

## Questions for Councillors August 2016

This questionnaire has been designed to gather evidence about Councillors' involvement and knowledge of the Edinburgh Trams Project. The questionnaire contains 12 questions and, for guidance, a list of issues that may assist you in answering these questions. Please ignore any questions and issues which you feel do not apply to you, for example, questions that relate to a period when you were not serving as a Councillor of the City of Edinburgh Council.

### Your details

In order for the evidence to be analysed and taken forward by the Inquiry we require some information about you.

As you are responding as a Councillor (or ex-Councillor) your name and ward will be published, but your postal address, postcode, telephone number and email address will not be published.

Ward	Drum Brae/Gyle
Period that you were a Councillor	May 2007- May 2012
Surname	Keir
Forename	Colin
Postal Address	[REDACTED]
Postcode	[REDACTED]
Telephone	[REDACTED]
Email	[REDACTED]

### What will happen to your response

Your answers will be considered by the Inquiry and will form part of the record of the Inquiry

All of the written evidence, unless deemed offensive or inappropriate, which is submitted through this process will also be published on the Inquiry's website at some point, either during the Inquiry proceedings or when the Inquiry Report is issued.

The Inquiry team may wish to explore the evidence you have provided in more detail. They may wish to contact you following completion of this questionnaire to take a statement from you, and you may be invited to give evidence at an oral hearing. However, not everyone who submits written evidence at this stage will be invited to provide more information, and participation at any oral hearings would be by invitation only.

## Questions

**Please refer to the guidance to assist you in answering these questions.**

1. Please provide an overview of your duties and responsibilities as a Councillor? Please also provide an overview of any duties and responsibilities you had in relation to the Edinburgh Trams Project.

I represented the Scottish National Party (SNP) and was part of the City of Edinburgh Council (CEC) administration 2007-12. I was Convener of the CEC Regulatory & Licensing Committees and was an ordinary member of the Education, Children and Families Committee and the Planning Committee until 2011. I was elected as member of the Scottish Parliament May 2011 and held dual mandate until May 2012. I held no committee membership of CEC during this time but attended all meetings of Full Council. I received no salary from CEC for the final year of my term as a councillor.

I held no portfolio relating the Edinburgh Trams project and played no part in the general management of the project. It should be made clear that the administration agreement between the SNP and Liberal Democrats allowed for a divergence in policy and voting on this subject. In leadership terms with no SNP elected member playing a leading part in the project we could not be accused of sabotaging the project from the inside. Also had anyone of our councillors taken a directorship of any management company directly involved there would have been a conflict of interest between politics and the duties of directors under company law.

As a result of the actions of the SNP council group staying away from positions of influence there was a clear path for the pro tram elected member majority to make decisions in support of the project as they saw fit within Boards or committees without interference from those who did not support the project.

2. Do you have any comments on the trams project during the initial proposals stage (i.e. between 2000 and 2006)?

I was not an elected member of CEC at this time, however like other members of the SNP I actively campaigned against the project during this period in the run up to the 2007 local elections.

3. Do you have any comments on the trams project in relation to events between May 2007 and the signing of the infrastructure contract in May 2008?

The majority of political groups on the CEC were pro tram. During this period the SNP group actively debated against the project, however as we were only twelve in number the enthusiasm shown by representatives of the other political parties aided by the same enthusiasm of senior council officers ensured a clear passage for the project in voting at meetings of Full Council and within CEC committees. The SNP (then Scottish Executive) had come to power as a minority administration at Holyrood having also campaigned against the tram project. The previous Holyrood administration of the Labour Party and Liberal Democrats held a combined number of MSP's in the new session to outvote any SNP proposals to scrap the project therefore the project was going to proceed.

When it was announced by the Cabinet Secretary that the funding would be capped to £500 million it was seen by the SNP council group as a warning to CEC that any extra funding (on top of the £500 million central funding and the £45 million to be paid by CEC) required would have to be found by them. It was a decision which I totally agreed with.

