

## 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your name and ward will be published, but your postal address, postcode, telephone number and email address will not be published.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	City Centre
Period that you were a Councillor	2007 to present
Surname	Mowat
Forename	Joanna
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### 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 was elected to represent the City Centre Ward on the City of Edinburgh Council in 2007 as a Conservative. I sat on the Transport, Infrastructure and Environment Committee from 2007 until 2013. I have been on the Planning Committee since 2007 to present and have sat on the Finance Committee, Corporate Policy and Strategy Committee, Economy Committee and have been Convenor of the Governance Risk and Best Value Committee since June.

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

None

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?

Coming in as a new Councillor in 2007 I had not been party to the decisions taken up until that point so from May 2007 until contract signing I was trying to assimilate a significant amount of information and responding to queries raised by constituents about the project as a significant part of the track would be constructed through the ward I represent including a significant part of the on street works which gave rise to many concerns. It became apparent that the significant decisions about the route of the track had already been approved so a lot of time was spent looking at what mitigating measures from the effects of the tram route could be made. For example the closure to general traffic of Shandwick Place and what impact this would have on the traffic patterns in the area.

My understanding of the contract in late 2007 was that it was a 97% fixed cost contract which is what we were advised by officers at that time this was broken down into various amounts and we given assurance that the costing for the MUDFA works

was generous as lessons had been learnt from Dublin's experience. When questioned the responses appeared credible. We were aware of the capped costs of funds from the Scottish Parliament so it was important that our costs were de-risked and fixed - assurances were given that this was the case.

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?

Regarding the dispute - I do not have detailed notes of these events so am relying on memory for these comments. Briefings were given to the Conservative Group on the dispute between the Consortium and TIE by the Chief Executive of TIE. The information we were given was that the problems were with the Consortium, specifically Bilfinger Berger that they were impeding progress and that disputes had been sent to adjudication and that TIE were winning these.

The review of the Business Case was to look for assurance that the business case was robust amid concerns that the project was not proceeding as it planned and was looking for assurance that the reduced line could be completed given the problems experienced.

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?

I had no input into strategy and was not consulted about the Mar Hall mediation.

I was Group Transport Spokesman when the decision was taken to vote to terminate the line at Haymarket. I proposed this course of action to the Conservative Group. By this time we had been advised that the contract was the source of the problems with the construction of the tram. My understanding was that the contract was so flawed that continuing construction under the contract would lead to further problems so the thinking from myself and shared with Lesley Hinds the Labour Group Transport Spokesperson was that terminating the current contract at the earliest point we could would be the best way to prevent further problems. We had received papers and advice which made clear this was a feasible option. By this time my faith in TIE and Council officers had been badly shaken - I didn't know who or what to believe - getting out of the contract stopping the project and then re-tendering seemed the sensible and cautious thing to do. It soon became apparent that the information that this was one of two ways forward was not in fact the case when we were called back for a further council meeting the next week and the decision was retaken with the outcome that the line would terminate at St Andrew Square. With hindsight it would appear that briefing to opposition members was inadequate or partial.

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

The use of TIE was an unsatisfactory halfway house. It would have been better had the responsibility lain totally within the Council which would have allowed more oversight by councillors or totally contracted out to the private sector.

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

Various officials were tasked with briefing councillors - when TIE was in charge they briefed the groups on the project, after Mar Hall Alastair Maclean and Alan Coyle briefed the groups.

Group Leaders received private briefings and regular updates on the project which were confidential.

Group Transport Spokesman were not party to the briefings given to the Group Leaders.

Decisions in the Conservative Group were whipped and were party decisions.

The information provided to councillors was not equal to all councillors - but that is a normal situation in the Council - not all councillors sit on all committees and all groups will have lead councillors on specific areas which will take the lead on these matters. The requirement to preserve confidentiality meant that information was kept particularly tight on this project.

I spent a significant amount of time dealing with the impact of the project on my constituents especially concerning the impact of the Traffic Regulations and rerouting of the traffic, loss of parking and loading. There became a division of labour in the Group whereby the Leader dealt with the contract issues and as Transport Spokesman I was responsible for the more tangible effects of the tram construction. It was not until late in the process that we felt we could share information about the problems with the contract and it was difficult to communicate the problems being experienced to constituents at the time.

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

Initially it was a joint venture between the Council and TIE as the Council contracted the management to TIE, given that TIE was an arms length company of the Council this would lead one to state that the Council was ultimately responsible, however the Scottish Government had granted significant funds for infrastructure and Transport Scotland which was responsible for this grant signed off funds without sufficient scrutiny. Had Transport Scotland fulfilled their oversight role more rigorously than it is likely that problems with the contract would have been uncovered earlier and resolved earlier preventing some of the later problems.

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?

My understanding is that the initial contract was so poorly worded it was essentially unworkable and would always have lead to problems with the contractors. Whilst

this is widely known now it was not made apparent to Councillors until 2011 and was the reason behind the proposal to stop the tram route at Haymarket so that that contract could be terminated once this section of the route was completed and any further works would be carried out under a new clean contract.

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

Standard rather than bespoke contracts could have been used. The project should either have been totally contracted out to the private sector or totally managed in house - it was only resolved when the management was brought in house and TIE abandoned. Allowing an arms length company to manage the project allowed problems to go unresolved for too long and be covered up from those who were ultimately responsible.

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 obvious first answer is that the tram does not complete the intended route which was to Leith. The tram route was originally conceived as a regeneration project which would connect Leith, Newhaven and Granton which offered the potential for large areas of new housing to the main employment hubs of the City Centre, Edinburgh Park and the Gyle. The psychology of creating a fixed rail link would have improved movement across the City bringing places that seemed far away closer which would have increased economic activity and created an economic uplift to these areas. We have seen that this is indeed the case as there is significant investment activity along the length of the tram route. Unfortunately the truncated nature of the line means that the proposed regeneration areas have seen housing development stagnate and the regeneration that was proposed has not occurred. Forth Ports has redeveloped the port area as industrial land which means that there is less land available for housing which puts further pressure on Edinburgh's green belt and pulls housing development further west making Leith more out on a limb. The reputational damage to the City was significant - although this is starting to diminish and strengths in other areas has mitigated this. The most damage has been to the Council which has lost a lot of credibility through this project.

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](#))

None



## **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.?