, which varies from year to year. This revenue impact is not enormous in terms of the Council's overall budget.
1033. Regarding whether there was any specific capital outlay or expenditure that was cut as a result of the funding of the ETP, it is possible but I cannot remember anything specifically. Capital projects might, quite often, be delayed because of unforeseen capital pressures such as, for example, emergency or unexpected major repairs to schools. I do not remember, however, hearing that spending on the ETP would have a negative impact on another Council project. There was also the effect on

finances that termination might have had (including the unavailability of prudential borrowing for termination) as I have already discussed (at paras 792 - 793 above).

1034. A service to Haymarket was never going to make a profit and would continue to be a drain on Council finances every year. After a period of possibly around ten years, a line to St Andrew Square/York Place would gradually start making a profit. Obviously, it was never going to be as profitable as a longer line to the waterfront.
1035. The SLD Group, when in administration, was always adamant that Lothian Buses would not suffer as a result of the ETP and Lothian Buses would not have to finance the tram on an on-going basis. Based on the figures, the tram was always expected to become independently profitable.
1036. It was always expected that there would be an operating profit for TEL. In August 2011, reports and presentations on possible future funding arrangements identified the TEL Business Plan, amongst others, as a source of revenue for the additional borrowing that it was known would be needed.

Other consequences

1037. One major consequence of the ETP was the harm to the Council's reputation. At the end of the day, because the Council was the promoter of the project, its reputation was harmed by the fact that the project was not delivered on time, on budget or to the extent projected.
1038. The delay in the start of operations meant that a profitable service could not be in place as quickly as had been hoped. There would also have been an impact on waterfront developments due to the curtailment of the line. However, there was also the impact of the global recession. The

delay probably has not helped development of some of the key areas in Edinburgh. There have been both economic and social consequences.

1039. The consequences for my constituents in the Gyle area were more limited than those for other areas. Councillors in the Leith wards would have seen more disappointment caused by the upheaval associated with the ETP with the only benefit to show for it being the utilities work rather than having a tram at the end of it.
1040. During my time as Council Leader, I was heavily involved in the economic development side of the city. Every effort was made to try to draw businesses in, and the tram was a selling point for that. That may have mitigated some of the overall social and economic impact on the city.
1041. Regarding the extent to which the shortened line resulted in the ETP failing to meet the objectives and benefits set out in the Final Business Case, the curtailment meant that there was a lower benefit-cost ratio. Part of the FBC, I believe, was that there would be enhancement of areas like the Leith Waterfront and the West Edinburgh development area. Some of those developments were slowed or lost due to the way the ETP proceeded. There was less benefit to retail in some parts of the city than what we had originally hoped for.
1042. There were general benefits from trams, particularly their environmental usefulness in attracting people onto public transport and out of cars. In every city that has introduced trams, it has been proven that trams draw people onto public transport in a way that buses do not. In most places, this has resulted in less air pollution in city centres due to the reduction of cars. I believe that there have been some studies on the Edinburgh Tram, and that it does seem to have that same impact in attracting passengers who would not consider going on a bus. Some of the general

benefits, like this environmental effect, have still been realised but there has been a lower benefit cost ratio in some areas and they have obviously lost out.

1043. I do not think the failure of the ETP to be delivered as originally hoped has had a negative effect on the development of public transport in Edinburgh. We, as councillors, always believed that once the trams were in place people were going to be happy with them. That thought kept us going through much of the project, and I think has proven to be the case. We still occasionally have criticisms, from bloggers and others, damning the whole idea of trams but I think, in general, most people are quite happy that the trams are there and running. I am still frequently approached by members of the public telling me that they are glad we continued with the project and that, while they were initially sceptical, they now think the trams are wonderful. I think the public perception of the trams is now different: people like and use them now they are in place. The tram detractors will fade away.

Final Comments

1044. I provide some final comments below to summarise my experience of and final thoughts on the ETP

Reasons for failure of the ETP

1045. It is worth bearing in mind that, in the context of public infrastructure projects, the ETP was by no means the worst or even particularly unusual in experiencing cost and time overruns. There are numerous other examples, including the Scottish Parliament Building, the Dublin tram system, the Skye Bridge and the new Forth Bridge. That is not to say that I want to excuse what happened with the ETP. Certainly there is

an opportunity to learn lessons from it and hopefully the Inquiry will find out what the main reasons for the failure actually were.

Background reasons

1046. There were a number of background reasons making it difficult to deliver on time and within budget:

1046.1 Technical factors that were related to the ground conditions and to discoveries underground, particularly when they were digging the utilities trenches.

1046.2 Economic factors such as the global recession (from 2008 onwards).

1046.3 Environmental factors, such as the weather conditions.

1046.4 National political factors, in that – at the start of the project and during the utilities diversion – work was put on hold. This was while the SNP decided, at a Scottish Government level, whether to commit to the project.

1046.5 Local political factors within the Council (though I would not put great emphasis on these). There were parties playing political 'football' with the ETP, in 2011 in particular. I do not think it affected the timing or the budget of the ETP, but it was politically difficult for the SLD members of the Administration. Particularly at the start of the coalition administration, we had to spend considerable time keeping our SNP Coalition partners on board so as not to block progress.

Main reasons

1047. Those are some of the background reasons but I also think that there were larger, principal reasons. These main reasons were related to the

infrastructure contract, TIE's management of the contract, the behaviour of TIE in general and TIE's relationship with the Council.