I thought that with the capping of central government funds it would have made the Liberal Democrat, Conservatives and Greens think again about the risk involved to CEC. One of the reasons the SNP and Liberal Democrats agreed to form a coalition was the general agreement that the previous Labour administration had been incompetent with the city finances. However, even with the precarious CEC financial position the pro-tram majority political groups showed incredible enthusiasm for the project, indeed they were highly critical of the SNP council group and national position. Considering the Liberal Democrats held the key positions of Convener of the Finance and Transport Committees I thought they may have showed some restraint and thought regarding the financial risk however this was clearly not the case.

When the vote on the business case in late 2007 took place, I and my colleagues voted against the motion effectively citing pressures on council finances, the possible stresses on Lothian Buses finances as well general value for money. The enthusiasm for the project remained extremely high from the other political groups on CEC. I should say that there was one dissenting voice from the Conservative Party. Former Councillor Kate MacKenzie was a critic of the scheme.

Any slippage on the construction phase at this time was said by supporters of the project to be relatively minor and there was full confidence that the project would get back on course.

4. Do you have any comments on events after May 2008, including, in particular, in relation to the dispute that arose with the infrastructure consortium?

It was clear the project was not proceeding easily, anyone could see the speed of construction had slowed and even the most optimistic of tram project supporters was aware of problems. This started to show within the reports produced for councillors at Full Council. Expectations that Tramline 2 be completed on time and budget were quashed and this part of the project was suspended as it was clear the project budget was under serious pressure. As the weeks moved on stories of serious disagreements with the consortium started to filter down to elected members until eventually there was what seemed a complete breakdown in the relationship between CEC and the consortium.

There was also the movement of senior officers of the CEC and TIE. The Executive Chairman of TIE (Willie Gallagher) from 2006 resigned late 2008 but was replaced some months later by Richard Jeffrey. David Mackay was interim Chair during this period between Gallaghers resignation and Jeffrey taking up appointment. It seemed that TIE and the project were rudderless during a period where strong leadership and direction was required. There was a number of other senior staff at TIE who moved on at various times which seemed to give the impression things were not well in the company and project.

5. Do you have any comments in relation to the settlement agreement reached at the Mar Hall mediation in March 2011, and finalised later that year?

The CEC had lost its Chief Executive (CEO) who retired and Sue Bruce had been appointed successor. Negotiations at Mar Hall couldn't have been easy, by this time the hostility towards the consortium from those in charge of the tram project (officers and politicians) was clear. Sue Bruce was not tainted by any of the planning or disagreements originating from the earlier years of the project.

It was known by this time of the perilous nature of the project finances and what the effect of this could be on the CEC finances. As a result when the CEO returned and reported what had been agreed at Mar Hall it was thought she had done well considering the circumstances she found after being appointed. Other than in general terms the Mar Hall deliberations/technical agreements from what I remember were covered by confidentiality clauses. Despite this there was a trust that the new CEO had managed to achieve more than previous senior officers by at least coming back with an agreement.

6. Do you have any comments on the project management or governance of the trams project?

I've never been convinced that there was clear leadership within the three commissioning strands i.e. Senior CEC officials, TIE management and the political leadership. It's obvious that it takes the majority of votes to push a decision through, that's democracy. Councillors however rely heavily on senior council officers to produce advice. Reports from council officers come with recommendations and I believe it is important that scrutiny is made of these papers so that officials views are understood.

I always got the impression (nothing more) that the chairmen of TIE felt deeply frustrated that there was too much influence from senior council officers and latterly that the project was such a political hot potato that it was difficult to operate. It's certainly true there were some vicious debates between members on the regarding the tram project in the city chambers.

