

Edinburgh Tram Inquiry Office Use Only

Witness Name: Steve Cardownie

Dated:

The Edinburgh Tram Inquiry
Witness Statement of Steve Cardownie

My full name is Steve Cardownie. I am aged 63, my date of birth being [REDACTED].
My contact details are known to the Inquiry.

Statement:

Introduction

1. I became a Councillor in 1988 and took the promotion to Executive Officer and was then promoted to Higher Executive Officer straight away on a minimum time period. I was also Chair of the Trade Union side and I gave up that position about 1994-95 and became a full time Councillor, and have been ever since. During my time as a Labour councillor I was the Labour Group Secretary, the Labour Group Whip, the Vice Chair of the Recreation Committee and later the Chair of the Recreation Committee. I served on several other committees on policy and resources because of my senior position. I then left the Labour Party in about 2005 to join the SNP and was the sole SNP councillor within City of Edinburgh Council (CEC) at the time. I also held the position of Deputy Lord Provost at that time. At the following CEC elections I was joined by 11 SNP Councillors and that made a total group number of 12 for SNP out of 58. I then negotiated a coalition deal with the Liberal Democrats in order to run CEC which made it 29/29 so if the opposition ever got together as one unit, then the administration at full Council would have required the casting vote of the Chair, the Lord Provost, George Grubb. Also written into the agreement that SNP had with the Liberal Democrats it was noted that the SNP's policy was opposition to the Edinburgh Tram Project and that we would be allowed to pursue our opposition

irrespective of the fact that we were in coalition with the Liberal Democrats. At that time I put it to the Liberal Democrats that the SNP's opposition to the Tram Project should not be an issue for them given that all the other parties supported the tram and it was going to go through anyway. At that time when I negotiated that position, I became Leader of the SNP Group and Deputy Leader of CEC. At the following elections, for which I'm currently serving the term of, I negotiated a similar deal with the Labour Group and the SNP were then in coalition with the Labour Group. At that time I was Leader of the SNP Group and Deputy Leader of CEC, and in 2015 I demitted the leadership of the SNP Group as I felt it was time that somebody else took over. By doing that, I was no longer Deputy Leader of CEC. When the Deputy Lord Provost, Deidre Brock, was elected as an MP she resigned from her position. Then the SNP Group voted me in as Deputy Lord Provost and I will see out that term, which will finish in May 2017. That will then be the end of my local government career as a politician as I have no intention of standing for election again.

2. I recall that the Recreation Committee had two sub-committees and I had convenorship of one of the sub-committees and had senior roles all throughout. The Labour Group Secretary at that time was in effect the Deputy Leader of CEC and I was full time. I was the Civil Service full time Trade Union Official elected annually and I was a lay official. I was given 100% facility time from the Scottish Office because our branch had 2,400 members and two of us had full time facility time and I was either the Chair or Secretary during that period. I was also on the National Committee for five years. I turned down promotions for a few years to remain in the Civil and Public Services Association (CPSA) because, at that time, I would have had to leave and join another Trade Union if I took promotion.
3. As a Councillor and when I was in the Labour Group the Edinburgh Tram Project was first introduced. The Labour Group considered the project in total and its funding. I was not party to any discussions other than those that took place within the Labour Group itself and after I left the Labour Group I was no longer party to any of those discussions. I opposed the Tram Project and was the only Councillor that was recorded as voting against the first Tram Project

Business Case that came so, virtually, I was starved of information because people knew I was opposed to the project. I did not get the information that I knew other Councillors were receiving who were in favour of the project on the other Groups. When I later became Leader of the SNP Group and joined by 11 colleagues to become Leader of the SNP Group, I then started receiving information as the Group Leader. However, I still knew there was information that I was not receiving, which may have been because I was regarded as an opponent and people felt that I was going to leak information, which was unfounded. I was party to discussions with the Chief Executive, the Director of Finance and with the TIE Chief Executives so I received a broad knowledge of the Tram Project. The stance that the SNP took was that, whilst opposing the project we recognised the Business Case had gone through. We recognised that the Tram Project contract had been signed and our view was as a group, the SNP should do what we possibly could to protect the public purse and that meant if there was any dispute, the SNP should side with CEC and support CEC. After the Tram Project contract was signed, people were more relaxed about my involvement or the SNP Group's involvement, although they were wary of any criticism that surfaced in the media. There was still some information that was not given to the SNP Group, but people were more relaxed that the Tram Project had been approved and I received more information in that regard. I had regular meetings with Jenny Dawe and, latterly, with Andrew Burns and all the main protagonists at that time. I had met them all and spoken to them all directly about the trams and the Lothian Buses.

4. I cannot recall receiving any specific training regarding the Tram Project. My background was the Civil Service Public Sector. I also have a Trade Union background and am familiar with reports, how to read them, how to dissect them and how to use the information that is provided within them. I received briefings on the Tram Project itself but I cannot recall being offered any guidance on how to interpret various reports, although I may have been.
5. Every group apart from the SNP supported the Tram Project at the time when the project was going through, and the Labour Group was in control. After

that, when the SNP had a coalition with the Liberal Democrats, all the opposition parties, the Liberal Democrats, as part of the administration, the Conservatives, the Greens and Labour Group shared the same view as proponents of the Tram Project apart from the SNP Group. Only, latterly, did the opposition parties give separate motions when they wanted to criticise the administration.

Reporting

6. Tom Aitchison, Chief Executive of CEC, was the main official responsible for advising Councillors of developments relating to the Tram Project, including explaining the risks and liabilities of CEC. Other responsible CEC officials were led by the then Director of Finance, Donald McGougan, and included the Head of Corporate Services, Jim Inch, and the Director of Transport or Economic Development, Andrew Holmes, who has now retired. The main person responsible was the Chief Executive and he would pick and choose his team depending on the subject matter or which part of the project he wanted to discuss. It was all at a senior level initially and later members of TIE would also come to advise, such as Willie Gallagher who was the Chair of TIE.

7. The only time the Tram Project was discussed was at CEC meetings. The discussions became disjointed near the end of the coalition agreement with the Liberal Democrats due to politics. The Labour Party and the Conservatives, as expected, wanted to be able to criticise the administration and the Liberal Democrats. Separate motions came up at meetings but the only time prior to that there was a real discussion on the Tram Project was when the SNP put up a motion. All the other parties had had discussions before the full Council meeting so they knew what was happening. Had the SNP not put motions up, then a lot of those reports would have been presented to the full Council but they would have gone through on the nod that the SNP were supportive of the Tram Project. However, because The SNP were putting amendments to reports and moving motions on the reports,

then there had to be a discussion. Any discussions that I had about the detail of the Tram Project would be separate discussions with me and my colleague, or me and the senior officials that I have mentioned. I do not know if I was kept fully informed or if I was only informed enough so that as an opponent of the Tram Project, I would not be able to use anything against the project. However, I received the same information that went to the full Council, so I looked at those reports and asked questions, as did all my colleagues. There was enough time given at Council meetings to discuss the Tram Project and it was never curtailed.

8. In relation to the Tram Project, Councillors were encouraged to vote along party lines. The Liberal Democrats purported not to have had a group whip but to all intents and purposes they did and they always voted as a group on the Tram Project. The Greens also said they did not have a group whip but they all voted as one group, and it was misleading that they said they did not have a group whip. On one occasion I recall a Liberal Democrat breaking the party line and voted against the rest of their colleagues and they were put in a situation that was just the same as breaking the whip, they were disciplined internally. All group members were expected to vote along party lines. Whether that resulted in the Tram Project not being as fully scrutinised as it might otherwise have been, the difficulty with politics was that those kinds of discussions would have taken place within the different groups. I would not have been party to the discussions that took place within the groups. However, I was aware that there were some people in the Labour Group, when I was member, who were not satisfied with the Tram Project and there were some vigorous debates within the Labour Group at that time. To quieten the debate within the Labour Group the members were told that leadership of the Labour Group was in favour of the trams and there would be consequences if members were seen to not be in support of the Tram Project. There may have been dissent within the various political groups but that was all dealt with before it came to full Council meetings. Although I am the only one that was recorded as voting against the trams, I know that I am not the only Councillor who was against the trams because Councillors were all subject to party discipline. The majority of Councillors were in favour of the

Tram Project because the political parties would never have maintained that party discipline had the majority not been in favour. There was a fair number of Councillors who would have expressed their concerns and objections within their political groups but abided by the majority decision. That was group discipline and politics and I had no problem with that.

9. CEC were aware of the negativity in Edinburgh surrounding the Tram Project and that would have been expressed within the Labour Group. The argument was that in Dublin all of the local people were against the trams but once the trams were up and running they embraced them and thought they were great. CEC's view was that all of the criticisms about the road works and amount of money spent would all fall by the wayside once the trams were up and running. Councillors expressed the views that they were given by their constituents but, once more, the argument was that Edinburgh had 500,000 people and compared to the number of constituents who had written in complaining, the silent majority must be quite favourable towards the Tram Project.

10. The public was alerted on significant developments relating to the Tram Project as and when the information became a public document, or when I had been given some prior notice. I do not know if the problems that arose with the estimates of the cost of completing the project had been known for some time before I was alerted to them. I put it to the SNP Group that we did not take up a Directorship of TIE because that would have been incompatible with our opposition to the Tram Project, and we agreed that. The other political groups were represented on TIE, so what they were told as TIE Directors, I do not know, but it was reported that I had said that none of the TIE Directors expressed any concern at any full CEC meeting regarding the Tram Project. Either they were negligent or oblivious, and I made that point as well because the TIE Directors never alerted CEC, and they were there to represent CEC's interests. They never came to a CEC meeting and said that there were any problems regarding cutting the line from Newhaven to the Airport, problems with Bilfinger Berger or problems regarding downing of tools when there had been disputes. I cannot recall at any time any Councillor

standing up and saying at a full Council meeting, that as a Director of TIE, they wanted to bring to CEC's attention that certain problems were occurring. That never happened and that was a travesty because these four Directors, were appointed to represent CEC as non-Executive Directors, but they were there to protect CEC's interests, and yet never reported back to CEC. The SNP did not take a position on TIE because it would have been hypocritical to go on the TIE Board and oppose the trams.

11. I am referred to the final paragraph in the Current Status of Tram Legal Workstream paper dated 13 November 2010 (CEC00013290) and to emails between Jenny Dawe and others dated 9 April 2010 (CEC00235026). In my view information on the Tram Project that should have been provided to Councillors was too often hampered by the need for confidentiality and that reason was given far more often than it should have been. Councillors were told that the information that they were given was commercially in confidence and, therefore, we were restricted in terms of what we could do with it. It was easy to attach that restriction to ensure that any information was not as forthcoming as it should have been and we were told that if we breached that restriction then we did so at our peril. We would have to sign that we would not disclose the information and would be given a document sometime, or the information was only provided in a room and we could not take any documentation away. That was a method that was used to ensure that the so-called openness that there was going to be about the Tram Project was not as open and as frank as it should have been. Those documents would have been more in the public domain and some of the information would have been commercially in confidence, however, it was convenient to attach that restriction to the information and then TIE/CEC would not have to worry because there was not a lot we could do as Councillors because we were bound by that clause.
12. The SNP Group was kept informed every step of the way on the Tram Project, and all the information I received had also gone to my group. I do not know what the other political groups received. In my group there was not anybody who was personally in favour of the Tram Project, therefore, it was easier for

me to tell them everything that was happening because we were all in accord. For example, would a leader of a group who knew that they had five or six dissenting voices in that group be as comfortable with imparting that information to them? However, I knew that within the SNP Group we were all opposed to the tram individually and collectively. I know that was not the case in the Conservative Group and, in particular, the Labour Group. How their leaders reacted to that and dealt with that, I do not know.