1048. With hindsight, there was possibly a lack of oversight of the project from Council Officers and from TS. There may not have been the right relationship between TIE and the Council from the beginning of the ETP.
1049. The infrastructure contract, which I think is at the core of the problems, appears to have been unworkable, deeply flawed and unfit for purpose. It was sold to councillors as 'fixed price', but it was not. We were told that risk had been passed to the private sector, but it had not been – at least not to the extent we had been led to believe.
1050. It has been suggested that the Consortium bid unrealistically low for the Infraco contract, knowing they would be able to exploit loopholes in the contract to get more money. In doing this, I would not put any blame on BB and Siemens because they were doing what they should have been doing as private companies - making profits for their shareholders while delivering on their reading of the contract.
1051. I do not think that the Consortium behaved impeccably, but my impression was that they did not have much respect for TIE's behaviour. This caused or encouraged them to reach the standoff situations that they did.
1052. It could have been that the Infraco was just drawn up incompetently by people who were not skilled enough to do the job, or there is the possibility that there were people even within TIE who knew the contract was flawed but still sold it to us as a fixed price contract. This comes from hindsight and from Richard Walker's comments to me about a 'Gentleman's Agreement' with the then TIE Chief Executive.

1053. With hindsight, the possible incentivisation of certain TIE Directors and employees (Richard Jeffrey's comments in 2010) raises concerns, which were shared by others (such as Nick Smith, one of the Legal Officers), about the probity of decisions that were taken.
1054. In essence, on the infrastructure contract side, it was a flawed contract which just was not suitable and certainly, as councillors, I do not believe that we had any inkling of this at the time. We relied on the fact that we were told this was, in essence, a fixed price contract and the risk had been contained or that the cost of the risk had been transferred to the private sector.
1055. The other side of the problem was the way in which TIE actually managed the Infraco (albeit that it was a flawed contract).
1056. It seems that there may have been an initial issue in that TIE retained DLA to advise them on disputes arising out of a contract that DLA had drafted. DLA were giving advice to both the Council and TIE on how the contract worked. On the DRPs, it appears that we were being given very optimistic stories by TIE about how disputes were being resolved.
1057. It is now clear that a number of Council Officers (such as Nick Smith and Marshall Poulton) had issues with how TIE was actually project managing the contract.
1058. While TIE was set up in 2002 as a delivery mechanism for transport projects, it may not have been the appropriate vehicle for delivering these. Adverse comments from some of the Council Officers (information that only became available to me through this Inquiry) suggest they did not believe TIE had the capacity to do what it was set up to do, They believed there was both a lack of competence and a lack of openness with the Council, with Council Officers feeling ignored or sidestepped. These criticisms seem to date from late 2010 (around the time of the

emergency motion to consider mediation) and I am not sure to what extent doubts and criticisms about TIE had been present before. In general, it seems that the 'one family' approach that prevailed between TIE and the Council was a very one sided one.

1059. It seems that the Council, in terms of both the Council Officers and, through them, the councillors, were too trusting of TIE. Both thought TIE had the requisite capacity. With hindsight, oversight was inadequate – particularly in the early stages when the Infraco was being drafted. The general feeling was that the Council Solicitor and legal officers did not have the right experience in that field.
1060. After mediation, all the problems with the running of the project were essentially resolved. That leads me to think that TIE was a bigger part of the problem than I had thought prior to their liquidation. The information that councillors got was not up to date or as accurate as it should have been. I suspect that was because Council Officers were not adequately informed by TIE. Council Officers legitimately had to make decisions regarding whether, under what circumstances and what to tell councillors, based on the evolution of a situation.
1061. There were so many issues raised around the confidentiality of the ETP that we never had a full picture of the issues involved. Even with fuller and more complete information, it is difficult to say whether it would have impacted on the strategic decisions that we made.
1062. Much has been made of the decision of TS to take a backseat in the running of the ETP. While others have been critical of this, I believe that once the grant had been made this was TS' decision. It is impossible to judge whether it was correct. Presumably TS had sufficient confidence in TIE to deliver the project, because otherwise I would have expected them to warn the Council that that was not the case.

Avoiding these failures


1063. In terms of avoiding the failures of the ETP, I believe there are a number of things that would have helped.
1064. I think that the project needed a better contract and better management of the contract by a trusted and experienced delivery body.
1065. The project also probably needed simpler governance, as it was difficult to understand what it was all about. There needed to be fewer layers between the delivery vehicle and the oversight of the project.
1066. While it is not a suggestion for avoiding failure, there does need to be an understanding that failing to deliver on time and on budget is not always unexpected. There will always be some unforeseen circumstances in a project, and there will always be those who try to damage projects by criticising them from the side-lines. While this may not affect the delivery of the project, it certainly affects the atmosphere around it.

Other comments to the Inquiry

1067. I have found it difficult to recall many of the details sought about the ETP, so my answers all come with a 'health warning', and it is possible that there is further information that could have been included in this statement. Equally, the ETP was only one of a huge number of items that I had to deal with as the Council Leader of a large capital city like Edinburgh. I was not on any of the relevant boards (TIE, TEL and the TPB) so there is a certain limit to what I knew.
1068. Above all, there needs to be an understanding of the respective roles and responsibilities of councillors and Council Officers – which I do not think has been fully understood. Councillors are not Council Officers, and they are not and should not be involved in daily operations. While we have a

democratic system of local government, there does need to be that differentiation between a councillor's role and a Council Officer's role.

1069. I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 279 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature 

Date of signing.....*30/06/17*.....