7. Do you have any comments on the reporting of information relating to the trams project to Councillors?

There were regular report updates to Full Council some of which were subject to a vote, some were not. This depended on whether or not there was a fundamental change to the project or there was a financial implication e.g business case or the termination of the tramline 1 at Haymarket. Not having been a member of the Transport and Infrastructure committee I do not know how discussions went in that forum and I am aware that the Convener of the Transport did do briefings for spokespeople for different political groups. I substituted on one occasion to one of these meetings and remember thinking I could have read the same information in the Edinburgh Evening News.

8. Which body or organisation do you consider was ultimately responsible for ensuring that the trams project was delivered on time and within budget?

Ultimately I believe CEC are responsible as the organisation that commissioned the project and set up TIE. The legal agreements and risk was for CEC to ensure was robust. The Scottish Government although forced to produce £500 million to the project through being a minority at Holyrood stepped back from the project. This was the correct decision as they couldn't possibly manage the project through Transport Scotland while objecting to it. A clear conflict of interest.

9. What do you consider were the main reasons for the failure to deliver the project in the time, within the budget and to the extent projected?

In my opinion the problems were caused by poor management particularly at the beginning of the project. It's clear the initial agreements with the consortium were flawed. I'm still unclear who gave legal advice on contracts, risk etc. Did these people have a background in these types of contracts and projects? The dispute resolution mechanism just didn't work well and I believe apart from slowing the construction down significantly the decisions for the most part didn't go the way of CEC. There was also the difficulty of managing such a project through an ancient city such as Edinburgh and Leith. It was clear no survey had shown up the amount of utilities which required to be moved on Leith Walk, Princes Street and Shandwick Place (as examples).

10. Do you have any comments on how these failures might have been avoided?

On the issues mentioned in item 10 I would suggest any answer to this question be answered by competent professionals in the relevant discipline.

11. What do you consider are the main consequences of the failure to deliver the trams project in the time, within the budget and to the extent projected?

The test of whether or not the project has been value for money is an obvious no. The estimated cost of the half tramline 1 could be somewhere around £1 billion after costs, interest etc are completed. Given the CEC managed debt I believe is over £1 billion there will be added strain on the CEC budget in future years, particularly if local government budgets continue to be stretched. There is also the added strain on Lothian Buses finances as they are now a part of an integrated group which includes trams. The only plus point to the current tramline is that it eases to a point traffic going to the airport, it certainly doesn't help congestion on the traffic pinch points on Corstorphine Road and Queensferry Road. CEC will still have to find a way round these problems which undoubtedly means added investment. Thanks to the tram where does this investment come from and how can it be afforded?

12. Are there any other comments you would like to make that fall within the Inquiry's Terms of Reference and which have not already been covered in your answers to the above questions? (The Terms of Reference can be found on the [Inquiry's website](#))

Not having any official documents in my possession my comments are based on memory. In my view, the tram project was a vanity project. The Labour administration prior to 2007 was struggling to manage traffic in the city. They had lost a local referendum on congestion charging and the creation of a housing association based on the Glasgow model to manage housing stock owned by them. Ideas were in short supply and when the tram scheme was first brought forward estimates of cost were considerably less than even the £545 million.

The tram project became the big election battleground of the 2007 local elections in the capital.

When the SNP achieved twelve seats on CEC we were the only political party to show hostility towards the project and in the key votes in chambers we recorded our opposition.

As a political party we were also acutely aware that we wanted the best deal for the Edinburgh taxpayer. Our stance only softened when we were informed that it would cost more to scrap the project than it would to complete it to St Andrew Square.

Perhaps one of the most distressing moments came when the Labour Party and Conservatives voted to stop the tramline at Haymarket. This was pure politicking and not in the interests of the city. There is no way a line from the airport could be viable stopping short of the city centre. It was no surprise when the SNP government called a halt to the stupidity of this and CEC had to vote again on the same subject a few days later. I'm sure that the former leader of the Conservative Council Group and the transport spokesperson of the Labour Party can explain their actions.