13. The political parties should have and did receive separate briefings as that was normal procedure. I was not party to the opposition group meetings and given that they were in favour of the Tram Project, and the SNP Group was not, whether they received additional information that we did not was a moot point. I believed that the opposition groups received additional information as certain information later came to light that the SNP Group was unaware of. All the briefings should have been the same, although the questions from group members may have differed.
14. None of the Councillors had any particular expertise in their background, in relation to their previous occupations or their history, in respect of the Tram Project. It was a technical project with huge infrastructure and required the advice of people who would be employed to breakdown that advice in layman's terms in order to make it understandable. As well as the trams, there were a whole host of different issues that were on-going, such as schools, the budget, planning, the economy, and other aspects of transport and the environment. For all these other issues that were on-going, there were 58 Councillors that had to deal with them. Therefore, we heavily relied on the expertise from our officials to breakdown to us and tell us the things that we should know in terms that we would understand. Therefore, we were more heavily reliant on the legal people and their advice on the contracts, the technical people as to what was happening with the project, and finance people as to what was happening with the money for the project, and also our officials as to what was happening in regard to disputes with the project.

15. The SNP Group were provided with a lot of detail; whether that was all the detail I will never know because I do not know if there was other detail there. There was certainly insufficient detail in some of the reports which was why the SNP Group continued to oppose the Tram Project and because there were various assumptions made and there was no background information given as to how these assumptions were arrived at. That was reflected in some of the motions that the SNP moved at the full Council. The information provided was clear and intelligible. I cannot recall any of the reports coming out so late that we did not have time to question officials. For example, when a report came out for the full Council or if it was going to Policy and Strategy, then the SNP Group had the opportunity to read that report and to question officials before the meeting.

16. The SNP Group did contest some of the reports and we put amendments up that were outvoted. I have kept copies of the amendments that we put up where we stated that there was insufficient detail on which to base a decision. We did not have sufficient figures and there was optimistic assumptions regarding budget, projected patronage, profitability, and limited effect on Lothian Buses. There was scant or no information provided to determine on what evidence, if any, that the assumptions were based upon. Amendments were put forward by the SNP, for example, in amendment 2 for the SNP as shown in the minutes for the full Council meeting on 16 December 2010 (**CEC02083128, pages 22-23**); we were outvoted on that by 45 to 12. The SNP Group did not believe that Councillors had sufficient information to take the risk that they were being asked to take by proceeding with the Tram Project. Every time the SNP Group put that up and said that we required more information and wanted to delay the project to get more information, we were constantly outvoted.

17. There were other instances where the SNP Group had moved amendments saying that we did not have the proper information. For example, I moved an amendment as recorded in the minutes of a full Council meeting on 14 October 2010 (**CEC02083123, page 5**). The amendment stated "*that despite the projection of patronage detailed in the draft Business Case referred to*

above no such figures have been provided in the "Refreshed Business Case"". What was being stated was that no definitive costings had been included in the refreshed Business Case, for whatever reason, which would have informed members of the projected capital costs for termination of the tram line at St Andrew Square. In all the motions that the SNP Group had put forward we had stated that there was insufficient information on which to base a decision because we were risking public funds. That would have invoked an unwanted delay. We asked questions about the impact it would have had on Lothian Buses. Lothian Buses were going to support the first two or three years running the trams and how that would affect their commercial position. Also, would Lothian Buses be open to a predatory competitor coming in and taking over? There was a lack of information and that was questioned in that amendment.

18. There were too many optimistic predictions that the SNP Group felt had not been properly tested because people were determined to get the Tram Project through. The whole rationale behind the Tram Project and the whole push to get the project through was based on the fact that the Scottish Government was providing about £475 million and CEC were to provide £25 million. The money being provided by the Scottish Government was regarded as a gift and that was why the groups were pushing ahead as quickly as possible to get this money from the Scottish Government. It had been promised by the Labour/Liberal Democrat Executive at the time and there was no guarantee that any incoming SNP Government at that time, or any incoming Government, would have stuck by that promise of money. The pace was picking up because the groups did not want to risk not receiving the money for the Tram Project, as it was seen as a gift to Edinburgh by having the project. That fundamental basis was flawed because CEC then started throwing good money after bad in order to qualify for the money from the Scottish Government budget, and that was why the optimistic assumptions were made in the Business Case and elsewhere. That was done to speed up in order to hit the budget process to get the money from the Scottish Government. The SNP Government did have second thoughts when they were elected but they did not have an outright majority in the Scottish Government and all the other

parties were of the view that unless money for the trams was included they were going to vote down the budget. Therefore, the Scottish Government had to reluctantly concede at that time and put in their budget that they would provide money for the Tram Project, and that went through. But that was done by forcing the SNP Government which they can speak about for themselves. I was present for the debate, which was around the total budget of £545 million. The Scottish Government promised £500 million and CEC's contribution was £45 million, and the whole focus was on securing the £500 million funding. Everything in CEC was geared to getting that £500 million and if something was going to delay them then they needed to get rid of that delay. CEC projected the figures and put everything in a good light because they did not want any potential delay or criticism. CEC were frightened that they would not hit the target time to secure the £500 million from the Scottish Government budget and that underpinned the whole Tram Project.

19. I understood that TIE would be working closely with other senior CEC officials. CEC would be asking questions, whether or not they asked the right questions or were robust enough in seeking answers to detail, I do not know. However, given that the CEC officials, at that time, were also supporters of the Tram Project, as were TIE, I do not know how much was allowed to let slip in order to speed the project up. Whether or not CEC officials were as diligent as they should have been, I am not sure, because they all had a collective vested interest in ensuring that the Tram Project went through the full Council. I was not there and was not party to that, but I suspect that given their views on the Tram Project, they perhaps may not have been as critical as a third party may have been, in terms of getting answers to the questions that were required.
20. With regards to concerns reported by constituents relating to the Tram Project, Councillors only replied to individual constituents that contacted them. Some Councillors may have put in their Councillors' reports that go out to their wards what the issues were regarding the Tram Project. That was a matter for individual Councillors and some SNP Councillors maybe did that. Some Councillors sent out monthly reports and some would be six monthly as there was no basic requirement other than to respond to any constituents' enquiries

that came directly to Councillors. I cannot recall there being any public meetings that people had to explain matters to the constituents, as that was done through the press. I was interviewed on radio and through a whole number of press articles regarding the SNP's position on the Tram Project. It was in the SNP Group manifesto that we were opposed to the Tram Project, that was an integral part of our manifesto and that was why I included that in my dealings with the Liberal Democrats. The SNP Group were elected on that basis and we could not get rid of that part of our policy in order to have a coalition with the Liberal Democrats.

21. I was aware of the content of the information about the Tram Project that was in the media. It was interesting what information was coming from Bilfinger Berger (BB) and what was coming from TIE. BB did not express themselves as fully as they probably would have liked to due to the 'commercial in confidence' restrictions. Every time CEC were told there was a dispute between TIE and BB, we were always told it was BB's fault and that if we gave any kind of support to BB then we would be undermining CEC's position. That was another reason why perhaps Councillors were told that they could not be disloyal to CEC as it was public money at stake and that BB were a hard organisation and were at fault. Looking back at the number of disputes and the number that were settled in BB's favour, we suddenly found that BB actually had a good point of view on a lot of them. TIE could say that it was not their fault and it was BB's fault and that way they covered up their own misjudgement and errors. Once more, it was skilfully deployed in order that Councillors did not criticise TIE for fear of being in support of a consortium and a German company against the city of Edinburgh. That was relayed heavily to us in the SNP time after time that we should not believe BB if they told us anything, and that it was important that we were a united front and supported CEC and TIE's position. It was only latterly that we found out that BB, in a lot of the cases, had a very good case and that TIE had a lot to answer for.

Initial Proposals (2000-2006)

The New Transport Initiative and the creation of TIE

22. As a member of the Council at the time the New Transport Initiative (NTI) was proposed, I understood the full Council to be responsible for the decision in 2002 to create TIE. It was not unusual to set up another organisation to bring on people with the expertise that CEC did not have. CEC had a number of arms-length companies where we brought on professions to sit on it, so TIE was set up specifically to run the Tram Project. There were Directors on the TIE Board and they were all Labour Group Directors in the first instance, appointed by the full Council to oversee the workings of TIE and to represent the Council's interests.

23. At that time money was being spent on the Tram Project, a big feasibility study was starting to build up but, as yet, the TIE Board still had to make a decision on the Business Case. My views were fairly relaxed at the time trying to wait and see what came out of it. If it was going to be a good case then I was in favour of a tram network, especially a tram network that was going to cost £545 million that was taking in 1a, 1b, 1c and tram line 3, which was what the SNP Group wanted. I was in favour of that tram network but what I was not in favour of was a line from Newhaven to the Airport which was deliberately designed to fit the costs rather than to fit the transport movements on the population of Edinburgh. It had become a project where parts of the tram line were shortened because of the money that was available, so I was not anti-tram but was anti-Tram Project. At that time the Tram Project was very much at an exploratory stage and CEC were optimistic. CEC were told that we could maybe deliver a tram network for that money.

24. I am aware of a report dated 2 May 2002 to CEC (**USB00000232**) which appended a letter dated 28 February 2002 from Wendy Alexander, Minister for Enterprise, Transport and Lifelong Learning, which supported private sector involvement and the principle of an off balance sheet company. TIE was created because CEC did not have the expertise or the internal

mechanism to oversee the Tram Project. To me it was not a practice to set up an independent group with Council representation on it. TIE would have their own experts, engineers and financial people to advise us, and our officers would then have discussions with them and to advise Councillors accordingly. The TIE Directors who were Councillors could also have done so. I was, at that time, satisfied that work was going as I would have expected.

25. I am aware that in a different letter from Wendy Alexander to Andrew Burns, she stated that she was supportive of the trams and that they would do what they could to get the Scottish Executive to support the Tram Project and to allocate sufficient monies for it. I only received that letter a long time after the Tram Project had started and although it was on headed paper and signed 'officially', it was a letter that was sent directly to Andrew Burns. Andrew Burns was the Transport Convenor at the time; he was not the Labour Group Leader. The letter was more of an internal Labour Party notification that we were in favour and would press ahead with trying to secure Scottish Executive funding for the Tram Project in 2002. It was a clear indication that discussions had taken place with some senior Labour politicians in Edinburgh and senior Labour politicians in the Scottish Executive before we even stated officially. It showed very early on that there was a clear recognition that the Tram Project would largely be funded by the Scottish Executive and was a project in which the Labour administration had wanted to proceed with.

26. I recall that the SNP Group was never on the TIE Board and I was never a Director of TIE. The off-balance sheet company TIE was set up to manage the Tram Project for which monies were allocated and not drawn from elsewhere without permission of the full Council and TIE would have to come to CEC for extra money. At the time when TIE was set up, Councillors would have been of the view that TIE would have provided sufficient information to CEC in order for us to base a decision on whether to proceed with the project or not. Therefore, it was all very much preliminary groundwork and at that time there would be no questions raised about what was happening at that time.

