

11:00

The Convener: Thank you very much. Can you confirm that the City of Edinburgh Council is clearly responsible for all decisions on the management, progress and implementation of the project?

Sue Bruce: The City of Edinburgh Council is clearly the client in the project. TIE, which is wholly owned by the council, is the arm's-length organisation responsible for the operational delivery of the tram. The council has put in place monitoring arrangements to enable it to take decisions with regard to its own wishes and aspirations for the tram, but TIE takes the operational decisions.

The Convener: Yes, but as the organisation responsible for the budget, for awarding and authorising the contracts and so on, the City of Edinburgh Council is responsible for monitoring and supervising efficient use of resources and effective progress.

Sue Bruce: I think that that is a reasonable assertion.

The Convener: And the leader and deputy leader of the council have, through the appropriate board of the council, made the decision to authorise the chief executive to have delegated authority to permit TIE to sign contracts.

Sue Bruce: That is the case. The council's policy decision is to proceed in this regard and the arrangements that were set up at the outset are exactly as you have described.

I have steeped myself in this issue but, having been in post for only seven weeks, I might need to defer to my colleagues for more detailed comment.

Donald McGougan (City of Edinburgh Council): Perhaps I can help. The council decided to delegate to the chief executive the authority to authorise TIE to enter into contracts but, because the final stage of contract negotiation took longer than expected, the chief executive at the time did not take advantage of that delegated authority and brought the report back to the full council for the decision to authorise entering into contracts. I do not think that it would be fair to say that the decision was made by the leader and the deputy leader; it was actually a formal decision of the council.

The Convener: Would the recommendation have come from whoever ran the appropriate policy board—or was there actually no recommendation at all and Edinburgh had no view on the matter?

Donald McGougan: The recommendation came from council officials—in other words, from

me and the director of city development, who at that time was Andrew Holmes.

The Convener: But the process itself would involve a recommendation being made and whoever convened that board or meeting taking ownership of it and putting it formally to the meeting. Is that correct?

Donald McGougan: No.

The Convener: No?

Donald McGougan: The process at a council meeting is that the council considers an officer report and the different political groups on the council can take a view on its contents. Someone on the council will then move either the recommendations in the report or, if they do not agree with them, amendments to the report.

The Convener: Who on behalf of the council moved the reports on giving delegated authority to instruct TIE to enter into contracts?

Donald McGougan: I cannot remember who moved that report at the council meeting, but it will be a matter of public record.

The Convener: Right. So we could find that out. You could revert that information to us.

Donald McGougan: Yes.

The Convener: Essentially, all the big decisions have been made by the City of Edinburgh Council, and TIE reports to the council for those decisions. Is that correct?

Donald McGougan: Yes. The council is the project owner and co-funder, and TIE is the delivery agent.

Richard Jeffrey (TIE): May I add a clarification? A number of different governance arrangements are in place between the City of Edinburgh Council and TIE. The latter has an operating board and a parent company, TEL—Transport Edinburgh Ltd—which is also a 100 per cent-owned subsidiary of the City of Edinburgh Council. There is also the tram project board, which has certain authorities delegated to it. All the decisions that fall within the delegated authority of the tram project board are made by that board. If decisions are required that go outwith the board's delegated authority, they are referred back to the council.

The Convener: Okay. I will just finish this bit, then I will bring in George Foulkes. Who chairs the policy and strategy committee of the council?

Sue Bruce: The leader of the council.

The Convener: Right. The convener of that committee ruled on, I think, 13 May 2008, under your standing order 22, that a changed commercial position in procurement negotiations for the Edinburgh tram network constituted a

material change in circumstances and suggested that the matter be reconsidered at that meeting. So that came from the convener, rather than from officials, although I presume that the convener was briefed by officials, as Mr McGougan has suggested. What was the nature of the changed commercial position at that time that necessitated that move by the committee convener?

Dave Anderson (City of Edinburgh Council): Perhaps I can address that. My understanding—it was about eight weeks after I arrived at the council—was that during the period of about nine months in the run-up to that particular meeting there had been further negotiations in relation to the additional novation of the systems design service contract to the council, and a settlement was arrived at between TIE and the consortium in relation to the novation of the SDS contract to the consortium to take over responsibility for design management. At that point in time, there was a change to the financial settlement with the consortium. There was also provision made for compensation to the consortium of £3.2 million in the event that tramline 1b did not proceed. My recollection, from very early on in my time in the council, is that that was the change that was being referred to.

The Convener: Okay.

George Foulkes: I want to go back a bit to the decision. Sue Bruce said that the Auditor General's report is fair and accurate, which is something that I agree with.

Sue Bruce: I said that it was balanced.

George Foulkes: Paragraph 22 of the report states:

"The ... Government's grant ... was conditional on CEC approving a final business case".

That is one of the big decisions to which the convener referred. What was the procedure within the council for approving that final business case?

Donald McGougan: That constituted part of the report to the council in terms of the final approval of the project. The business case for the tram is very complex and includes a number of components: the estimated capital costs of the project; the cost of operations; the maintenance of the project or the trams going forward; development assumptions about the Edinburgh economy and the wider economy; patronage assumptions; and time savings in relation to public transport journeys. All those aspects came together in the business case.

The business case was prepared by TIE with significant inputs from independent consultants and others. In terms of patronage, for example, a huge number of complex and technical financial transport models are run. They were run by Steer

Davies Gleave and Colin Buchanan and Partners. Development assumptions were reviewed by our own planning department and by Pieda; patronage assumptions were reviewed by Lothian Buses; and the whole thing was reviewed by officers in finance and in city development within the council.

George Foulkes: That is a very helpful answer. You had a business case produced by TIE and there was input from Colin Buchanan, from Pieda and from Lothian Buses, and then it came up to the council. What is the procedure within the council for assessing such a case? You have to make your own assessment and make a recommendation to elected members. Who did that?

Donald McGougan: That is what I was trying to say. Officers in the council were involved in—

George Foulkes: Which officers?

Donald McGougan: In city development and in finance, and in planning in relation to the development assumptions, and then in the transport section in relation to the work that Steer Davies Gleave and Colin Buchanan and Partners did. Across the council, a whole variety of officers was involved.

George Foulkes: Who was the lead officer—the person who put his or her name to the paper that went to the council recommending the approval of the final business case?

Donald McGougan: The answer to that is the same as was given in the answer to a previous question: it was the director of city development and me as director of finance.

George Foulkes: Two?

Donald McGougan: Yes.

George Foulkes: Is it not better to have one officer who is ultimately responsible, rather than two?

Donald McGougan: The normal practice for reports to the council is that one officer would sign it off.

George Foulkes: Which officer signed it off then?

Donald McGougan: The normal practice is for it to be the service director with senior responsibility for the project. In this case, that was the director of city development. However, because of the size, scale and importance of the project, it was felt advisable to have the director of finance involved in the sign-off process.

George Foulkes: What about monitoring progress after the approval of the final business case? Who was the officer responsible for keeping

an eye on how things were going and reporting to the council on progress?

Donald McGougan: In terms of the whole project—

George Foulkes: Yes.

Donald McGougan: The senior officer responsible is the director of city development, but—

George Foulkes: Always the director of city development.