This project has been blighted by poor management and confused leadership and I hope this enquiry is able to be thorough in its endeavours in order that the residents of Edinburgh find out what went wrong.



## **Guidance:** **Possible issues to consider in your response**

### **Your duties and responsibilities**

1. It would be helpful if you could set out the dates you served as a Councillor, the Ward you represented, the political party (if any) you were a member of and any positions in CEC you held (e.g. membership of committees, Group Leader etc)?
2. Were you a member of the Tram Project Board, TIE Ltd or TEL Ltd? If so, please provide dates.
3. Do you consider that you, or other Councillors, had any relevant qualifications or experience that assisted when taking decisions relating to the Edinburgh Trams Project? Did you receive any training or guidance in that regard? Do you consider that any such training and guidance would have been helpful? If you were given some training was it sufficient to enable you to fully consider the issues relating to the trams project that were brought before the Council? If not what was missing?
4. Did the fact that not all members/political parties supported the trams project cause any problems or difficulties (and, if so, in what way)?

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

5. What were your views on the creation of TIE to deliver the various projects forming part of the Council's New Transport Initiative, including the Edinburgh Trams Project? What was your understanding of how CEC would, and did, exercise control over TIE? Did you have any concerns in relation to these matters?
6. Various draft Business Cases and STAG (Scottish Transport Appraisal Guidance) appraisals were produced between 2002 and 2006. Did you have any views on these documents including, for example, the various estimates for the project and the allowance for risk?
7. The Council decided in January 2006 to build the tram network in phases, with a first phase to be built from Edinburgh Airport to Leith Waterfront. What was your understanding of the reason for that decision? What were your views?
8. What was your understanding of the procurement strategy for the trams project including, in particular, the aims of the procurement strategy, the extent to which design and utility diversions would be complete before the infrastructure works commenced and the extent to which the infrastructure contract would be a fixed price contract?



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

9. Following local government elections in May 2007 the administration of the Council changed from a Labour administration to a Liberal Democrat/SNP coalition. Do you consider that that had any effect on the trams project (and, if so, in what way)?
10. Following national elections in May 2007, and a vote in the Scottish Parliament, the SNP government announced that funding from Transport Scotland for the trams project would be capped at £500m. What was your awareness and understanding of the extent to which the capping of the grant from central government represented an increased risk for CEC? What was your understanding of the steps taken by CEC following the capping of the grant to address, quantify and mitigate any increased risk?
11. The Council's approval was sought in October and December 2007 for the Final Business Case for the trams project. In general, what were your views on the Final Business Case?
12. What was your understanding in late 2007 of the extent to which design and utility works were complete? What was your understanding of any difficulties that could arise from incomplete design and utility diversion works and how any such difficulties would be addressed?
13. What was your understanding in late 2007 of the extent to which the infrastructure contract was a fixed price contract? What was the basis of your understanding? How important to you was it that the infrastructure contract was a fixed price contract? To what extent, if at all, did your understanding in that regard influence your vote on whether the trams project should proceed?
14. What was your understanding of the allowance for risk made by TIE/CEC (including the amount of the risk allowance and the main risks allowed for)?
15. In early 2008 there were various increases in the price of the infrastructure contract. What was your understanding of the reasons for these increases?
16. The infrastructure contract was signed in May 2008. What was your understanding at that time of (i) which party bore the risks arising from any incomplete design and utility diversion works, (ii) the extent to which the infrastructure contract was a fixed price contract and (iii) the extent to which the aims of the procurement strategy had been met?