Initial Estimates for the tram network

28. I am aware that various STAG Appraisals and draft Business Cases for a tram network, with different estimates, were produced between 2000 and 2004. TIE in conjunction with our Finance Department would have been involved in preparing cost estimates for the Edinburgh tram network. I would have expected CEC officials to have been in constant contact with TIE, with their financial representatives and ask questions and reach conclusions in the preparation of these cost estimates.
29. I do not recall how much information was provided to the SNP Group with regards to the various STAG Appraisals and draft Business Cases produced during that period, including the cost estimates for the project and the allowance for risk. I was a member of the group at the time and information would have been confined to various group meetings. I cannot recall how much information would have been provided to us as group members. I was informed that there was an allowance for risk in the cost estimates but we were told if we set aside a certain amount of money then that would cover it, which was not enough in the end.
30. At the time the varying estimates for the proposed tram network produced caused Councillors concern as to the reliability of the estimates. We wondered why we were told that the whole tram network could come in at £545 million and then we were suddenly told we would not be able to afford that and could afford the line from Newhaven to the Airport. We were also told that there may be money spare from Roseburn to Granton and then that money was lost. The varying estimates gave us cause for concern and we questioned whether the line was being driven by transport considerations or if it was being driven by financial considerations, with the latter proving to be the case.
31. I recall that a member of the public, Alison Bourne, emailed every Councillor on 10 December 2003 in relation to the imminent meeting at which Councillors were to approve the lodging of the Tram Bills (**CEC02082850**). Alison was a regular correspondent in the Council and in the press regarding the Tram

Project and brought to our attention a number of points over a number of years. I am aware that Alison Bourne was part of a deputation to CEC on 11 December 2003 on the subject of the route of tram line 1 and the costs which elected members were being asked to approve that day (**CEC01926998**). The view that was expressed to us was that she was implacably opposed to the project and would find any means, in which she possibly could, to talk us out of it. Alison Bourne had several letters in the Evening News that were very interesting indeed, and would have been discussed within the political groups and the groups would have been told that it would all work itself out at a later date. Alison Bourne was almost regarded as a thorn in the flesh of the groups that were in favour of the Tram Project and that she was on a type of personal vendetta against the Tram Project. The Director of Finance would have imparted to the various groups, or the Chief Executive or the group leaders would have imparted to the group that maybe Alison Bourne had got facts wrong and that the situation would change. Certainly Alison Bourne was well known to all the political groups because not only did she correspond directly with us, she also corresponded with the media. With regard to any concerns Councillors had as to the reliability of the estimates that were being provided following the concerns that Alison Bourne raised, we were simply told that our estimates were robust.

The October 2004 Arup Review

32. I am referred to a review of the Business Case for line 1 (**CEC01799560**) dated October 2004 produced by Ove Arup and Partners Ltd, on behalf of the Scottish Parliament. I cannot recall if I received the review at the time as there was a lot of paperwork circulating at that time. Up until that time CEC had not been asked to agree the Business Case so we may have been told that these issues would be fixed prior to the Business Case being presented. We were always told that the start date was the date in which the Business Case would go through the full Council. If anybody had any objections, in principle, to the Tram Project, then we were told that they should wait until that date. I am referred to TIE's response (**CEC01705043**) to Arup's report. I cannot recall seeing that response at all.

The 2005 road charging referendum

33. I am aware that in February 2005, following a referendum, the public voted against the introduction of road user charging. The income from road charging was fairly crucial in terms of providing CEC with funds to finance CEC's proposals under the New Transport Initiative including the tram network. The internal ring for road user charging was especially important because it was advocated that we could just opt for the outer ring rather than an inner ring, however, we were told that that would not bring in sufficient income. The inner ring for road user charging was the most important one and was fairly integral. Councillors were concerned about the affordability of the Tram Project without road user charging income but we were told that that alternative funding would be found.

The May 2005 Draft Interim Outline Business Case

34. I am aware that in May 2005 TIE produced a Draft Interim Outline Business Case (**CEC01875336**) for the Tram Project. I note that an acknowledgement of a £206 million shortfall appears to contradict TIE's earlier assurances in their response dated 12 November 2004 (**CEC01705043**) to Arup's report. As CEC had not agreed the Final Business Case (FBC), we had not actually signed off the Tram Project in terms of going ahead with it. From memory, these would have been made available to Councillors and we would have known about the shortfall, but we would have been told that plans were in place to resolve that. It would all have been presented when it came to the Business Case. I was not party to the discussions that were taking place at a senior level at that time. I was still a member of the Labour Group at that time and the only information I would get would be as a group member. TIE and CEC were under pressure to meet such a challenging timescale to qualify for the Scottish Government funding. They were hoping to get the funding before the Labour/Liberal Democrat Scottish Executive went out of office because there was no guarantee who was going to be re-elected. As it turned out the SNP was elected with the support of Margo Macdonald, the independent, so

there was just a majority of one. CEC and TIE were hoping to get the Tram Project confirmed by the outgoing Executive but they had to wait for the incoming government and they got their money that way after pressure was applied by the other parties. Therefore, there was a rush to have everything concluded before, at that time, the Scottish Executive elections, now the Scottish Parliamentary elections.

2006 Reports to Council and Draft Final Business Case

35. I am aware of a report to CEC dated 26 January 2006 (**CEC02083547**) which made certain recommendations for funding and phasing of the tram network. I note that the figures quoted in the report to CEC appear to be based on the Edinburgh tram progress report of September 2004 (**TRS00000209**). The need to restrict or phase the scope of the tram network caused concern in relation to the reliability of the initial cost estimates, the affordability of the Tram Project and TIE's ability to deliver it. It was a clear indication that the money that was envisaged for the project was not sufficient to cover the whole project and it was clear now that the network could not be provided. I cannot recall if the Scottish Government played any part in recommending that a first phase be built from the Airport to Leith Waterfront. There would certainly had to have been discussions with the Scottish Government given that they were providing the money so there would have been discussions at that level. There was a view that the tram had to run to the Airport. There was another view that the one that made the most economic sense would be that a line that ran from north to south, going up Leith Walk. That was where the majority of people who use public transport were. There was a high density of flats in that area for the line to run out past Edinburgh University to Edinburgh Royal Infirmary. There was view that that would be a more profitable line, but the view that prevailed was that Edinburgh should not have a tram line that did not go to the Airport. I do not know who had the final decision on that but we were eventually presented with tram line 1 and that any surplus monies would be used for tram line 1a, which was wishful thinking.

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36. A first phase from the Airport to Leith Waterfront was a more political decision in that there was a view that visitors to the city who arrived at Edinburgh Airport could then take a tram into the city centre. It was not pointed out that we had a very good Airport bus service which had served Edinburgh city more than adequately all these years and would do so in the future. It was felt politically that in terms of the Edinburgh's reputation as a city that the tram line should reach the Airport. We were told that once the Tram Project was in profitability that everything would be fine and that there would be no need to go back to CEC's public purse for CEC's contribution to the Tram Project.
37. I am aware that in a joint report to CEC on 21 December 2006 (**CEC02083466**) the Directors of City Development and Finance sought members' approval of the Draft Final Business Case (DFBC) for the Edinburgh Tram Network. The SNP Group opposed the DFBC, and there was an amendment to that effect and we were outvoted, as shown in the minutes to that meeting (**CEC02083464, page 7**). I opposed the DFBC when it first came up on 21 December 2006. At that time I was the sole SNP Councillor and I moved an amendment to agree the Business Case for the Edinburgh tram network, which was not made. To agree that the financial risk with the planned route and technical difficulties dictated that work on the Tram Project should cease as soon as possible. Approaches should then be made to the Scottish Executive to secure the public funding to improve and enhance the bus service currently enjoyed by the citizens of Edinburgh. I moved that amendment; however if I did not receive a seconder, then that amendment would not have even appeared on the minutes, such was our standing orders which was absurd. I spoke to the amendment for about ten minutes and I had a seconder from a Labour Councillor, Lorna Shiels, although she said in seconding it that she would not vote for it because the party whip prevailed, but at least then it was minuted. It then went to a roll call vote which surprised and delighted me. From the roll call vote it can be seen that the only person that voted for my amendment against a draft Business Case was me, which was on 21 December 2006. One other Conservative Councillor, Councillor Kate Mackenzie, stayed out of the room and she was suspended from the Conservative Group for three months for doing so because she could not

bring herself to vote for the tram. By the time that the tram Business Case was re-presented it was a Lib Dem/SNP coalition and we submitted an amendment on 25 October 2007, which was recorded in the minutes (CEC02083535, pages 6-7), and was moved by our Councillor Nick Elliott-Cannon. Our member was defeated by 46 votes to 12. The first part of the terms of the amendment stated "*To reject the Final Business Case (FBC) for trams, agreeing that the expenditure required could not be justified for a single tram line from Newhaven to Edinburgh Airport*". At that time the planned tram line was from Newhaven to the Airport and of course later on it did not even go as far as Newhaven, which the SNP Group opposed as well. The amendment also stated "*To note: (a) the absence of a detailed breakdown of costs. (b) that the full risk for the project would not be made available until after contract close, requiring Councillors to make decisions without access to essential information*". The SNP Group was also outvoted on that amendment by 46 votes to 12.

38. Councillors knew that the timescales that were put to us were running askew. We were told that they would be met timeously and that everything would be fine but we knew we had problems with MUDFA; we had problems with the local businesses; there were disputes and issues found under the ground that were not on the maps. The utilities company was saying that they did not budget for the new issues found. There were disputes and until they were resolved, the contractors then virtually downed tools until the dispute was resolved, and that was why there were long periods of inactivity surrounding those disputes. That was a great cost to the public purse and was only resolved latterly by the new Chief Executive, Sue Bruce. We were concerned and could see with our own eyes what was happening with the streets being dug up and no real evidence that work was moving along as quickly as it should have.
39. My understanding at the time was that TIE, in conjunction with CEC's Finance Department Director and Chief Executive, would have taken the necessary steps that would have maintained control over the capital costs of the Tram Project. The Director of Finance would advise the Chief Executive who was

then ultimately responsible. At the time of the procurement strategy for the Tram Project we were told that the design and utility diversions would be complete before the infrastructure works commenced and the infrastructure contract would be a fixed price contract. I remember when I raised that issue at the full Council and Councillor Whyte from the Conservatives spoke, and I referred to it potentially being similar to the construction of the Scottish Parliament building. What had happened at the Scottish Parliament building was that the £45 million initial estimate went up to £400 million plus, and I used part of the debate to point out that the Tram Project was going to be similar to that. Councillor Whyte in his response stated that that was not true because there were checks and balances built into the whole procedure to ensure that the cost could not overrun. Some Councillors were comforted by that and once more we relied on the word and support and recommendations of our officials that the cost could not overrun. I had knowledge of other public sector projects throughout the world that started off with the local authorities making what would seem to be a small investment and then continually building on that investment. I remember at the time when I was opposing the DFBC, about £80 million had been spent up until then and if we did not then agree to the DFBC then that £80 million was wasted. My understanding was from literature that I had read elsewhere that that was a common practice in order to hook authorities in that they do not want to waste the money they had already spent so that they would have to give the go ahead, and, of course, that was the trap that CEC were in.

40. I recall that there may have been a small contingency in the extent to which the infrastructure contract would be a 100% fixed price contract. Councillors were aware that disputes were arising all over the place because of various factors. The companies were saying that issues had not been brought to their attention prior to them starting the work. There were also rumours at the time that there were all sorts of reasons for delay. There was also talk of companies with ghost members of staff, such as people who were not being employed by the company but signatures were being acquired. That never officially came to CEC's attention, but certainly people brought it to Councillors attention. Some people were making a lot of money and it was not being

scrutinised enough. I regarded it as a bit of a public sector gold rush where people were coming in and organisations and companies were making a great deal from the Tram Project. We could see with our own eyes because we knew how long these works should take and we could see the streets were still dug up and the traffic diversions. More and more Councillors expressed disquiet because it could not be hidden. You can hide figures and reports but you cannot hide looking at the street and seeing vast swathes of the street being dug up. We were being told that work that would take a couple of months but it was still visibly on-going six, seven or eight months later.