Donald McGougan: No, sorry. I will finish. We also have a nominated officer from within the department of city development, who is the tram monitoring officer. Within our governing arrangements with TIE, that officer has responsibilities. However, I have continued to be a joint signatory with the director of city development to the progress reports that have been submitted to the council.

George Foulkes: One thing that comes out clearly from the report is that there was confusion at different levels and at different periods of time over who was actually responsible for ensuring that this project was delivered on time and for ensuring that the council was informed about it. TIE and TEL and Lothian Buses and the whole structure—which we will come to later—contributed. You are telling me now that even within the council a number of officials had different responsibilities.

I have a question for Sue Bruce. Was that not bad practice? Within the council, is it not better practice to have one official who is responsible to you, and through you to the council, rather than having three or four officials?

Sue Bruce: A key element is that each officer involved should be clear about their roles, responsibilities and accountabilities. That is now the corporate policy of the council. Each relevant officer has corporate responsibility for the elements of the project on which they can provide key advice.

George Foulkes: Even with corporate responsibility, and with the chief executive having ultimate responsibility, I would have thought that a wise chief executive would say that one person should have continuing responsibility for monitoring things, for ensuring that everything is up to speed and for ensuring that everything in the business case is actually being achieved.

11:15

Sue Bruce: As Donald McGougan said, we have a tram monitoring officer who works to Dave Anderson, so city development is the lead directorate for delivery of the tram project. Donald

McGougan, as section 95 officer for the council, has lead responsibility for providing guidance, advice and direction on financial matters. The two directorates work closely to provide collective advice to the council. The key issue is about each officer having clarity about their roles, responsibilities and accountabilities.

George Foulkes: I will leave it there.

Jamie Hepburn: Can the chief executive of the City of Edinburgh Council tell me whether she is satisfied that the governance arrangements that are in place for the project are sound?

Sue Bruce: As we said, the Auditor General's report raises questions whether the governance arrangements are sound. As a chief executive coming in to the council, I want to satisfy myself across the board about governance arrangements, whether to do with this or any other project.

Jamie Hepburn: We are interested only in this project today.

Sue Bruce: The Auditor General has raised these questions and we are certainly looking at the matter to see whether a change of direction or further clarity is required.

Jamie Hepburn: May I ask the gentlemen who have had longer involvement in the project whether they are satisfied that the governance arrangements are sound?

Dave Anderson: I believe that the governance structure is complex, but that all the adequate checks and measures in relation to reporting progress on the project are in place. Where the project currently stands is a symptom not of the governance arrangements, but of the contractual dispute with the consortium.

Exhibit 12 on page 34—

Jamie Hepburn: If I may interject, surely an aspect of the governance arrangements is managing the contract. What is the governance structure for, if it is not for that?

Dave Anderson: The management of the contract is a matter for TIE, as the council's arm's-length company, and the consortium. Both Donald McGougan and I are members of the tram project board. Every four weeks we attend the board and get a comprehensive update on exactly where the project stands and on issues related to it.

Throughout the duration of our time in post we have been privy to the strategy adopted by TIE to deal with the dispute with the contractor.

Donald McGougan: The governance arrangements were reviewed at the start of the project as part of the previous Audit Scotland review. They were obviously part of an Office of Government Commerce review at that stage and

the recommendations were that the governance arrangements appeared to be sound. However, I agree with the chief executive's comments that, given that we are four years into the project and given the contractual difficulties that have emerged, it is certainly time for us to have another look at the governance arrangements. That would be the correct thing to do and we want to do that as we come out of the mediation process to see whether we can focus on the best way forward on the project for the people of Edinburgh.

Jamie Hepburn: Is that work under way? What is the early prognosis?

Sue Bruce: Page 35 of the Auditor General's report reflects the Office of Government Commerce's comments on the requirements of corporate governance in an organisation such as this. It identifies three roles, which the Auditor General's report recognises are present. As Donald McGougan said, we have to sort out a number of issues in terms of the delivery of the project, some of which will be discussed in mediation in the immediate future.

We want to examine the effectiveness of the governance arrangements. We have in place the roles that would be expected to be in place for the governance of such a project but we want to reflect on the matter and see whether any adjustments and improvements can be made and whether further clarity can be provided.

Jamie Hepburn: Do you agree with the recommendation in the Auditor General's report that Transport Scotland should have a greater role in the process?

Sue Bruce: Yes. Transport Scotland is a major stakeholder in the project and I would certainly welcome its involvement, given the expertise that it can bring to the table. Clearly, as it is a major stakeholder, it will want to satisfy itself that the governance arrangements are appropriate.

Jamie Hepburn: You say that Transport Scotland is a major stakeholder, but in what sense is it a major stakeholder? You and Mr McGougan have both stated clearly on the record that the City of Edinburgh Council is the complete owner of the project. That is the case.

Sue Bruce: I said that the City of Edinburgh Council was the client. Transport Scotland is a major funder of the project and therefore, by definition, it is a major stakeholder.

Jamie Hepburn: But it does not own the project, does it?

Sue Bruce: No, but as a major funder on behalf of the Government it is entitled to express a view. If Transport Scotland were at the table, that could only be helpful, to be honest.

Jamie Hepburn: Do you not feel that the recommendation that Transport Scotland should be involved is a bit of an indictment of the management of the whole process? That body needs to come on board because it has the expertise that you do not have.

Sue Bruce: Transport Scotland can bring an additional dimension.

Jamie Hepburn: A dimension that you do not have.

Sue Bruce: It brings its own views as a core funder of the project. Transport is what it does full stop. I have had the benefit of working with Transport Scotland previously on other projects in Scotland and I have found them helpful to work with. They bring their own expertise to the table, and we should welcome that.

Jamie Hepburn: If you are saying that you need its involvement, does that not indicate that this project was somewhat beyond the City of Edinburgh Council in the first place?

Sue Bruce: Not necessarily. What I am saying is that if Transport Scotland can bring something useful to the discussion, we should welcome that.

Murdo Fraser: I want to follow up Mr Hepburn's line of questioning about Transport Scotland. The Auditor General makes it clear in paragraphs 70 to 72 of his report that, originally, Transport Scotland was represented on the tram project board but that in June 2007, after the parliamentary vote on the funding of the tram project, ministers instructed Transport Scotland to withdraw from the project board. Was the City of Edinburgh Council consulted by Transport Scotland before it took the decision to withdraw from the board?

Donald McGougan: No, we were not consulted; we were notified.

Murdo Fraser: You were just told. It was a fait accompli by that agency.

Donald McGougan: Correct.

Murdo Fraser: What effect did the withdrawal of Transport Scotland from the board have on the project? Is it something that you regret?

Donald McGougan: At that stage of the project, we recognised that the conditions had changed around the provision of the grant, that the Government's contribution was capped and that Transport Scotland was withdrawing on the back of that. Given the stage that the project was at, it was felt that we needed to ensure that TIE had the delivery capability to ensure that the project was taken forward in accordance with the overall objectives.

Murdo Fraser: Do you feel that that was achieved?