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

17. In general, what information were you given as to the progress made with the design, utility diversion and infrastructure works after May 2008? Were you given progress reports or revised estimates of risk?
18. When, and how, did you first become aware of the dispute between TIE and the infrastructure consortium, BSC? What was your understanding of the nature of the dispute and the reason(s) for the dispute? What were your views on the dispute, including which party or parties were primarily responsible for the dispute arising? What was the basis of your understanding of these

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

19. A dispute arose in respect of track laying works due to commence at Princes Street in February 2009. What were you told about the Princes Street dispute and the agreement to resolve that dispute? What were your views?
20. What was your understanding of, and views on, TIE's strategy to resolve the dispute? To what extent, if at all, did you consider that that strategy had been approved by the Council?
21. What were you told about the use of the contract dispute resolution procedures including, in particular, the referral of certain of the disputes to adjudication? What were you told about the outcome of these procedures including, in particular whether the outcomes were more favourable to TIE or to BSC? What was the basis of your understanding of these matters?
22. What were your views on the letters sent by BSC directly to Council members in 2010?
23. In late 2010 the Council were provided with a refreshed Business Case, which recommended building a line from the Airport to St Andrew Square. What were your views on that proposal?
24. At a Council meeting in December 2010 an amendment was passed to request a review of the updated Business Case by a specialist public transport company with no previous involvement with the trams project. What was your understanding as to why members requested that review?

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

25. What were your views on the proposals for mediation that took place at Mar Hall in March 2011? To what extent, if at all, were Councillors consulted on, or had an input into, CEC/TIE's strategy for the mediation?
26. What were you told about the outcome of the mediation? What were your views?
27. What did you understand to be the main changes brought about as a result of the mediation?
28. Do you consider that you were provided with adequate briefing in relation to the mediation, both before and after the mediation?
29. What was your understanding of, and views on, the Council's decision in late 2011 to build a line from the Airport to Haymarket before, shortly afterwards, voting to build a line from the Airport to St Andrew Square/York Place?
30. What were your views on the settlement agreement reached in September 2011?

## Project management and governance

31. What did you understand to be the respective roles and responsibilities of CEC, TIE, TEL, the Tram Project Board and Transport Scotland in relation to the trams project?
32. Do you have any views on whether members and officers of CEC should have been more actively involved in the project? Did you hold these views at the time or later? Do you consider that members and officers of CEC exercised effective oversight and control over the trams project (and, if not, why not)?
33. Did you have any concerns at any time in relation to the performance of any of the bodies involved in the project management or governance of the trams project, or the senior personnel in any of these bodies? If so, what were your concerns? Did you report or discuss any such concerns with anyone (and, if so, with whom and what was their response)?

## Reporting

34. Which official or officials in CEC were responsible for advising Councillors of developments relating to the trams project, including explaining the risks and liabilities of the Council arising from the project?
35. Were issues relating to the project discussed separately or in the course of other Council business? Do you consider that there was sufficient time at Council meetings to discuss and consider the project? Did you have a free vote in relation to matters relating to the trams project or were you required or encouraged to vote along party lines?
36. How were you, as a Councillor, kept informed of developments relating to the trams project?
37. Did other Council members (including the Council Leader, the Finance and Transport Convenors and Group Leaders) receive separate briefings on the project? If so, did they, in turn, keep you informed?
38. What was your understanding about the level of information that you required before taking a decision in respect of the trams project?
39. In general, do you consider, that Council members were provided with sufficient information in relation to the trams project? Do you consider that members were advised in sufficient detail of developments in relation to the trams project? Were members provided with any guidance (eg on financial and or technical matters) to assist them in coming to decisions? Was information and advice provided in a clear and intelligible form? Did you have the opportunity to request further information, or seek further guidance, advice or clarification and, if so, by what means? Did you ever make such a request and, if so, what was the response? Do you consider that the information and advice provided to members was accurate? Did you have any concerns in relation to these matters? If so, did you express these concerns to others (and what was their response)?

40. To what extent did concerns over commercial confidentiality affect the information provided to and from Council members? What steps were taken to address any such concerns? Do you consider that concerns in relation to commercial confidentiality adversely affected Councillors' understanding of the project (including the problems that arose) and their ability to take informed decisions?
41. What was your understanding in relation to the extent to which information provided to Council members derived from TIE and the extent to which it was produced or checked by Council officers?
42. How did you report matters relating to the trams project to your constituents? Did your constituents report concerns relating to the trams project to you? If so, how and what steps did you take to address your constituents' concerns?
43. To what extent, if at all, was your understanding of, and views on, the trams project informed by what was reported in the media?