Events in 2007 to May 2008

41. The Tram Project was politically contentious prior to the 2007 election for CEC. At the time I was the only Councillor that opposed the Tram Project so I suppose people regarded me as being a pest rather than anything to worry about because it was only me out of 58 Councillors. With one Councillor out of 58, CEC did not have to worry, although they would not have been very happy with the publicity that I was managing because I knew my way around and I knew how to get publicity and express my views in the media. CEC would find that rather irksome but given I was the only Councillor expressing opposition to the Tram Project, I do not think that it was contentious for CEC. In the public's eye it was contentious because we knew from speaking to people and from letters to the press and contributions as seen in the media, that we were not sure that the public supported the Tram Project. I asked the Leader of CEC at the time, Ewan Aitken, on his Leader's report if he would have a referendum to take the Tram Project forward. I also proposed a referendum and a motion which was defeated, and the Evening News at that time supported me that there should be a referendum. However, the reason it did not go to a referendum was that CEC knew the outcome of that referendum would be to scrap the Tram Project. The change in the administration of CEC from a Labour administration to a Liberal Democrat/SNP coalition did not have any great effect on the Tram Project. Instead of just being me, there were now 12 in the SNP Group and still 46 others who were in favour of the Tram

Project. CEC had an in-built majority in terms of pressing ahead with the Tram Project. In my negotiations with the Liberal Democrats, I maintained that the SNP would be allowed to keep to our position on the trams or I would not have entered into a negotiation or a coalition with them. That was an integral part of the SNP Group manifesto and we were elected on that basis. I did receive information on the Tram Project at the time and whether that was all the information, I do not know. I was made aware that there was more information being given to other people than was being given to the SNP Group.

42. I recall that the local government election on 3 May 2007 changed the administration of CEC from a Labour administration to a Liberal Democrat/SNP coalition. I was regarded probably as being a safe bet in terms of giving information to because CEC and TIE knew that I would defend them, and that our group would defend their position. The SNP Group would receive information that BB was always to blame in disputes. However, in terms of other aspects regarding the Tram Project, I suspect that CEC and TIE might have been concerned that the information would reach the public domain and they did not want that. Therefore, I believe that I was only given the information that CEC and TIE wanted to give me.
43. I am aware that the SNP administration formed after the local elections in May 2007, and then there was a debate and vote in the Scottish Parliament on the future of the Edinburgh trams and EARL projects. Following that, the Scottish Parliament called on the SNP administration to proceed with the Edinburgh trams project within the £500 million budget limit set by the previous administration in June 2007. I am referred to a letter dated 2 August 2007 from Malcolm Reed, Transport Scotland (TS), to Tom Aitchison, CEC, **(CEC01666269)** which notes that the grant for the Tram Project from TS was capped at £500 million. I am also referred to a Highlight Report to the Chief Executive's Internal Planning Group (IPG) on 30 August 2008 **(paragraph 4.1, CEC01566861)** and an email dated 3 July 2007 from Clive Brown to Jim Grieve **(CEC01556572)**. I cannot recall all the detail of what effect the change in administration had at a national level on the Tram Project. The SNP led

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Scottish Government had to include the Tram Project in their budget or the budget would have been voted down because all the other parties were in agreement. I was at that debate in the Scottish Parliament and it was made emphatically clear that the Government would cap the Tram Project at £500 million and John Swinney's words were "*and not a penny more*". That probably prompted CEC and Jim Inch, in particular, to say that they had to be very careful about spending the £500 million because the Government was not going to give any more should they overspend. I cannot recall if any contingency plans were put in place by CEC at that time.

44. I am referred to a Briefing Paper dated 20 July 2007 produced by Jim Inch **(CEC01566497)** in relation to the governance arrangements of TIE. I cannot recall seeing the briefing paper because I was not a director of TIE. The briefing paper might have been discussed with the TIE directors that were Councillors, and as the SNP Group did not have one, I do not believe that they would have shared with me any concerns that they had regarding the governance of TIE.

45. I recall that I attended a CEC meeting on 23 August 2007 **(CEC01891408)** at which Councillors were asked to note a number of points on the Tram Project. I recall that it was thought to be necessary to revise governance arrangements regarding TIE as a result of Jim Inch, because they regarded it as not working properly. I cannot recall the timescales but I was not happy when Willie Gallagher, whilst being the Chair of TIE, took over as the Chief Executive of TIE. I opposed that move at an informal meeting that CEC had with all the group leaders, the Chief Executive and Donald Anderson the Leader. I was told at that time that it was a temporary measure. After Willie Gallagher left TIE we had Richard Jeffrey who came in. Richard Jeffrey had resigned in his position at Edinburgh Airport and suddenly Councillors were told that he was the man for the job, so there was a bit of disquiet regarding TIE. Once more, none of the TIE Directors had ever brought any views to the full Council that they were concerned, so my knowledge of what concerns Jim Inch had regarding TIE was limited.

46. My understanding was that it was thought necessary to establish a subcommittee of the Transport, Infrastructure and Environment Committee in order to have a number of people concentrate on those issues alone, as that would be the only item on the agenda. I did not have any involvement with that committee. I was not on transport and the SNP did not have a representative on that committee, that I recall. I am referred to changes to the governance structure introduced in the second half of 2007 and the first half of 2008 that were previously noted as a requirement by Jim Inch in his Briefing Note mentioned **(CEC01566497)**. As such, the sub-committee was set up to carry out TS's urging of CEC to implement a more robust monitoring of TIE's activities in delivering the Tram Project.
47. I am aware that a joint meeting of the TIE Board, Tram Project Board (TPB) and Legal Affairs Committee took place on 15 October 2007 **(CEC01357124)**. The Boards were advised that the Infraco bids were primarily based on preliminary design. At the time we were told that the preliminary design would not change very much from the detailed designs and I believe that that probably was not the case. While there were reasons for opposing the Tram Project, and that everything was based on preliminary design, there was a haste to get the project up and running and completed. We could not understand why BB were in dispute with TIE over issues that they said they were unaware of when we thought that they would have been made aware of them before they took over the contract. BB was finding tunnels underneath Leith Walk and also graveyards with skeletons in the city. There were other technical problems regarding the turning point of the tram into South St Andrew Square. However, once more, Councillors were not given very much detail of the nature of the disputes with BB. We were just told that BB was playing hardball and that they were trying to increase the price of the contract. We were told that we should stick with TIE's estimates and take their side of the argument, which we did, because that was what we were told and that TIE were justified. Only latterly did BB start making approaches to individual Councillors to tell them that perhaps not everything was as it seemed.

48. I am aware that on 25 October 2007 TIE sought CEC's approval for the FBC, version 1, in respect of phase 1a from the Airport to Leith Waterfront **(CEC02083538)**. I am also referred to the full FBC, version 1 **(CEC01649235)**. I note that at the CEC meeting on 25 October 2007, members appeared to have been given a presentation by Andrew Holmes, Willie Gallagher and Neil Renilson **(CEC02083536)**. The SNP Group was opposed to the FBC. I also had some off the record discussions with people who were involved in Lothian Buses who let me know that not all was as it seemed in terms of what was being portrayed. At the full Council meeting on 25 October 2007 the SNP Group submitted an amendment that was defeated by 46 votes to 12, as shown in the minutes of that meeting **(CEC02083535, pages 6-7)**. So it was set out there what the SNP Groups view was on the FBC. I cannot recall TIE's presentation on the FBC version 1, but we were told that everything was fine as checks and balances were in place. I cannot recall if they tendered a valuation, if it was provided to CEC or whether it in the information room that we had where Councillors could go to view the documentation. To view certain commercially restricted documentation, Councillors had to sign a document that we had seen the documentation but we could not take copies. My understanding why TIE chose BBS as the preferred bidder was that they had the necessary expertise to get all the work done and they came in with the best cost. Also BBS had the knowledge and experience of similar big infrastructure projects internationally.
49. I am referred to an email dated 3 December 2007 **(CEC01397538)**; attached to which, Alan Coyle sent a briefing note **(CEC01397539)** to Andrew Holmes and Donald McGougan setting out a number of concerns in relation to the Tram Project including the report to CEC seeking approval of the FBC. I cannot comment as I cannot recall Alan Coyle's briefing note.
50. I am referred to an email dated 14 December 2007 **(CEC01397774)** in which Duncan Fraser referred to a presentation by TIE the previous day and asked certain questions about the Quantified Risk Allowance (QRA). I do not know if I was ever made aware of that email from Duncan Fraser of 14 December

2007 and I do not recall seeing that. It was very much technical; we understood that the scope of the scheme was to be fixed.

51. Councillors were being told that incomplete detailed design approvals and consent had been in-built into the overall price and that they were confident that it would come within the given price and there was no need for concern. That information was coming from the people that we relied upon to give us that professional advice. If that information came from TIE then there would be a comment made by senior officials CEC whether they supported what TIE were saying or not and I would be amazed if our officials and TIE did not say the same thing. That conversation would be agreed before the Councillors were ever made aware of information.

52. I am now aware that between 17 and 20 December 2007 negotiations took place at Wiesbaden, Germany, between representatives of BBS and TIE and that on 20 December 2007 an agreement was reached, called the Wiesbaden Agreement. I knew that there were meetings in Germany but I cannot recall by whom, when and how I was advised of those matters. As far as I can recall we were of the view that TIE was aware that it was fixed price contract and I do not know how they would have been told otherwise.

53. I am aware that on 20 December 2007 Donald McGougan and Andrew Holmes presented a joint report to CEC (**CEC02083448**) seeking members' approval of the FBC, version 2 (**CEC01395434**). The SNP Group submitted a motion not supporting the FBC, which was defeated. We were concerned about the delays resulting from the unforeseen ground conditions, or issues with the utilities. There were issues occurring all the time now that were giving us cause for concern. My understanding at the time was that the infrastructure contract was fixed price and that there was a contingency fund set aside for any unforeseen difficulties. Those would have to be met by a financial contribution from CEC which was predicted to be more adequate for what would be required. It was hugely important for CEC that the infrastructure contract was a fixed price contract. The Scottish Government had said it was not giving a penny more than the £500 million promised. Any money

overspent was not going to be found from the consortium so it would have to be found from CEC's budget or the projected tram budget and/or Lothian Buses budget. Therefore, whatever happened, that money was going to be made up by public money and CEC referred to it as the 'ticket box monies', which was monies from fares. That also concerned us, that there could be an impending fare increase in order to provide more money for the Tram Project. This would mean a fare increase, not only for the trams, but for the buses. Bus passengers would be paying an increase in their bus fares for a tram which they might never ever set foot on. For instance, bus passengers travelling from Waterloo Place to Portobello might have their bus fares increase but were never going to set foot on a tram from York Place to the Airport and would have to pay for that, which was a concern.