Donald McGougan: We can see from the Auditor General's report that elements of the project have been successful and have gone well. However, we are clearly in significant difficulties with the contract related to the provision of the infrastructure. Those are complex matters. The Auditor General in his previous evidence stressed the complexity of the issues. Because those issues are subject to mediation and could be subject to future legal action, we do not want to go into them in any detail in front of the committee today. However, although there are complex legal and contractual issues surrounding the project, I expect that they would have arisen even if Transport Scotland had retained a seat on the board.

Richard Jeffrey: May I add something? The contractual disputes between us and the consortium were clearly not part of the original plan. As those disputes have arisen, we have supplemented our resources with a range of recruits and consultants who have specialist expertise in the areas that are in dispute. The resource and capability of any organisation is not set in stone at any given point in time; it needs to evolve to match the challenges that face the organisation.

Murdo Fraser: I do not think that members of the committee want in any way to disparage the management of the project by the City of Edinburgh Council, but we all recognise that things have not gone according to plan. On the back of the Auditor General's report, we are trying to get a handle on the extent to which the withdrawal from the project board of Transport Scotland in 2007 had a negative impact. Had it stayed at the table, would that have made a difference? Mr McGougan, in your answer to me, you sort of indicated that its expertise might have been helpful.

Donald McGougan: To answer that question would require speculation and I do not want to speculate on what might have happened as we went through the process.

Murdo Fraser: Okay. Perhaps we can look forward. The Auditor General has recommended that Transport Scotland should have a more active involvement in the project. Do you see that as being advantageous at this stage?

Donald McGougan: The chief executive has answered that question, and I agree with her answer.

The Convener: I would like to pursue that, as I am a bit confused. Even with the benefit of hindsight, you are saying that whether it would have been beneficial for Transport Scotland to continue to be involved is a matter of pure speculation. However, Sue Bruce and you have

said quite clearly that it would be helpful if Transport Scotland were to come back into the process. What has caused you to believe that Transport Scotland's involvement could be helpful to the process, given that you cannot say whether it would have been helpful if it had not withdrawn in 2007?

Donald McGougan: I cannot look into the future, either—

The Convener: You have said that it could be helpful—

Donald McGougan: Yes, it could be helpful. The other point that I would make is that, although Transport Scotland is not part of the tram project board, it has been closely involved in a monitoring role over the period that we have been talking about, and we have discussed with it all the issues that have beset the infrastructure part of the project and have had the benefit of its guidance at some level with regard to the generalities of the project. What we are talking about post-mediation is a different situation. Given that we are where we are, and that the project is so far behind due to the difficulties that we are facing, any assistance that the council and TIE can receive from any other agency would be helpful.

Richard Jeffrey: Can I—

The Convener: Let me follow this through for a minute, Mr Jeffrey.

Mr McGougan, you and Sue Bruce have said that it could be helpful if Transport Scotland were involved, but you are saying that you cannot offer a comment about whether it would have been helpful had Transport Scotland stayed involved. Why is that?

Donald McGougan: It could have been helpful.

The Convener: That is a bit different from saying that it is pure speculation. Your considered opinion is that it could have been helpful.

Richard Jeffrey: We should not confuse the lack of involvement of Transport Scotland through formal governance procedures with it not being involved in the project at all. We have kept Transport Scotland regularly updated and have had conversations with it around various issues that the project has faced. Some of those conversations have been helpful.

Shirley-Anne Somerville (Lothians) (SNP): Mr McGougan, earlier you said that, after the emergence of the contractual dispute, it would be useful to consider the management process that has existed throughout the project. There is no doubt that that is complex. However, the issues have not emerged only recently.

There is a delay because of the mediation, and I appreciate that you do not want to make quick

decisions with a new chief executive in post and the mediation under way. However, were any discussions had 18 months or two years ago, when the writing was on the wall about the difficulties with the project? The diagram in the Auditor General's report about the decision-making process is exceptionally complex. Did no one think at the time that it might be useful to review the governance procedures because they were not working effectively?

11:30

Richard Jeffrey: I know that the questions were for Mr McGougan, but I can answer them. The contractual difficulties have emerged and evolved over a period—they did not appear suddenly one day. When I joined the project nearly two years ago, the contractual difficulties were clear.

The strategies that we have adopted to deal with the contractual difficulties are a different issue from governance. The existing governance arrangements through the tram project board, the TEL board and the relationship with the city council have been discussed, and decisions have been taken about strategies and tactics. The question of how the governance is structured and should be structured in the future has not prevented such decisions from being taken.

Shirley-Anne Somerville: I appreciate that and I will return to your strategy and tactics later. Did no discussions about governance take place until the Audit Scotland report suddenly flagged up the fact that the arrangements might be overly complex and that you might need to examine them? Did nobody in the council or TIE think, "Hold on a minute—can we have an internal review and see whether a better way exists?"

Donald McGougan: Several reports about governance have been provided to the tram project board. Reports that have been submitted regularly to the council have included commentary on governance and governance issues, which have been considered all the way through.

The governance arrangements that are shown in the Auditor General's report are complex because the project is particularly complex. In TIE, we have brought private sector non-executive directors to the table and tried to ensure that the council's interest is reflected properly, but we have allowed people to get on with delivering the project. We have tried to match that with the governance all the way through. The governance has been under constant review.

Dave Anderson: I repeat that nothing in the current governance structure has contributed directly to where the project stands, which relates to a contractual dispute between TIE and the contractor. The reviews of governance have

considered its evolution as we move forward to TEL's role and Lothian Buses operating the network.

Under OGC guidance, it is clear that the models and roles that are set out in the Audit Scotland report are working sufficiently for the project's governance. The big issue is that the strategy and tactics have—rightly—had to deal with the potential for future litigation, so matters must be kept in commercial confidence.

Shirley-Anne Somerville: Your initial point about the situation being all down to your contractual dispute is an opinion on which we can agree to disagree and that we can discuss another day.

On the strategy and tactics, I met Mr Jeffrey not long after he started in his post, which I described as being mission impossible. The Audit Scotland report expresses concerns about management, although I certainly have a lot of respect for several individuals in TIE who have dealt with the project. Nevertheless, questions are—rightly—being asked about the strategy and tactics that have been adopted, part of which has been a reliance on Queen's counsels' opinions and taking everything to official disputes. That approach has been followed through in the past couple of years. In the city, much was made of the fact that that would prove that TIE's and the council's opinion and analysis of the contract were correct, which would solve everything.

With the benefit of hindsight, we can see that the approach has not taken us far. We are two years down the line and we have spent an enormous amount on QCs' opinions and legal disputes. Now, we are going into mediation. Is that the wrong way of going about matters? My concern about mediation now is that the relationship between both sides is bad. Perhaps mediation should have taken place before we hired expensive lawyers and hit each other over the head with QCs' opinions.

Richard Jeffrey: Clearly the strategy and tactics that we have adopted have not delivered what they were designed to deliver; they have not brought the project back on programme and we are not seeing the level of on-site productivity that we could and should be seeing. The question is whether at the time they were the right things to do—I believe that they were. We have tried extensively to work in partnership on this contract—indeed, it sets out clear obligations on both parties to do so. We have tried both informal and formal mediation—there was a significant mediation event in June 2009—and a whole range of other tactics to get the contractor to meet what we believe are its obligations under the contract. The latest evolution of that is a more formal mediation process involving the City of Edinburgh

Council and, on this occasion, Transport Scotland to seek a mutually agreed way of resolving differences and moving forward on the project. Obviously until we achieve that aim we will not know whether we have hit on the right tactics or strategy, but we have tried everything that we think it was reasonable for us to try and done everything that we could to avoid formal disputes. If the parties believe strongly in their positions and neither is prepared to compromise, the contract provides for a formal dispute resolution mechanism.