### **Cost overrun and consequences**

44. When, and how, did you first become aware that there was likely to be a significant cost overrun, including that the total cost of the project was likely to exceed £545m? What did you understand to be the main reason(s) for that overrun?
45. What was your understanding following the Mar Hall mediation as to how the additional contribution by the Council would be financed, including the different financing options? What was your understanding about the effect that was likely to have on the Council's finances and expenditure, including on services and capital projects etc?
46. Do you consider that Councillors were kept properly informed of the risk of a cost overrun throughout the project, including the likely amount of the overrun?
47. What do you consider to be the main consequences of the failure to deliver the trams project in the time, within the budget and to the extent projected, both on your constituents and more generally?
48. To what extent did the shortened line result in the project failing to meet the objectives and benefits set out in the Final Business Case?
49. What was the effect of the additional borrowing by CEC for the trams project on the Council's finances and expenditure, including on services and capital projects etc.?

## **Guidance:** **Possible issues to consider in your response**

### **Your duties and responsibilities**

50. It would be helpful if you could set out the dates you served as a Councillor, the Ward you represented, the political party (if any) you were a member of and any positions in CEC you held (e.g. membership of committees, Group Leader etc)?
51. Were you a member of the Tram Project Board, TIE Ltd or TEL Ltd? If so, please provide dates.
52. Do you consider that you, or other Councillors, had any relevant qualifications or experience that assisted when taking decisions relating to the Edinburgh Trams Project? Did you receive any training or guidance in that regard? Do you consider that any such training and guidance would have been helpful? If you were given some training was it sufficient to enable you to fully consider the issues relating to the trams project that were brought before the Council? If not what was missing?
53. Did the fact that not all members/political parties supported the trams project cause any problems or difficulties (and, if so, in what way)?

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

54. What were your views on the creation of TIE to deliver the various projects forming part of the Council's New Transport Initiative, including the Edinburgh Trams Project? What was your understanding of how CEC would, and did, exercise control over TIE? Did you have any concerns in relation to these matters?
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#### **The Mar Hall mediation in March 2011**

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89. To what extent did concerns over commercial confidentiality affect the information provided to and from Council members? What steps were taken to address any such concerns? Do you consider that concerns in relation to commercial confidentiality adversely affected Councillors' understanding of the project (including the problems that arose) and their ability to take informed decisions?
90. What was your understanding in relation to the extent to which information provided to Council members derived from TIE and the extent to which it was produced or checked by Council officers?
91. How did you report matters relating to the trams project to your constituents? Did your constituents report concerns relating to the trams project to you? If so, how and what steps did you take to address your constituents' concerns?
92. To what extent, if at all, was your understanding of, and views on, the trams project informed by what was reported in the media?

### **Cost overrun and consequences**

93. When, and how, did you first become aware that there was likely to be a significant cost overrun, including that the total cost of the project was likely to exceed £545m? What did you understand to be the main reason(s) for that overrun?
94. What was your understanding following the Mar Hall mediation as to how the additional contribution by the Council would be financed, including the different financing options? What was your understanding about the effect that was likely to have on the Council's finances and expenditure, including on services and capital projects etc?
95. Do you consider that Councillors were kept properly informed of the risk of a cost overrun throughout the project, including the likely amount of the overrun?
96. What do you consider to be the main consequences of the failure to deliver the trams project in the time, within the budget and to the extent projected, both on your constituents and more generally?
97. To what extent did the shortened line result in the project failing to meet the objectives and benefits set out in the Final Business Case?
98. What was the effect of the additional borrowing by CEC for the trams project on the Council's finances and expenditure, including on services and capital projects etc.?