54. The SNP Group were against the Tram Project from the start. All of the issues that were occurring did not surprise us and it was rapidly turning into a mess. We knew there was disquiet amongst officials in TIE, there were personality clashes and it was starting to unravel. We knew at that time that the lead negotiators in TIE and BB were so far apart that no compromise could be reached. It went to arbitration to decide which party bore risks arising from incomplete design, approvals and consents and utility diversion works. If the arbitration found against CEC then the costs would have been borne by CEC. Before it went to arbitration or dispute resolution, both parties would try and work out between them to try and reach a compromise. If they could not compromise it went to dispute resolution and it was in the hands of the third party to examine it all to see who was at fault. What we found out was that TIE appeared to be claiming victories over BB when BB went to dispute resolution. For example, if BB were asking for £200,000 and the person in charge of the dispute resolution decided that BB were not entitled to £200,000 but were entitled to £140,000, then TIE counted that as a victory because BB did not get what they wanted. The fact that BB got more than they were awarded in the contract was deliberately downplayed by TIE and they were saying that when matters went to dispute resolution, then they were securing victories but it was a kind of pyrrhic victory, which only came to light later on. I had

understood that the allowance that had been made for these risks was more than adequate.

55. In relation to the FBC, it was in the SNP Groups motion that we did not believe that the aims of the procurement strategy had been met because the aim of the procurement strategy was to get everything at a fixed price. There was now disquiet because matters were coming to light that had not materialised as they had been predicted. Although we did not pour scorn on everything that we were told, we were certainly more prejudicial in terms of how we looked at the time at the information we were being given. They were always giving optimistic outlooks and the evidence was building up that that kind of outlook was misguided entirely or it was deliberate, and my view would be it was more deliberate to give an optimistic outlook in order that the project went ahead. I cannot recall if I considered that the price and terms of the infrastructure contract at that stage were consistent with the FBC. We were concerned that allowance had only, apparently, been made for delay resulting from design and not for delay resulting from delay resulting from unforeseen ground conditions or issues with utilities. Both were pertinent issues and somebody had to meet the costs of unforeseen ground conditions. BB's view was that if they were to meet all those costs then the Tram Project was becoming unprofitable and that they would not have bid for the project had they known, so we knew the cost was going to fall to the public purse. I cannot recall which risks associated with design work were to be transferred to the private sector and which had been retained by CEC.
56. I recall that the SNP Group were asking for clarity on a whole number of issues at that time as we were opposed to the Tram Project. We did seek further clarity on the costs that could arise from changes to the programme, because people were still attracting salaries and there was a huge slippage in terms of the programme. We knew that these costs had to borne as well and that concerned us. We did not feel comfortable approving the FBC in those circumstances. There was no discussion about postponing the award of the infrastructure contract until the design and utility diversion works were complete as we were outvoted and the Tram Project went ahead.

57. I am referred to the joint report dated 20 December 2007 and presented by Donald McGougan and Andrew Holmes to CEC (**CEC2083448**). I note that some risks were retained by the public sector which included agreements with third parties including delays to utility diversions, finalisation of technical and prior approvals, and the absence of professional indemnity insurance for TIE as it was wholly owned by CEC. I was concerned that CEC retained those risks.
58. Jim Inch, Donald McGougan, Andrew Holmes and Tom Aitchison were all involved in determining whether it was appropriate for TIE to award the infrastructure contract. They were all experienced senior CEC officials, and the view that the SNP Group took was that they themselves would know what new due diligence requirements were required before the contract was awarded. That was why a lot of money was paid to the people who were supposed to be advising us. We were not satisfied that the conditions in relation to giving approval to TIE to award the contracts had been met. We did not oppose the awarding of the contracts because we had lost the vote on the DFBC and our colleagues in the Liberal Democrats had told us that it was hugely important that CEC be seen to be together on the awarding of the contracts. We had a discussion in our group whether we should actually oppose the awarding of the contracts or allow the contracts to go through, having lost the debate on the business case being approved and given that the contracts were a consequence of the FBC being approved. We therefore took a back seat in terms of the contracts being awarded because we knew that it was a necessary consequence of the DFBC being agreed. We were opposed to the DFBC but we did take on board what our colleagues and officials were telling us, that it was better to present a united front in terms of the contract. The consortium would then know that CEC was united on its side and that was why we did not stage any opposition or put any further amendments up.
59. I am referred to a progress report from TIE to Transport Scotland dated 14 January 2008 (**CEC01247016**). I was not aware of the report at the time as it

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went from TIE to TS. CEC's TIE directors must have seen it but I cannot recall that report ever being reported to CEC.

60. The SNP Group were told all throughout that most of the costs of the infrastructure contract had been fixed, that it would only be in unusual circumstances that we would require to make additional payment and we had sufficient money set aside in our contingency fund to accommodate that. We opposed the whole scheme anyway because we opposed the contingency fund and we had seen similar circumstances happen before where suddenly the contingency fund has had to be increased. There was a lot of money being spent on the Tram Project at the time, so that it finally got to the stage where it would have cost more to cancel than it did to proceed, which was a tactic that had been deployed elsewhere. My understanding remained the same of the risk of scope changes.
61. I am referred to a number of emails by CEC deputy officials which raised concerns about the Infraco contract in the lead up to contract closure (CEC01567522), (CEC01567520), (CEC01560815), (CEC01508412), (CEC01400919), (CEC01400987), (CEC01399016), (CEC01399075), (CEC01401032), (CEC01401628), (CEC01401629). The concerns did not surprise the SNP Group because we had predicted that the project would spiral out of control. More money was being put to the project and those deliberately optimistic timeframes could not have been acceded to. I said in a letter that I sent to the Evening News that we took no delight from saying 'we told you so', and that was all reflected in our actions in CEC, notwithstanding the fact that we always backed CEC when in a dispute. With the consortium we were always severely critical of the way that the project had been handled, in particular, the dearth of information coming from CEC directors to CEC. There was not one written communication from any of the CEC directors on TIE giving a report, or saying anything at all, about their actions on TIE, or if they had any misgivings of what they were. That was their role, they were there as lay members to tell us what was happening as directors and they did not. However, all those views were reflected in the motions that we gave them putting them forward.

62. I am referred to a Design Due Diligence Summary Report that BBS produced on 18 February 2008 (**DLA00006338**). I cannot recall if I saw the report. At that time we were made aware that BBS had a case, and that they had legitimate claims. They had found so many issues when they had started the work which they had not been alerted to when bidding for the project, that they would never have gone for the project in the first place. Although we were always told that the Tram Project was fixed price, when the project was up and running it was evident that it could not possibly maintain a fixed price because of the experience of what was happening.
63. I am referred to a letter dated 12 March 2008 (**CEC01347797**) in which DLA advised CEC on the Draft Contract Suite. I am also referred to emails between Graeme Bissett and Andrew Fitchie dated 11 March 2008 (**CEC01551064**) and (**CEC01551066**), and email dated 11 March 2008 (**CEC01541242**) which enclosed a draft of the proposed letter from DLA to CEC (**CEC01541243**). I am also referred to Graeme Bissett's email of 13 March 2008 (**CEC01474537**) which attached a draft of a further letter from DLA to CEC (**CEC01474539**). I do not recall the letters from DLA to CEC. I did not know that individuals from TIE would have had an input into the drafting of letters from DLA to CEC. I was not on the TIE Board and did not receive information directly from our directors on TIE. I would have thought that there would be conflict of interests if TIE had an input into the drafting of letters from DLA to CEC, especially if the TIE Board were unaware of it. CEC would have thought that the information was coming from DLA and that would have been inappropriate.
64. I am aware that deputy officers at CEC had previously recommended around August 2007 that CEC should seek independent legal advice on the risks arising to CEC in respect of the infrastructure contract, (**CEC01567522**) and (**CEC01560815**). The SNP Group was certainly told that the contract had been checked by lawyers, but I cannot recall if the lawyers being asked to consider them were in-house lawyers or if they external. We were told that the contract was watertight and that we had nothing to concern ourselves about and that it had all been checked to the satisfaction of our senior officials,

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including CEC's Chief Solicitor. I had the impression that during the debate, we were told that the contract had been looked at by external lawyers but I cannot say for certain. However, because the SNP Group were against the Tram Project, our gut reaction would have been to oppose the contract, although we were asked to support the contract. I was sure that people in the other groups asked the questions about safeguarding CEC's interests through the contract and we were told that CEC was legally in a watertight position, which came from people who supported the trams as well. The Conservatives asked questions about that as well. They wanted reassurance that the contracts were watertight and we were given that assurance by CEC senior officials.

65. I am aware that a full meeting of the Council took place on 13 March 2008. I am referred to the agenda **(CEC02083387)** and minutes **(CEC02083388)** in which members do not appear to have been given any update on the Tram Project. I do not recall if members were given an update in relation to the Tram Project at that meeting.
66. I am referred to an email dated 14 March 2008 by CEC's solicitor, Gill Lindsay, to Alan Coyle **(CEC01386275)** which attached a note that had been approved **(CEC01386276)**. I am aware that the note, to be signed by Donald McGougan, Andrew Holmes and Gill Lindsay confirmed that it was appropriate for Tom Aitchison to authorise TIE to immediately issue a Notice of Intention to award the Infraco contract to BBS. I understand that they had CEC approval. By that time CEC had given its approval to the awarding of the contracts, which would have been the normal course of events unless that was pre-emptive. After the SNP Group opposed the business case, we lost that vote and they then came back to us and said that they had agreed the business case, the contracts relating to the business case were watertight, and we were told not to cause any upset as they were not going to sign the contracts, so we let it go through. I would have thought because of that, Tom Aitchison would write to TIE to say that they could issue the Notice of Intention to award the Infraco contract to BBS. BBS were the only ones that were in the

frame at that time anyway and they were the only consortium that we were having discussions with.

67. I am referred to an email dated 31 March 2008 (**CEC01493317**), attached to which David Leslie, Development Management Manager, Planning, CEC, sent a letter to Willie Gallagher (**CEC01493318**) expressing certain concerns in relation to prior approvals for design. I am also referred to a letter dated 3 April 2008 sent by Duncan Fraser to Willie Gallagher setting out similar concerns by the Transport Department relating to Technical Approvals and Quality Control Issues (**CEC01493639**). I was unaware of all of that and had not seen any of that before. Other members of CEC may have been aware but I cannot recall as the SNP Leader having those letters. I am taking from what David Leslie stated, that he thought BBS had under-estimated the amount of work that was going to be required and that was the SNP Groups view as well, that there were too many unknown unknowns. As it transpired BBS, the consortium, were saying that lots of things were coming to light that they were unaware of that they should have been made aware of. BBS were extremely critical of TIE and said that TIE should have known all those issues before it went out tender for the project and alerted any potential bidder what the extent of the project was. However, once more, we were told that we had four CEC directors on the TIE Board and that it was a CEC body and that BB were just trying to get more money out the project. We were told that BB did not have a basis for doing so; but as it transpired they did indeed have a basis for doing so. I understood that there was concern that the nature of those difficulties were such that the contingency fund that had been set aside, over and above what we regarded as fixed price, may not be sufficient to cover them. It was not just a question of a couple of pipes, my understanding was that there were serious omissions in the maps that were provided to BBS, and when they started working from those maps, they found that they were deficient. That caused BBS alarm and they were paying the expense for it.
68. I am referred to an email dated 11 April 2008, sent by CEC's deputy solicitor, Colin Mackenzie, in which he advised CEC's solicitor, Gill Lindsay, of a difficulty that had arisen with the "*Russell Road Bridge: Prior Approval*" and

raised the question whether the sum allowed in the Quantified Risk Allowance (QRA) for the SDS delay of £3 million was sufficient (**CEC01401109**). I note that Colin Mackenzie also commented that *"this is getting very close to calling upon the Monitoring Officer to become involved"*. I am aware that concern was expressed by Alan Coyle of TIE, in an earlier email in the same thread, that that was contrary to the risk transfer to the private sector and that insufficient information had been provided by TIE for CEC to accept the risk on those matters. The SNP Group were aware and we shared those concerns and the view of how many more of those issues were going to come out, so we were concerned as it appeared to be a regular occurrence. Other members of CEC must have been aware. The buy-in was such now that an irrevocable decision had been made and we had passed the point of no return. It was now that CEC were looking to mitigate how much money was coming out of the public purse and people were concerned because it was showing up the professionalism of some very senior CEC people. We as 58 lay members needed support and guidance. I was not qualified and neither was anybody else in CEC. We understood that we had a responsibility and that we should have asked as many questions as we could. However, there were certain people employed for a lot of money to give us the advice that we required and we relied on them to sort issues and that did not happen. I could understand why Colin Mackenzie said that it was getting very close to calling upon the Monitoring Officer to become involved. It would have been escalating the matter to involve the Monitoring Officer because they would only get involved if matters were getting out of hand and getting close to jeopardising the amount of money that was set aside. The Monitoring Officer was there to monitor the on-going expenditure. I am not sure if that email correspondence was known to me at the time but, certainly, I knew that the problems we had had on Russell Road bridge were well known and to the local Councillor as well. It was another example of the issues that were happening regularly.