Nicol Stephen: Has the Scottish Government, which I believe you said has invested £500 million of taxpayers' money in this project, ever expressed concern about the governance arrangements?

Donald McGougan: Yes. We have had several meetings with members of the Scottish Government over the period and Mr Swinney has expressed concern about the project's progress and a desire that we be able to bring the project to a conclusion as soon as possible. In joint meetings with TIE and CEC representatives, he has challenged our tactics and strategy and has encouraged us to go to mediation. I might be being unfair to him but I have to say that I do not think that any serious concerns about the governance arrangements have been raised either by Mr Swinney or by Transport Scotland.

Nicol Stephen: Has the Scottish Government ever suggested alternative governance arrangements that it would like to be put in place?

Donald McGougan: No—and, to be fair to the Scottish Government, I think that it would take the view that governance is a matter for the City of Edinburgh Council as owner of the project.

Nicol Stephen: You mentioned discussions with the Cabinet Secretary for Finance and Sustainable Growth in which he expressed concern about progress on and the handling of the project. How many of those meetings have taken place and who else has been present at them?

Donald McGougan: I think that there have been four meetings involving CEC representatives, me and representatives of TIE, TEL and Transport Scotland.

Nicol Stephen: Are the meetings regular or should they be regarded as unusual or unexpected occurrences or crisis meetings?

Richard Jeffrey: I have been involved in a number of the meetings, some of which I have held without the city council being present; indeed, the city council might well have held meetings at which I was not present. I would describe them as ad hoc. They are not regularly programmed, but I would not describe them as crisis meetings either.

They are not called to discuss a specific issue or point; they are more general update meetings.

As for your other question, other people, including the transport minister and representatives of Transport Scotland, have been present on occasion.

Nicol Stephen: At whose request have these meetings taken place?

Richard Jeffrey: I would think that it is probably a mixture. Some have taken place at my request, some at the suggestion of Transport Scotland and others at ministers' request.

Nicol Stephen: Has the Government ever suggested taking over delivery of the project?

Richard Jeffrey: Not to my knowledge.

Nicol Stephen: So there have been no discussions about an alternative delivery mechanism for the project.

Richard Jeffrey: Not with me.

George Foulkes: On a number of occasions, you have confirmed what the Auditor General said—that ownership lies with City of Edinburgh Council. Nicol Stephen has just referred to that again.

I would like you to be really honest about this. Are you not being a bit coy and a bit cautious about the main problem of governance in City of Edinburgh Council? In the administration, you have had one group that favours the trams and one group that does not favour the trams and has been doing everything that it can to undermine the project. Is that not true?

Sue Bruce: As I perceive it—although you must bear in mind that my perception is relatively recent—all political groups within the council have the right to express their political views, and they do so. It is the council's policy position that the tram project should progress. Since I have been in the council, I have not witnessed any active intervention to undermine that progress. Individual elected members are entitled to their views, but the council's policy position is that the project should proceed, and that is what people are working towards.

George Foulkes: I think that it was before your time—although perhaps people who were there before your time can confirm that. It is not helpful to have a joint administration—or a coalition, such as we have in London now—in which one part is enthusiastic about a project and the other part does not favour it and has been deliberately undermining it, stirred along by Shirley-Anne Somerville and others on the sidelines.

The Convener: I do not think—

Dave Anderson: From my long experience in public service, I know that unity of purpose and direction are important. That said, the position of the administration in the coalition agreement that was signed was quite clear about the different party-political positions of the Liberal Democrats and the Scottish National Party. There has been no material impact on the governance of the project or the contract but there has undoubtedly been an impact on the public perception of the project.

The Convener: Okay—and we are not going any further into personal speculation about the role of any individuals within this Parliament.

George Foulkes: You just have to read—

The Convener: Just before I move on to consider a different aspect, did you have a point to raise, Frank?

Mr McAveety: Nicol Stephen asked Richard Jeffrey about governance arrangements, and Richard said that they had not been raised with him. Dave, did I hear you say that they had not been raised with you either? I heard you say that, but I do not think that the whole committee heard. I would like to get your view on the record.

Dave Anderson: The issue of governance has never been raised by the cabinet secretary with the city council, to the best of my knowledge.

The Convener: Before we move away from this particular line of inquiry, I would like clarification of the point that Mr McGougan made about Transport Scotland being regularly updated. Was Transport Scotland updated before it signed off further payments to you?

Donald McGougan: Yes, there is a process in place whereby Transport Scotland receives a four-weekly progress report on commercial issues, programme issues and cost issues. Applications for payments are synchronised with that process. A progress meeting takes place every four weeks between Transport Scotland representatives and representatives of the city council. We also have a quarterly review of the project at a more senior level with representatives of Transport Scotland.

The Convener: An arrangement was put in place before any money was signed off by Transport Scotland to come to you. Was the model for that arrangement suggested by Transport Scotland?

Donald McGougan: Yes. The grant letter was agreed between Transport Scotland and the city council's officials, with assistance from representatives of TIE, but the standard processes for reimbursement were agreed between the city council and Transport Scotland. I think that they reflect the arrangements that Transport Scotland has for other projects.

11:45

The Convener: Shirley-Anne Somerville described the problems that were emerging. At any time, did Transport Scotland query why a substantial part of the £500 million was being signed over with no or very little discernible progress?

Donald McGougan: Those issues have been discussed with Transport Scotland, certainly at the quarterly meetings and almost certainly at the monthly meetings, although it is more likely to have been at the quarterly meetings, which were more strategic. We have all been concerned with progress on the project and with the timing of the expenditure.

The Convener: Notwithstanding such concerns, Transport Scotland was quite happy to sign off a substantial portion of the five hundred and something million pounds.

Donald McGougan: Under the terms of the grant letter and the grant conditions, Transport Scotland is obliged to do that.

The Convener: That is right—it is obliged to do that—but that grant letter was something that Transport Scotland put in place itself. It put in place a process that obliged it to pass over the money notwithstanding any concerns.

Donald McGougan: The grant letter was agreed between Transport Scotland and the City of Edinburgh Council.

The Convener: Had the grant letter been differently constructed, Transport Scotland might have been able to say, "You're not getting another penny until we see progress." However, because Transport Scotland had drafted it in a certain way, as agreed by yourselves, it had no obligation, as you have said, other than to hand over the money at certain stages.

Donald McGougan: I understand that Transport Scotland representatives are coming before the committee and I would be more comfortable if you took up those issues with Transport Scotland.

The Convener: We can certainly ask them about the matter.

Jamie Hepburn: When was the grant letter signed off?

Donald McGougan: It was signed off before the contract was signed for the project.

Jamie Hepburn: Do you have a rough date for that?

Donald McGougan: It would have been in early 2008.

Jamie Hepburn: That was after the Parliament voted to proceed with the project and grant the £500 million—and the votes were not unanimous, incidentally.

Donald McGougan: Yes.