69. I am aware of an email dated 14 April 2008 by Colin Mackenzie which set out certain concerns (**CEC01256710**) and noted his view that it would be *"prudent and proper"* to report again to members before Financial Close of the Infraco contract was authorised, given the various changes which had emerged since

December 2007. I must have been made aware of those concerns because any increase would have to come back to CEC. Of course we were concerned because we saw that the danger was that the Tram Project was going to spiral totally out of control and that was one of the first indications that that was happening and that the timescale was slipping. I believe that members of CEC must have been aware of those concerns. If CEC's decision was to set aside a certain amount of money and the contract was given a fixed price, then any variation of that would certainly have to come to the full Council, unless the Finance Committee was given the authority, but Councillors would be made aware of that. The SNP Group had predicted that it would happen so it was no surprise to us. We were in a position where we could not do lot other than highlight matters if we possibly could because we were always going to be outvoted.

70. I am referred to an email dated 15 April 2008 (**CEC01245223**) in which officers in CEC legal were sent a copy of Schedule 4, the Pricing Provisions of the Infraco contract (**CEC01245224**) and a cost analysis spread sheet (**CEC01245225**). I am also referred to CEC legal's reply on 16 April 2008 (**CEC01247679**), asking whether it would be appropriate to get a revised statement from TIE confirming that the risk allowance was still sufficient. I cannot recall seeing Schedule 4. Officials must have reported to CEC on pricing provisions, but I cannot recall. I cannot recall the discussion, but I can recall by that time, from the outset, the SNP Group knew that the figures that we were given would bear no relation to the final cost. That could only then happen if the cost was varied and the only people that could have varied the cost were the contractors. I do not know whether that would be because of time delays and disputes in terms of the MUDFA works. It was only really then that they could say our costs had gone up as they had employees, people on site, materials, machinery on site, sub-contractors and such like. The costs could only vary because the contractors said that the tram line cannot be met out of the money that had been set aside, and that was what we had predicted.

71. I am referred to an email dated 30 April 2008, at 1441 hours, sent by Colin Mackenzie to Gill Lindsay (CEC01241689). I am also referred to a report to CEC by Tom Aitchison on 1 May 2008 (CEC00906940), which sought refreshment of the delegated powers previously given to the Chief Executive to authorise TIE to enter the contracts with the Infraco and Tramco bidders. That confirmed that Tom Aitchison did not have delegated powers to award the contract because he was seeking to refresh them. The only price increase that we would be alerted to was the one that was noted in the report to CEC in which the price increased from £498 million to £508 million. As far as I can recall, members were not advised at the meeting on 1 May 2008 of the recent price increase. Some CEC leaders may have been advised but I was not given all the information that I suspect others received but it could well have been that the officials did not report that. They may have decided to wait and see what Colin Mackenzie was going to say. If BB had increased the price by a significant amount they might have just blamed BB for the increase and said that they were not in negotiation with BB at that time and because there was nothing agreed, they did not report that to CEC. They may have waited to go back and negotiate with BB, so they could not assert that there was a need to bring it to the attention of CEC as they had not yet had a chance to resolve matters with BB.
72. With regards to the new risk area that had emerged as a result of the overlapping period of design and construction and the steps that would be taken by TIE and CEC to reduce the new risk area, the person paying devoted scrutiny to that was SNP Councillor Nick Elliott-Cannon, who has responded in writing to the inquiry. He was CEC's finance person at the time and had all the detail about all of that back in 2008. As well as that going on, hugely important as it was, there was other CEC business going on which had to be taken account of. That was why we had spokespeople and Nick Elliot-Cannon at the time was Vice Convenor of Finance. Gordon Mackenzie was Convenor at that time, as under the coalition agreement, the Convenorship and the Vice-Convenorship was split between the SNP and the Liberal Democrats. The Liberal Democrats being the largest partner wanted to have Convernorship of Finance, as you would expect. I note that the report to CEC by Tom Aitchison

indicated that risk was fully managed. We had concerns as to whether that gave the full picture regarding risk to CEC. I do not consider that I, and members of CEC, were adequately briefed on the effect and risks arising from the contract including the Infracore Pricing Schedule 4. The members understood that it said that 95% of the costs were fixed but with a project of such a large cost, 5% can be a lot of money. However, at that time, we had stated politically that we had no confidence that the budget was not going to be hugely exceeded. It was also a recurring theme that the price was increasing. Those who were in favour of the Tram Project were getting more and more reluctant to criticise it because then they would have to admit that they had made a mistake. So they had to buy-in because they were maybe well aware of the cost increasing but decided not to do anything with the information for fear of the fact that it would shed light on the original decision to go ahead. That in itself ensured that any potential criticism was quietened down and if anybody was of the view, in a group, that they wanted to do something with the information then they would be told that they cannot do that because that was the group policy, and that was what the leadership wanted. You would then be seen to be anti-leadership. Therefore, they would keep quiet because those issues were coming up all the time, but too much money had been spent and contracts had been signed so they just had to make the best of the situation. If there was any misunderstanding in members understanding of the costs then it was up to the officials to brief adequately elected members. So if elected members misunderstood something then they had not been briefed properly, it was as simple as that.

73. I am referred a slideshow presentation summarising key aspects of the Tram Project dated April 2008 (**CEC01276012**), that may have been shown at a full Council meeting on 1 May 2008. I do not recall whether I was shown this slideshow.
74. I am referred to an email dated 8 May 2008 sent by Stan Cunningham, Committee Services Manager, to Gill Lindsay, CEC's Solicitor (**CEC01248988**), which advised on the current plan for tabling a report. Also noting the further price increase from £508 million to £517.2 million and

seeking approval for the Chief Executive to instruct TIE to enter into the relevant contracts which meant that it may be the first time that many of the members were aware of the matter. Unless CEC gave the authority for the Policy and Strategy Committee to make such decisions then I would have thought it would have to go back the full Council because it was a full Council decision, so the full Council should have been notified. All the leaders were at the Policy and Strategy Committee but nevertheless, unless they had specific authority to determine that it was a small increase or they were going to be notified and approval sought from them. Unless that was given to them by the full Council then it would have been more appropriate to go to the full Council unless there were time constraints. I do not know if monies had to be paid by a certain time; I doubt it, because we were talking about the overall contract increase from £508 million to £517 million. I do not understand why it would have been necessary to go to Policy and Strategy in terms of time. I would have thought they would have gone back to the full Council.

75. I am referred to a report dated 13 May 2008, submitted shortly before contract signature, by Tom Aitchison to the Policy and Strategy Committee **(USB00000357)**, and minutes of the meeting **(CEC01891564)**. That was the first meeting after the election so Jenny Dawe would have been elected as Leader, I would have been elected as Deputy Leader which meant that she convened Policy and Strategy and I was Vice-Convenor. It would have been the first meeting after the election and that was the normal course of events. I am aware that the minutes note, at paragraph 11, that notice of approval would be sought for Financial Close and notification of contract award. I cannot recall when and how members of the committee were first given the choice. It might have been a paper presented at the meeting because up until then, with it being the first Policy and Strategy meeting, nobody knew who the Convenor and Vice-Convenor was going to be until it had gone through the full Council and until the coalition was set. What sometimes happens was that a paper may have been presented at the start of the meeting. I note that under Declarations of Interest, that Councillor Buchanan was TEL because he was SNP and Councillors Jackson, Wheeler and Mackenzie were TIE Directors. They were saying that they wanted to finalise matters and it was

first Policy and Strategy after the election so it may have been held in abeyance for some time until the election had been concluded.

76. In hindsight, the increased price and authority to enter the contracts ought to have been considered by the full Council, unless there was a reason, such as if there had been a delay and they wanted to go directly to the Policy and Strategy Committee. The Policy and Strategy agendas should be discussed within groups as well but if that was an emergency report then it would be just the Policy and Strategy Committee members who would determine it and would have to vote according to the policy of their groups.
77. I am referred to a certified extract of the minute from the meeting notes that the committee authorised the Chief Executive to instruct TIE to enter into the contracts **(CEC01222172)**. It would appear that it was the final approval from CEC **(CEC00080738)**.
78. I cannot recall what changes had been made to the Infraco contract between December 2007 and contract signing in May 2008. I understood that both parties jointly bore the risks arising from incomplete and outstanding design, approvals and consents and outstanding utility diversion works. However, it was becoming evident it was more CEC's liability because it was being proven that the utility diversion works were encountering problems that they had not been alerted to that may have existed. We recognised by that time that CEC may well be liable for the risks. Once more, the infrastructure contract was a fixed price contract, it mentioned that it may have been 95% with a 5% fluctuation. We were not told that the aims and procurement strategy had been met. I cannot recall being briefed or notified on Part 4 of the Schedule to the Infraco contract. We were starting from the premise that it was all as predicted. We set our premise that all those assumptions were optimistic assumptions and nothing surprised us.

Events between May 2008 and December 2008

79. I am referred to the report to CEC dated 1 May 2008 (**CEC00906940**) which stated that the firm costs had increased by £27 million, whereas the risk allowance had reduced by £17 million. I am referred to an SNP Group motion which noted that the movement in cost may impact severely on the ability to deliver tramline 1b (**TIE00153367**). I am also referred to a Highlight Report to the Chief Executive's IPG dated 29 April 2009 (**CEC00860021**). Line 1b was never going to happen. It was a political decision to let people know that there was a plan to run the line from Roseburn to Granton. The money was never going to be available. It was added at the last minute by the Labour administration to appease the people of Edinburgh who were by then raising questions about a line that was going to go from Newhaven to the Airport. The indications were that there was insufficient money perhaps even for that, so line 1b was never taken seriously by any Councillors, certainly not by me, and I am the Councillor for the area of Granton.
80. I am referred to the report to CEC from TIE dated 18 December 2008 (**CEC01043168**) which noted that TIE were engaged with the contractor on re-programming phase 1a to address the slow start up of construction. I cannot recall that.
81. I am aware that at a meeting held at the City Chambers on Friday 28 November 2008 (**CEC010695910**), Jenny Dawe requested that TIE suspend the implementation of phase 2 until after the embargo period. That obviously had a delay in a project that was already delayed. The Policy and Strategy Committee on 12 May 2008 probably understood that. Any delay on the Tram Project was costing CEC money.
82. I am referred to an action note dated 1 December 2008 (**CEC01069093**), which stated that Tom Aitchison was to meet with me and Councillors Dawe, Wheeler and Buchanan to brief us on the Princes Street closure. I cannot recall the outcome of that meeting as there were a lot of meetings at the time.

CEC010695910
should be
CEC01069591

83. I am aware that on 10 December 2008, Councillor Iain Whyte sent an email to Jenny Dawe, Phil Wheeler, Alan Jackson, Tom Aitchison and Donald McGougan which noted concerns in a comment made by David Mackay of TIE to the effect that TIE had never started with a fixed budget because "*the design changes as you go along*" (TIE00887286). I was aware of that comment made by David Mackay. My view was that David Mackay had revealed that carelessly or by mistake.
84. I would have been first made aware that there was a dispute between TIE and BSC in relation to the infrastructure contract by a report or a briefing, but I cannot recall exactly how I was made aware. I did not know who was primarily responsible for the dispute arising. We were always told that BSC were responsible and that BSC were being unreasonable, particularly BB. I understood TIE's strategy to resolve the dispute was a hard-headed approach to meet BB head on and, once more, we were implored to support TIE's strategy to try to save more money being spent from the public purse. CEC proved that and the Council Director said nothing on TIE. At that time, the Chief Executive would have been, Richard Jeffrey who came in from the Airport, because Willie Gallagher had left by that time.
85. I was well briefed on the use of the contract Dispute Resolution procedures, including the referral of certain disputes to adjudication. I cannot recall who made the final decision, but I know that the cases were put to an independent arbiter when it got to the Dispute Resolution and a decision was made. It will be on record that either a Sheriff or another person with a legal background was appointed, but I cannot recall which. We were told at that time that TIE were winning the disputes but what they were classing as winning was reducing the amount of money we had been asked for by BB. TIE regarded that as a victory which was a bit of a spin given that additional money was required to go to BB.

Events in 2009 and the Princes Street Agreement

86. I am referred to an action note following the special tram IPG on 29 January 2009 which was attended by CEC officials (**CEC00867661**). Senior CEC officials who attended the meeting did not make me and other members aware that absolute clarity was still needed on the price and that there was concern BSC costs did not represent value for money.
87. I am aware that a dispute arose between TIE and BBS prior to the planned commencement of works on Princes Street in February 2009. I am referred to an email dated Friday 22 February sent on behalf of David MacKay which notified Councillors Jenny Dawe and Phil Wheeler and the Chief Executive, Tom Aitchison, and others, of a response that was due to be dispatched to BBS (**CEC00867359**). I do not know when I was first alerted to the dispute in Princes Street. We saw with our own eyes that work had ground to a halt. I cannot recall the nature of the dispute.
88. I am referred to emails dated 9 November 2010 between Anthony Rush and Mandy Haeburn-Little (**TIE00306566**). At that time we thought that TIE was acting appropriately. It was only afterwards that I considered that TIE were not open and transparent when reporting to CEC on the Princes Street dispute because they kept on reporting that they were right and that the contractors were wrong, which was not the case. TIE was reluctant to use the contractual Dispute Resolution procedures because they were trying to negotiate with BB but then had to go to the Dispute Resolution. TIE was not getting much success despite them telling us that they were being successful. My view on the conduct of BB throughout the dispute was that they were being unreasonable but that was because we were told that TIE's position was secure. I cannot recall if the dispute in relation to the works at Princes Street was the first dispute between TIE and BSC in relation to the infrastructure contract.

29 January
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28 January 2009

89. I recall that I received a letter dated 5 March 2009 (**CEC00883268**) from the Chief Executive of CEC, Tom Aitchison, in response to me seeking clarification on the current budgetary position, cancellation of the contract, TS funding and residual benefits of the work to date. I wanted to ascertain whether or not it was still feasible to argue for a cancellation of the contract and I needed a lot of information. We were getting to the stage where we were being informed that cancellation of the contract would incur more expense than continuing with it. I wanted to get it right and clarify what the situation was, but Tom Aitchison was still telling us that the Tram Project could be delivered within the £545 million funding available, which was ill-advised. I thought that it was another attempt to force us into a situation of supporting the contract. In 2008/09 the cost to date was in the region of £233 million and then it increased well above that. I cannot remember fully but at that time, 26 February 2009, the work had maybe yet to be started on the Tram Project. I was looking for information to clarify how much would be incurred by CEC if the contract was terminated. I found it fanciful that TS asked for the money back because we were trying to save public money. I saw it as another attempt to get us to support the project, so I was not satisfied with Tom Aitchison's response.
90. I am referred to an email from Donald McGougan to Evelyn Mackenzie dated 6 March 2009 (**CEC00883267**). I was not aware that TIE officials had drafted that letter from Tom Aitchison. I would imagine that the Chief Executive would have had to get information from them, whether they provided the information and he drafted a letter, or they drafted a letter for him and he checks and signs it.
91. I am aware that Tom Aitchison sent a letter to TIE dated 5 March 2009 (**CEC00870592**) in which he set out a number of measures required to keep CEC updated about disputes. I cannot recall the purpose of that letter. We were conscious of the fact that when there were issues occurring that there were no reports coming back from TIE. I do not know exactly what the measures were but we wanted to be kept updated about the disputes. We were being inundated with calls from constituents that they, themselves, had

witnessed a lot of inactivity with roads being dug up, diversions and traffic jams, so there was a whole lot of pressure on elected members. I had concerns at the time that whether TIE was keeping CEC Council fully informed of the views of BSC. TIE was not operating as they should have done and they were keeping matters quiet in order that we could not criticise them.

92. I am referred to an email in relation to the Princes Street dispute dated 6 March 2009 from TIE's solicitor, Andrew Fitchie at DLA, to Gill Lindsay, CEC's solicitor, **(CEC01031402)**. I am referred to an email dated 11 March 2009 **(CEC00869667)** from Colin Mackenzie with concerns about the Infraco contract and CEC officers lacking information. I am also referred the email response from Chris Horsley, DLA, to CEC attaching a paper entitled "*DLA Piper Response to CEC Questions*" **(DLA00001357)**. I cannot recall receiving any briefing from CEC officers at that time on the differing interpretations of the Infraco contract or TIE's interpretation of the main provisions in the contract, including the Infraco Pricing Schedule.
93. I am aware of the report to CEC dated 12 March 2009 **(CEC01891494)** which referred to contractual difficulties between TIE and BSC. I had concerns about the commercial confidentiality of information provided to and from CEC members. It was used many times to suppress information being given to us, or us doing anything with any information that was given to us. I do not know about the conditions that the contractors wished to impose in relation to carrying out works. I was told that the contract would be fixed price but I did not consider the contract was at a fixed price. We were never convinced that the contract was going to be at a fixed price anyway. We were always convinced that the price would be exceeded. I always understood that that would be the case.
94. I am referred to a status report to CEC dated 12 March 2009 **(CEC01891494)** which refers to a progress report submitted to the Policy and Strategy Committee meeting on 24 February 2009. I am also referred to the minutes of the Policy and Strategy Committee meeting on 24 February 2009

(CEC02083836) in relation to contractual problems. I do not recall what was said in relation to contractual difficulties. We were on the side of TIE and CEC because we were told that that was the best way of ensuring that CEC did not incur any greater expense. At that stage CEC was not receiving any legal advice about the contractual dispute.

95. I am referred to an email from Colin Mackenzie to Marshall Poulton dated 7 April 2009 **(CEC00900419)**, which made observations and raised concerns on the dispute between TIE and BBS. I am referred to an email from Colin Mackenzie dated 9 April 2009 **(CEC00900404)** which attached a report on the dispute between BBS and TIE **(CEC00900405)**. CEC members were aware that there were far more notified departures and disputes in the process than we were led to believe. Some, but not all Councillors, may have been aware and we should have been made aware. It was very difficult because we were told that we had to have a united front because we had been taken to task by the contractor and that it was a tactic by the contractor in order to secure more money from the contract. We were told that the contractor had bid deliberately low to get the contract knowing that they would be able to increase the price once they were on the ground. At that time we were concerned about the high number of disputes but we were keen to restrict the amount of money that was going to be paid by CEC. However, it was an on-going war between TIE and BB on a daily basis.

96. I am referred to an email dated 27 February 2009 sent by Councillor Phil Wheeler to Council Leader Jenny Dawe **(CEC00868427)** which informed her about his meeting with Richard Walker of BSC. I am also referred to an email dated 11 March 2009 **(TIE00446933)** in which Mike Connelly of TIE advised David Mackay of his meeting with Margaret Smith MSP and Alison McInnes MSP. To my knowledge I never knew about these meetings and I was not invited to attend.

11 March
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97. I am referred to a letter dated 24 March 2010 from Tom Aitchison to Richard Walker **(TIE00304351)**. BBS were frustrated that their position was not being adequately represented to CEC elected members and they were keen to

speaking to elected members directly to put to them matters that may not have been put to them by TIE or may have had a different meaning put on them by TIE. Bilfinger Berger was a big company with a huge international reputation and if they thought that they were being stymied by TIE officials then I would have thought that it was pertinent for the leadership to meet with TIE. David Mackay had a meeting with Margaret Smith MSP. Councillor Phil Wheeler informed me about the meeting with Richard Walker. Mike Connor of TIE also advised David Mackay of his meeting with Margaret Smith. So the MSPs wanted to speak to TIE Directors, which was fine. I had no knowledge or feedback of those meetings. BBS probably wanted the meeting with elected members and alarm bells would have been ringing and elected members wanted to get to the bottom of matters. We were told that it would always jeopardise TIE's position but that was used as a tactic to get us to support TIE and not to be overly critical and perhaps look more deeply into matters that any such action would jeopardise TIE's position. That was what TIE told us and CEC Directors did not contradict that. However, it was coming to light more and more that all was not as it seemed in terms of what TIE had told us.

98. I am referred to an email chain dated 10 to 12 December 2008 which raised concerns that the contracts were not fixed price (**TIE00887286**). I am also referred to an email chain dated 31 March to 12 April 2010 which the Wilson/Hunter adjudications (**CEC00356396**). That confirmed what we had suspected all along, that the contracts were not in fact fixed price.
99. I am aware that CEC were given an update on the Tram Project by way of a report dated 30 April 2009 by the Directors of City Development and Finance (**CEC02083772**). I am referred to the press release by TIE in relation to the resolution of the Princes Street Agreement (**TRS00016944**). I am also referred to joint TPB and TIE Board meeting presentation dated 24 March 2009 (**CEC00934643**) in relation to the resolution of the Princes Street dispute. The report states that if BB came across any unforeseen additional works then they would be reimbursed for the cost. That was bound to have an effect and we did not have any say in the negotiation. We may have noted the conclusion of the Princes Street Agreement. I cannot recall what the rationale

behind the Princes Street Agreement was. The main purpose was to get people working whilst there was the dispute because up until then if a dispute had been declared then work was stopping and workers were idle and that was increasing costs and delaying matters. It was a move, whilst a dispute was declared, to continue with the works and resolve the dispute afterwards. BB was a bit concerned that going down that route they would do the work and not be recompensed fully for it. I cannot recall if Councillors were given a sufficient opportunity to consider and comment on the agreement before it was entered into. The statement that the full scope of the project could be delivered within previously agreed funding levels was misleading and officials should have made it clear that budget limits were being breached. We always suspected that was the case and it had then become evident. I do not know the details of the strategic review that was carried out by CEC and TIE.