Anne McLaughlin: I know that Transport Scotland witnesses are coming in next week, but I wish to clarify something. There seems to be a line of questioning that suggests that Transport Scotland had completely washed its hands of the project. Mr McGougan and Mr Jeffrey, you have both referred to Transport Scotland monitoring things and suggesting meetings. You have mentioned the body fairly frequently in relation to the on-going business. Did you, at any stage, ask the advice of Transport Scotland? I am sure that you did. Was its door open or shut? Has Transport Scotland washed its hands of the matter? Is it actively involved in monitoring the project?

Donald McGougan: Mr Jeffrey will also have a go at answering the question, but I can say that Transport Scotland is absolutely actively involved in monitoring the process, and we have regular discussions with it about the best way forward.

Richard Jeffrey: The individuals whom I have dealt with have been very helpful. To use your terminology, Ms McLaughlin, I think that it is an open door.

Anne McLaughlin: I have a question for Sue Bruce. This is a little bit of speculation, but I think that you will be able to give some form of answer. The Auditor General has called for Transport Scotland to get more involved now and work in a more hands-on way, given the circumstances in which we find ourselves. If you had been appointed chief executive of Transport Scotland seven weeks ago, how would you be feeling about that? If you had come to the project as chief executive of Transport Scotland at this point and were adopting a more hands-on approach, what is the first thing that you would do?

Jamie Hepburn: Good question, Anne.

Anne McLaughlin: Thanks, Jamie.

Mr McAveety: And would you have applied for the job?

Sue Bruce: Would I have applied for the job? No, I would not.

Transport Scotland coming in to sit with us, inside the grouping rather than on the outside, means that its expertise is brought straight to the table all the time; it is a peer, if you like.

What would I have done first? The Auditor General's report was in the brewing at that time and the first thing that we have been doing is to look to the Auditor General's report and then deliver, jointly, an action plan that addresses the

issues to come out of that, some of which will undoubtedly be reflected on in the mediation process that will begin shortly.

We want to reassure ourselves that if the governance arrangements can be improved, we have explored what they might look like and what the role of Transport Scotland might be. Transport Scotland was involved at the outset, but its role changed and it has fulfilled that role. We are now suggesting collectively that Transport Scotland should come back to the table, reflecting what the Auditor General is saying. We would look to Transport Scotland for advice, experience and views on the governance arrangements and so on. However, we must settle on what the scrutiny arrangements will look like further to that, given that Transport Scotland is currently involved in the external monitoring arrangements. If Transport Scotland comes to the table, there must be satisfactory scrutiny arrangements.

Anne McLaughlin: The decision to go to mediation was made in December. I appreciate that things do not happen overnight, but it has taken three months for the mediation to take place and every day that we wait for the mediation costs a huge amount of money. Why has it taken so long?

Sue Bruce: Several people probably want to comment on that. I welcome the decision to go to mediation and we are all undertaking an absolutely enormous amount of preparation for it. As has been noted around the table, we have already been involved with arbitration, informal mediation, lawyers and all sorts of things. It is absolutely critical that we get the forthcoming mediation right, so that we achieve a positive outcome that delivers for the people of Edinburgh from the investment that has been made and that will, we hope, continue to be made in the future.

The preparation for the mediation has been huge and has included work at a range of levels on the soft side and relationship building. Without straying into the formal terms of the mediation, I have been involved—along with the leader of the council and others—in meeting senior personnel from the consortium to ensure that we have a common understanding going into the mediation. We want all parties to go into it open minded, with a positive foot forward and looking for common ground to try to get an outcome. There has been an absolutely huge amount of preparation.

Could the mediation have taken place any earlier? The intervention of the seasonal break over Christmas and new year probably added to the delay. It may be difficult for the public to understand why it has taken us so long to get to the table, but bringing parties together for this type of mediation is complex, given all the material that needs to be reviewed, all the backstop positions

that need to be identified, and so on and so forth. It would have been difficult to bring it together any earlier—we might have managed to bring it forward by a fortnight or so. However, if we can get the right outcome through the mediation, those three months spent in preparation will have been time well spent.

Dave Anderson: The delay in commencing the mediation has not necessarily been down to TIE and the council. We are dealing with a consortium that has three constituent parts, so we are dealing with a complex set of issues relating to three commercial companies that potentially have a lot to gain or lose from the outcome of the mediation. Agreeing the mediator to be appointed, the venue and the exchange of documents that are required on both sides to enable the mediator to make judgments is a lengthy process but it is important that we get it right, as our focus must be on getting the outcome that represents the best value for this city.

Anne McLaughlin: That is a perfectly legitimate explanation. My view is the same as the one Shirley-Anne Somerville expressed earlier—that the mediation should have happened a long time ago; nevertheless, I welcome what you say about relationship building. We cannot underestimate the importance of mediation, which is different from legal action. It is about relationship building and working together to get the best possible solution. You are all keenly aware of the fact that every day that the mediation is delayed is costing us money. It is absolutely crucial that we get this right, and the best chance of getting it right is mediation.

I do not suppose that you are going to say no to this, but are you confident that everyone involved is approaching the mediation as a means of resolving the problem rather than as a stepping-stone to legal action?

Sue Bruce: I am, actually. All the parties around the table have reflected upon where we have been and where we are. This is not a good place for any of those parties to be in because of the cost and time overruns, and because of our reputations and the impact that the situation is having on the city and the wider reputation of Scotland's public sector. The consortium will also be concerned about that.

Having met all the key players, I am convinced that people are entering into in the spirit that we have been to a lot of different places to resolve the problem and we have to get a resolution out of the discussions that are coming up. Those discussions will be complex and detailed, but we want to look for common ground to secure a strategic way forward. From what I have seen and heard, I believe that people are earnest going into the mediation and are looking for a positive outcome.

Willie Coffey: Despite the obvious searching questions from members around the table, it is important to give you the impression that we are behind you in wanting to take the project to a successful conclusion for the city of Edinburgh and for Scotland.

I know that Sue Bruce and Richard Jeffrey are relatively new to the project. Sue has extensive experience of local government and Richard has a history in civil engineering, and they bring all that to the table. As a relative outsider to the process, I wish you both every success in bringing the project to the conclusion that we hope for and expect.

I have a couple of questions that look backwards. The Public Audit Committee usually gets an opportunity to look at past projects that have completed, but we are in the middle of this one. At the outset, I was struck by the large number of disputes that have arisen. According to the Auditor General's report, the number was around 800 initially, although I know that that figure has been whittled down considerably. However, it is a huge number of disputes for a project. Do you have a view about why that has happened?

As you will recall, convener, in the past four years we have looked at major capital projects and we have seen the initial phases, designs or specifications for those projects as being a problem area that we might be doing too quickly or too soon, or not putting enough thought into. That can give rise to disputes during a project. Would the witnesses say that some of the disputes have arisen because of contractual inaccuracies or lack of detail at the outset? Alternatively, are we dealing with large numbers of unexpected outcomes, as the spade has been put into the ground and we have discovered unforeseen problems? The public in Edinburgh and Scotland would like to know why you are having to resolve such a large number of disputes.

Richard Jeffrey: A large number of factors have led to the large number of disputes or claims. At the heart is a difference of opinion between the client and the contractor about the interpretation of the contract. All the issues, claims and disputes will be subject to mediation and might, in future, be subject to litigation. It is not appropriate, therefore, to go into the details behind that because doing so might prejudice the mediation or any subsequent litigation.

Sue Bruce: I agree with what Richard said. Looking forward to the mediation, I feel that the final position will undoubtedly be rooted in a contract as is absolutely necessary in these circumstances. We are talking about the ethos, or climate, as we go into mediation. I hope that the mediation achieves the settling-down of the

relationship and, if we get a positive outcome, the ethos for how we will work in future. That will impact on the climate for dispute resolution and so on. So one of the things that we want to consider as we go into mediation is the spirit in which the parties do business.

12:00

Willie Coffey: I will not go further into the issue, for the reasons that Mr Jeffrey gave.

The Convener: The witnesses cannot speculate on the outcome of mediation, but you hope that it will go in your favour. If any part of the discussion does not go in your favour, where will additional costs come from? Who will bear the responsibility?

Dave Anderson: First, it is not arbitration but mediation, so it is about reaching a mutual agreement on a way forward. The focus of mediation, from our perspective, is to deliver a working tram, in the first phase into St Andrew Square, for a guaranteed maximum price, with clarity around price certainty and the allocation of risks going forward. We are working towards that end and trying to get the best possible financial outcome from where things currently stand.

The Convener: Sure, but given what the cabinet secretary said about the Government's contribution being capped, who will bear additional costs to City of Edinburgh Council or TIE that emerge from the mediation or from the project in general?

Donald McGougan: We have reported to the council that it is unlikely that we can do what we want to do within the funding envelope of £545 million. We have been charged with doing contingency planning in relation to a figure of up to £600 million.

The contingency planning is well developed and is in the public domain, and it relates to utilisation of the prudential framework in relation to provision of resources that the council has identified in its long-term financial plan, which runs for 10 years from now—although we realise that we have only a one-year settlement from the Scottish Government.

Within the long-term financial plan, we have identified resources that can be used for infrastructure development. As we consider the business case for the tram going forward, we also anticipate that the surpluses that would be generated would support further borrowing. Between those two factors, we are undertaking contingency planning up to a level of £600 million.

George Foulkes: I very much welcome Willie Coffey's positive remarks about the scheme—it is good to get such endorsement from Kilmarnock. I

want to follow up his question, which Dave Anderson started to answer, and which was helpful. The aim is to get agreement as quickly as possible to get the tram operational to St Andrew Square. If the mediation goes well, when do you expect to be able to give a date from which the tram will operate? I am not asking you to give a date now; I am asking when you might be able to give the date.

Dave Anderson: It would be unwise of me to commit to that. Richard Jeffrey and TIE have carried out their own diligence in relation to what they think a reasonable contractor, acting reasonably, could deliver in a particular timeframe, including sectional completion dates for the stretch from the airport to Haymarket. The remobilisation of the contractor is one of the issues that will be discussed at mediation, so it would be imprudent of me to offer a specific date and put it in the public domain. We should not be doing that at this point.

Richard Jeffrey: However, let me add that if we are to get the project back on an even keel, cost certainty and programme certainty need to be resolved.

George Foulkes: Excellent. I was also encouraged by Donald McGougan's answer to the convener's question, in which he talked about the 10-year plan. Can I take it that you hope that the extension to Leith, Newhaven and Granton will be included in the council's forward plan?

Donald McGougan: It remains the council's policy to build the tram from the airport to Newhaven but there is a recognition that that will need to be done incrementally. The first thing that we will focus on when we come out of mediation is to get to St Andrew Square. After looking at the costs and affordability of that we will look at the other increments from St Andrew Square through to Newhaven. I would not want to say that we have resources for that until we know the outcome of the mediation.

George Foulkes: But there are two or three possible additional sources of funding: the Scottish Futures Trust, if it continues to exist, and the other one, which is for infrastructure development. I have forgotten the name of it.

Donald McGougan: Tax increment financing.

George Foulkes: Yes, TIF. I could not remember the acronym. Would the council look at such things?

Donald McGougan: The council will look at all possible sources of funding in order to provide the tram all the way to Newhaven, which is, after all, the policy. Certain projects have been identified for the TIF pilot scheme and a business case is being built around them.

George Foulkes: Can you explain TIF a little more?

The Convener: We can do that another time. We do not have the luxury of being able to spend a lot of time on this.

Donald McGougan: We would also be happy to speak to the Scottish Futures Trust and Transport Scotland about how to bring the project to completion, but as far as mediation is concerned the current focus is on getting to St Andrew Square.

George Foulkes: My understanding is that you were planning to co-ordinate the administration of the buses and trams and that David Mackay would be chair of both. However, he has given up and you are now advertising for a new chairman of Lothian Buses. Do you still plan to integrate the two operations?

Sue Bruce: You are right. A new chair of TIE has recently been appointed and the post of chair of Lothian Buses is being advertised presently. The ultimate aim of all the parties is to have a properly integrated transport system led by Lothian Buses.

George Foulkes: Led by Lothian Buses?

Sue Bruce: Yes.

Richard Jeffrey: I have a very close working relationship with the senior management of Lothian Buses, which sits on the tram project board as well as on the prepare for operation committee, which is a separate sub-committee of our board. It is clear that the integrated transport system will in effect be bus-led and the expertise and experience that exist in Lothian Buses will be vital in that.

Dave Anderson: It is important to remind ourselves of the strategic rationale behind this project. This is a city of 477,000; it is growing at 2,000 or 3,000 people per annum; and growth forecasts suggest that by 2030 the population will be 540,000. According to the 2001 census, there were 85,000 daily in-commuters to Edinburgh. That figure is well over 100,000 now; indeed, the 2011 census will tell us just how much more. The tram was always conceived as part of an integrated transport solution—and part of a wider network originally with the Edinburgh airport rail link but now with the Edinburgh to Glasgow rail improvement programme and the construction of the Gogar intermodal project—to facilitate access to a much wider labour market. Compared with other European cities with a high gross domestic product per capita, Edinburgh is almost unique in not having a light rail, metro or tram system. On the other hand, Glasgow benefits from an installed base of fixed-rail network that allows people to get around Strathclyde and which is a fantastic asset

for that city. This is a long-term investment for the city of Edinburgh and we are really focused on delivering it and ensuring that we produce the best possible outcome.

The Convener: I know that Murdo Fraser has some questions for TIE, but I have one last question for the City of Edinburgh Council. Who was responsible for drafting the contracts that were signed off?

Donald McGougan: TIE was responsible for drafting the contracts and took extensive legal advice on that matter.

The Convener: But did the chief executive of the City of Edinburgh Council, as project sponsor, consult the council's own solicitors for a view on whether the contracts were fit for purpose and robust?

Alastair Maclean (City of Edinburgh Council): I can answer that. The chief executive did take a view from my predecessor, the then council solicitor, and reliance was based on a duty of care letter that was obtained from the same legal advisers who were advising TIE on the detail of the contract.

The Convener: Are those legal advisers external to the council?

Alastair Maclean: Yes. TIE is the contracting party in the contract, and it rightly took detailed and expert legal advice. Where there is community of interest between parties, such as with the City of Edinburgh Council and TIE, there is often a duty of care letter from the external legal advisers. Such a letter was obtained by the council in this case.

The Convener: Yes, but TIE took legal advice on the suitability and robustness of the contracts. The council is the major sponsor and through the council Transport Scotland made payments. Did the council take its own, separate legal advice or did it take the same legal advice that TIE got?

Alastair Maclean: I think that I answered that question. We took the same legal advice from the same advisers as TIE, which is perfectly normal in this type of scenario where there is community of interest between two parties who are connected, with TIE being the delivery entity and the council being in the position of financial guarantor and project sponsor.

The Convener: So you accepted the legal advice that was given. If any deficiencies or defects are subsequently shown in the contracts, are the external legal advisers liable in any way for that?

Alastair Maclean: That is a bit of a hypothetical question.

The Convener: Is it?

Alastair Maclean: Yes. We are dealing here with hugely complicated issues and, as we have heard already, a number of issues have got us to where we are today. The focus right now is on taking matters to mediation and seeking to get resolution. I am sure that later on there will be a period of time for people to reflect on what happened and why, but here, today, is not the right time to do it.

The Convener: It might not be the right time, but is it entirely hypothetical to consider that there might be further legal implications? You suggest that because it is hypothetical you have not considered those implications.

Alastair Maclean: The council and TIE are looking at every avenue and option that is open to them. I am afraid that it is not appropriate in this meeting, as we go into mediation, to dwell on that. I am sure that the Auditor General himself has pointed out that we should not do that. As I understand it, he excluded from his report the contractual arrangements and disputes. So, if you do not mind, I do not want to be drawn on that.

The Convener: I am not going into the detail. It might not be appropriate—I accept what you say—but that is different from saying that it is hypothetical, is it not?

Alastair Maclean: It is hypothetical because right now we do not want to look backwards. The team here are committed to looking forward to try to get a resolution for the benefit of the public purse.

The Convener: We may differ in our interpretation of the word hypothetical, so we will leave it there.

Murdo Fraser: I want to ask Richard Jeffrey some questions about TIE and the context for the project. I appreciate that you have been with TIE for only about 18 months, Mr Jeffrey, but I am sure that you will be familiar with the background.

Richard Jeffrey: I have been with TIE for almost two years.

Murdo Fraser: Am I correct in saying that when TIE was originally set up it had four projects? There was the Stirling-Alloa-Kincardine rail line, the Edinburgh congestion charge, the Edinburgh airport rail link and the tram project. As we know, the Stirling-Alloa-Kincardine railway line project was transferred to Transport Scotland and the congestion charge did not proceed. That left the EARL project and the tram project, but of course the EARL project was dropped in 2007 by the Scottish Government, which left only the tram project. Am I right in saying that the tram project is now the only one that TIE is taking forward and that it consumes all the work of the people within TIE?

Richard Jeffrey: That is correct, apart from a minor role that we still have. Technically, we are still the statutory undertaker for the EARL project. Although the Government decided not to proceed with the project, it has never been formally cancelled, so, legally, it still exists and we therefore have a role as the statutory undertaker.

Murdo Fraser: That is helpful. So, from the summer of 2007, the jobs of all the people who have worked within TIE—you and your predecessors—have depended on the continuance of the tram project. Did that lead to a culture within TIE of wanting to see the tram project continue, come what may?

12:15

Richard Jeffrey: I do not think that it did. To an extent, what you say is speculation about people's motives.

What always impresses me is the dedication and commitment of my team to seeing the tram project built. I recently held a number of small focus groups with all my staff to talk about what the future might hold. There is wide recognition that the bulk of the people who work for me have what you might call nomadic careers, in that they move from project to project. The vast majority of them know that when this project comes to an end they will move on to other projects with almost certainly different employers. What motivates them is being part of delivering infrastructure that will be here for generations to come and which will make a difference to the city.

Is there a passion and belief among the team that the trams are a good thing and they want to see them built? Absolutely. Are they motivated by their own job security? I do not believe so, because the bulk of them are used to moving from employer to employer as projects come and go.

Murdo Fraser: Could that passion to see the project completed have led to TIE putting a more optimistic spin on the project's prospects in reports to the council or Transport Scotland?

Richard Jeffrey: Again you are speculating about what people's motives might be. There are 60 people in TIE who are all individuals and have their own motives and approaches.

Murdo Fraser: But what I suggested could have been the case.

Richard Jeffrey: Many things in life are possible. You are speculating about what people's motives may or may not be.

Murdo Fraser: Am I right that the annual running costs of TIE are around £12 million?

Richard Jeffrey: Yes, but that would be a high year. Typically, we would expect the running costs

to be just under £10 million. That is a combination of our internal staff costs, fairly extensive use of external legal professionals at the moment because of the level of dispute, external construction specialists and the usual raft of overheads such as insurance and rent and rates. We also pay for the council staff who are engaged in the project and pay Lothian Buses for the time it contributes to the project.

Murdo Fraser: Okay. The project is currently around two years late and it may well run later than that. For every year that goes by we are running up additional costs for the running of TIE that are over and above all the other costs involved with construction, so that is a factor that clearly must be borne in mind.

I will give you an opportunity to respond to a question that was put earlier to the council. Can you give us an update on the likely total cost of the project or on likely completion dates?

Richard Jeffrey: No. I have consistently said that I will not engage in speculation about the potential cost of the programme, particularly until we have a resolution to the current disputes with the contractor. The Auditor General's report accurately reflects the fact that for the vast majority of the project's elements we feel confident about being able to predict final costs and outturn consequences. However, for the main infrastructure construction project, while we still have the dispute with the contractor it would not be sensible to start to speculate, because it all depends on what resolution we can reach through mediation or whatever other mechanism.

Murdo Fraser: So we really have no idea at this stage when, or whether, the project will be completed or how much it could cost?

Richard Jeffrey: As I said, it depends on the outcome of the mediation.

Shirley-Anne Somerville: I appreciate that you do not want to speculate about the date, but the report states:

"It is possible that trams will not be operational until at least 2013."

I asked last week for clarification of what that means and was guided to today's panel of witnesses, so I am looking to you to give me further information about what it means, even if you do not want to go any further.

Richard Jeffrey: I will pick up on a comment that one of my colleagues made earlier. It is obviously possible to look at the scope of work that is still to be completed and make an assessment as to how long it would take on the basis of a reasonable contractor working at reasonable productivity rates. Until we have certainty about the productivity rates that are going

to be achieved, as opposed to those that are, if you like, technically achievable, it is hard to say how long the work will take.

I use this analogy: we can estimate how long it will take us to drive from Edinburgh to Glasgow by considering the distance and our average speed, but if we do not know what speed we will be driving at, we do not know how long the journey will take.

Shirley-Anne Somerville: When you considered what a reasonable contractor could do, were you thinking that the whole line or part of it could be completed by 2013?

Richard Jeffrey: We can extrapolate productivity rates for any part of the line or for the whole line.

Shirley-Anne Somerville: Does the sentence, "It is possible that trams will not be operational until at least 2013"

refer to the whole line or part of the line?

Richard Jeffrey: I think that it probably refers to part of the line but, as I said, the programme and the timescale will be a subject of mediation.

Shirley-Anne Somerville: We heard that the council is now working to a ceiling of £600 million and we heard about the 10-year prudential borrowing analysis that it has been doing. Was the money that has been earmarked for prudential borrowing for the trams earmarked for other projects, or are we talking about new prudential borrowing that the council will take on?

Donald McGougan: I was talking about a provision in the long-term financial plan, which gives us spending capacity. That capacity was not earmarked for any other project, but it clearly carries with it an opportunity cost, in that it could have been used for other things.

Shirley-Anne Somerville: Is £600 million the estimated cost of getting to St Andrew Square? In the analysis of City of Edinburgh Council's prudential borrowing, are you assuming that you can deliver the tram only as far as St Andrew Square for that? Are you looking to do more prudential borrowing in future?

Donald McGougan: We did not come at the issue from the perspective of the cost to St Andrew Square. There is no connection with the potential cost to St Andrew Square. I was referring to a contingency plan, which the council determined on some eight months ago, which was based on a figure that was 10 per cent more than the funding envelope, so it was about seeing how we would get another £55 million, if that was required. That is all. We are not saying that the cost to St Andrew Square is £600 million.

Shirley-Anne Somerville: I appreciate that. We are simply looking at a percentage increase in cost, but we have no idea whether that will get us to Haymarket, St Andrew Square or anywhere else. That was not the basis of the exercise; the council was simply considering how it would get to £600 million.

Donald McGougan: We were looking ahead and contingency planning up to £600 million. When we come out of the mediation we will need to review the prospects for timescale and cost.

Shirley-Anne Somerville: There has been speculation in the press recently that the council or TIE will ask the next Government for more money. Has such a strategy been considered as part of contingency planning?

Donald McGougan: That is not part of the contingency planning at the moment, but I think that I said in answer to a previous question that we would be prepared to explore every avenue and to talk to the Scottish Futures Trust and Transport Scotland about the funding issues after we come out of mediation and see where we are in relation to timescales and cost.

Jamie Hepburn: We heard earlier that Lothian Buses has been identified as the operator of the trams. When did that happen?

Richard Jeffrey: When the project was conceived, there was a separation between the project and Lothian Buses, and Transdev, which is a private sector transport operator, was brought in. Around the end of 2009 we terminated the contract with Transdev and in effect brought the operation back in-house. One of the reasons for that was that after discussions with the then management of Lothian Buses it was clear to me that the expertise to operate the tram existed in Lothian Buses. At that point we concluded that we no longer needed the services of Transdev.

Therefore, I guess that the idea was conceived—or, rather, acted on—at the end of 2009. Since then we have had a continuous process of working more and more closely with Lothian Buses, to ensure that when the trams are ready for operation the company is geared up to absorb them into its operation.

Jamie Hepburn: I do not represent the area and I do not have intimate knowledge of how Lothian Buses is structured, but am I right in saying that it is not owned wholly by City of Edinburgh Council but is owned by all the Lothians local authorities?

Dave Anderson: City of Edinburgh Council owns 91 per cent, and the balance of 9 per cent shareholdings is distributed across the three Lothians authorities, although not in exactly equal shares.

Jamie Hepburn: So it is virtually owned by City of Edinburgh Council. What has been the opinion of the other Lothians authorities on the prospects of Lothian Buses operating the trams?

Donald McGougan: Due diligence in relation to how everything will work has still to take place. It has been recorded again in public as recently as in the latest council report that the direction of travel is that Lothian Buses will take on the operation of the trams. A number of issues in relation to the governance of the operation and how it will be put in place are outstanding. That has still to be subject to legal due diligence. There has been some discussion with the other councils, who have small minority shareholdings in Lothian Buses, but no concrete proposals have yet been agreed with them.

Richard Jeffrey: There is logic behind the proposal and there are reasons why it is the right way forward. We have to consider the issue from the city's perspective and passengers' perspective. We have talked about integrated ticketing and integrated timetables, with a single fare structure across the whole combined tram and bus network and with the opportunity to integrate service patterns and so on. All those factors mean that the smart thing to do is integrate the tram and bus operations.

Jamie Hepburn: Mr Jeffrey said that the EARL legislation is still in place and that TIE has responsibilities there, but, on a de facto basis, EARL is not happening. Also, Lothian Buses seems to be the preferred operator for the trams. So the only project left to TIE—as was highlighted in the answer to Murdo Fraser's question—is the delivery of the tram project. So what is the long-term future for TIE? Once the tram project is delivered—whenever it is delivered—what will your role be?

Richard Jeffrey: As you can imagine, that is a conversation that I have with my team all the time—because they want to know the answer as well. However, until the tram project is delivered, there is really no point in thinking about the longer term for TIE. We have the one project and we have to get it delivered. That has to be our focus.

If, in the longer term, funding is available for other transport projects and it is deemed that TIE is the right organisation to take them forward, then so be it. If that does not happen, TIE's purpose ceases to exist at the end of this project.

Dave Anderson: The need for investment in public transport infrastructure in this city has not gone away. The city is growing and it will require investment in infrastructure in future. It will require a body that is capable of developing new infrastructure and of finding methods of financing

that new infrastructure. Whether or not that happens through TIE, the task will remain.

Jamie Hepburn: We could explore that point further, but I will not.

I want to follow up on a couple of points that Mr Jeffrey made in response to Shirley-Anne Somerville and Murdo Fraser. You have said quite clearly that you will not speculate on the total costs of the project. Does that not offer no reassurance whatsoever to members of the public who, in essence, are paying for this project? Are you not giving the impression that there is a bottomless pit?

Richard Jeffrey: The uncertainty of the costing programme is understandably a source of frustration for everybody—politicians, members of the public, the media and so on. That is why one of the things that must come out of mediation is certainty.

Jamie Hepburn: You were also somewhat reluctant to give any concrete forecast for when the project is likely to be completed. I was very interested to hear you say that you could make a forecast with a reasonable contractor working at a reasonable rate. I may be paraphrasing you slightly, but was that a backhanded criticism of the current contractor?

Richard Jeffrey: No, it was simply a clarification of the assumptions that would need to go into the calculation of any programme.

Jamie Hepburn: So the current contractor is a reasonable contractor working at a reasonable rate.

Richard Jeffrey: Our differences of opinion with the contractor have been well publicised. Earlier, Shirley-Anne Somerville talked about the need to build relationships. I am not sure that it is helpful for me, in a public environment, to express again views that have been expressed in the past. The focus has to be on building relationships and finding a satisfactory resolution at mediation.

Jamie Hepburn: We may read about it in your autobiography.

The Convener: This discussion has been quite wide-ranging and I am now going to draw it to a close. I thank the witnesses for coming to the meeting; I know that you were somewhat concerned about it because of the upcoming prospect of mediation. We appreciate your taking the time to come along.

It will be interesting to hear what Transport Scotland has to say. Because we are so near to the dissolution of Parliament, it will be difficult for the committee to go into the depth that it might want to go into, but I am sure that this issue will come back either to a future audit committee of

the Scottish Parliament or to a future transport committee. Thank you all very much for coming along.

Item 5 is no longer on our agenda so we move to item 6, which will be taken in private.

12:30

Meeting continued in private until 12:37.

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