100. In hindsight, I am neither sure if it was appropriate or sensible for TIE to enter into a supplementary agreement to the contract when there was still disagreement about the original contract terms. I know that there was increasing pressure on CEC to get work back underway and concluded. The people of Edinburgh were getting more and more fed up with streets being dug up and left; traffic diversions; temporary traffic lights and traffic jams. What people wanted to see was the streets brought back to a condition where they could be used by traffic and that then meant proceeding apace. Anything that could resolve those issues was being considered and so I suppose it may have been deemed to have been appropriate to enter into the Princes Street Agreement at the time. There was also a question of pedestrians who were being forced to keep moving from one place to another. There were issues in Princes Street regarding the Galleries, Princes Street Gardens regarding the tourists and the Edinburgh International Festival. People just wanted the works to be completed.
101. I am referred to the notes of a meeting that I attended with Tom Aitcheson and other group leaders that took place on 14 July 2009 (**CEC00736584**). I cannot recall what was discussed at the meeting or what the outcome was.

102. I am referred to an email dated 13 August 2009 from Richard Jeffrey, TIE, to certain CEC members of the TIE Board to inform them about the significant developments in the relationship with BSC and TIE. BSC were not happy to start works on Shandwick Place unless work was undertaken on a cost plus arrangement. I am also referred to the minutes of the TPB meeting on 10 March 2010 (CEC00379020). I do not recall that elected members also received the email feedback from Richard Jeffrey. My view was that the Princes Street Agreement set a precedent for BBS to claim further additional costs.
103. I am aware that the report to CEC on 20 August 2009 (CEC00308517) was the first report to state that phase 1a could not be delivered within the budget price of £545 million. I do not know why the ground conditions unexpected. Depending on where and when the works were taking place there may have been underground chambers that did not feature in the plans that were provided to BB and they only found out when they went underground. There were issues regarding graveyards and the unearthing of skeletal bodies in the Leith area. There were other issues about nests of rats. There were all sorts of issues that came to us. In terms of ground conditions regarding the weather, there were not any adverse weather conditions. Basically the problem was that what was found underground was not provided in the plans and they were inaccurate. At that time we understood that the utility companies had got the data from TIE. It was TIE that issued the contracts and it was TIE that went out to tender, so BB said that the information that they had received was provided by TIE who were issuing the contracts. That was why they were crying foul and said that it cost them more than they expected because they had not received the proper information from TIE. Once BB had identified that those problems existed there had to be a re-look at the plans because they were insufficient. At that time there must have been somebody called upon to go down and to re-write the plans to take into account what had been found because that required additional works.
104. All of our understanding about TIE's prospects of success came from TIE and from the officials. Our understanding was that TIE was in a robust position and

BSC were just trying to augment their income by creating disputes to get more money for the contract. CEC had basically affirmed that their commitment to provide the whole of the tram line to Newhaven was for political purposes. Works were being carried out and they had started works by that time in Leith Walk and there was a great deal of disruption to businesses. The traders did not take too kindly to having to put up with that disruption which caused a loss of business and some of them lost a great deal of money. CEC kept repeating that the plan was for the tram to run to Newhaven, even though it was obvious that that was not going to happen.

105. I am referred to the DLA's "Overview of Adjudicator's Decisions" dated 18 November 2009 (**CEC00479382**). I cannot recall ever receiving a briefing from CEC officials or TIE on that overview. I cannot recall reading those decisions at the time or later.

Events in 2010

106. I am referred to an opinion from Richard Keen QC on the interpretation of the Infraco contract (**CEC00356397**) that was given in the course of a Dispute Resolution on 14 January 2010. I note that the opinion was provided to Nick Smith, Gill Lindsay and CEC legal officials on 12 April 2010 (**CEC00356396**). I cannot recall whether I or other members ever received a briefing from CEC officials or TIE on that opinion. TIE should not have needed to get that opinion. TIE should have been aware of what was in the contract without a QC telling them what was in the contract but, of course, TIE now had a vested interest in not allowing those matters to be made public because TIE had got things wrong and it was now in damage limitation in terms of its reputation and individuals. Therefore, it did not take a QC to understand what the contract meant and TIE did sign it, but we were told at that time that those contracts were all watertight.
107. With regards to whether CEC as ultimate stakeholder should have taken separate legal advice at an earlier stage, we were told at the time that the

entire legal basis had been covered and that came from our Chief Executive. On hindsight, the last three lines of paragraph 3.4 of Schedule 4 were quite clear and said "*for the avoidance of doubt*" so why did TIE have any doubt and why did they require a QC to tell them what that sentence meant. The sentence warned at the start "*for the avoidance of doubt*" and then details what it was warning about and TIE was aware of that. Therefore, in hindsight, I wish we had been more aware of that and the ramifications but it may have slipped past in terms of our reading of the contracts because there was a lot of paperwork provided to us at that time. As lay members it was certainly up to our officials to let us know that those costs would have to be met by CEC. It was just wishful thinking why parties had differing interpretations of the contract. The contract was quite clear and I am not a lay person but I understood what that sentence meant. It was a deliberate policy not to let us know and somebody had missed that. If that was in the agreement then the ramifications should have been spelled out that it was in the agreement. They have allowed it to go in and the sentence warns you, "*for the avoidance of doubt*" so it was quite clear. There was no point putting in "*for the avoidance of doubt*" and then making it a matter of conjecture. I cannot recall if TIE or CEC officers reported to CEC on what was covered by the price in the original contract and why departure from that was necessary. I do not believe that they went into the detail about those changes and notified departures. If they did say that any of it was due to be paid by CEC then we were told that it would be catered for in our contingencies.

108. I am referred to legal advice from Dundas and Wilson that CEC had instructed in January/February 2010 **(CEC00450359)**, **(CEC00479797)**, **(CEC00480029)**, **(CEC00551307)**. I cannot recall if I was informed of the outcome of that advice. That may be part of the information that I did not receive.
109. I am aware that I and Councillors Jenny Dawe, Phil Wheeler, Iain Whyte and Andrew Burns received an email from Alison Bourne dated 8 February 2010 **(CEC00492018)**, which expressed concern that CEC reports in advance of the Budget meeting on 11 February 2010 made little mention of the financial

position of the Tram Project. The SNP Group were also of the view that none of the reports contained sufficient information. That view was backed up by motions at the time that we were concerned that there were optimistic predictions being made about the money to be spent and the expenses to be incurred, but they were optimistic for a reason. I do not believe that they were genuinely optimistic; I thought that they were there to ensure that the Tram Project went through and Mrs Bourne had been in contact with us on several occasions and had also written to the Scotsman and the Evening News. I cannot recall the detail of the unexpected works at Russell Road. I do not have copies of the literature now. Alison Bourne was assiduous in going through those reports and she knew what she was talking about. She had done a lot of hard work but she was being portrayed as a bit of a nuisance because it was not helpful that she kept on unearthing matters that she felt should be investigated prior to decisions being made.

110. If there was not be sufficient headroom within the current prudential borrowing limit to meet the funding shortfall then our understanding was that there would be re-working of the case. The case would be re-examined and they would perhaps inflate the income to allow the potential borrowing, because the potential borrowing was paid back on projected income. For instance, we used prudential borrowing to refurbish the Assembly Rooms and the basis was that we would be able to pay back the loan because we would get more income from the Assembly Rooms once the work was done and that the loan allowed us to do that. TIE were constantly re-working the figures and looking at the figures and coming back and it could have been an increase in bus fares and that was on the front page of the Evening News which talked about the risk to bus fares because of the funding shortfall. It was referred to as 'ticket box income' which was fare income and that could be increased and for the tram to go back for more prudential borrowing. Alison Bourne was a member of the public who was a road user and she started by campaigning against the Tram Project. She had a great deal of knowledge of transport issues although I am not sure if she was actually qualified in transport matters, but she was regularly at deputations. It was getting to the stage where other people did not care because the decision had been made politically and that

could not be changed and there was no way that they were going to call off the project. I corresponded directly with Alison Bourne; I had telephone calls with her and met her on at least one occasion.

111. I am referred to an email dated 4 March 2010 from Alan Coyle to the Directors of City Development and Finance (**CEC00474750**) which included a Briefing Note setting out the estimated cost of the three options that formed part of Operation Pitchfork (**CEC00474751**). I note that the estimated cost of completing the works was stated in the briefing note to be between £644 million and £673 million. I cannot recall the term "*Pitchfork*" and at that time it was becoming perfectly evident that the tram line was not going to go to Newhaven. There were discussions about the tram line going to the Foot of the Walk and then Newhaven later or to the Top of the Walk such as York Place. TIE thought that there was an engineering problem between St Andrew Square and York Place in terms of going down North St Andrew Street and then turning right into Queen Street, which was then resolved. At that time we were told there were engineering problems. When it was found out that no such engineering problems really existed and that they had been overcome, the tram line went to York Place rather than St Andrew Square. We witnessed the tram line shrinking from a tram network to a tram line, then to half a tram line before our eyes. The SNP Group's scepticism of the viability and the sensibility of the Tram Project unfortunately came to pass. I must have been aware of those cost estimates at the time but I cannot recall all the options that were put forward. I knew that the tram line was to be truncated but I cannot recall whether I was aware of that on 4 March 2010. I knew at some time that the tram line had problems and that it was not going to really go beyond St Andrew Square; however I cannot recall when I became aware of that fact. I may not have been aware of that by the time we came to the CEC meeting.
112. I am referred to a letter dated 8 March 2010 sent by Richard Walker of BBS to Tom Aitchison, Gordon Mackenzie, Donald McGougan and David Anderson (**CEC00548823**). I do not recall seeing that letter and if we considered meeting BSC once more we were told that it would not be appropriate and it

would be undermining CEC's position. I was contacted once more, I do not recall exactly when, with a view to being asked to meet somebody from BB so that they could express their point of view to me. I told them that it was impossible for me to do so, on the basis that we had to be seen to be united because we had been informed that BB were the party that was asking for more money and that TIE and CEC's position was fairly solid. Although I might have wished to meet with BSC, I would have been dissuaded from doing so on the basis that I did not want that to be used politically against the SNP. The SNP Group had already incurred a great deal of comment for opposition on the trams in the first place and I was mindful of the political ramifications of having such a meeting.

113. At the time, TIE did not have a strategy for resolving the dispute. TIE was just meeting the dispute head on as far as I was aware. Later on, from when Sue Bruce got involved, TIE's strategy was that there was no room for compromise in the dispute. We were told that David Mackay was hard-headed and that he would not stand for any nonsense and neither would Richard Jeffrey and that CEC were being lent upon by the private sector. We were told that they wanted to screw more money out of the public purse and that was the view that was given all the time to us. CEC Directors on TIE did not say that the dispute was more complicated than it appeared.

114. The SNP Group presented various motions to CEC to stop the Tram Project but there was a time when we were told that it was too late and that it was going to cost more to cancel the project because there were contractual difficulties. We submitted motions in 2010 that included various amendments such as a tram line from the Airport to Haymarket, the Airport to York Place, the Airport to the Foot of the Walk, the Airport to Ocean Terminal and also the Airport to Newhaven. That was five different options that we proposed on incremental delivery of the tram line. At the CEC meeting in meeting in December 2010, the SNP Group were outvoted again in a vote of 45/12 and we said that the refreshed Business Case was no more than a rehash of the original flawed Final Business Case that the SNP Group had previously opposed. We said that the Business Case for the Tram Project was full of

optimistic assumptions regarding budget, projected patronage, profitability and limited effect on Lothian Buses. The SNP Group motion in December 2010 finished by saying, *“Given the history of this ill-conceived project based on proven false premises, the SNP Group had no confidence in the information provided in the Chief Executive’s report”*. We were expressing our view of what happened in the past but we were not, in that particular motion, calling for action. We were saying there was no point in creating TEL, because the case for creating TEL no longer existed and Lothian Buses could run the modified transport system.

115. I recall that I and other party leaders, Jenny Dawe, Ian Whyte, Andrew Burns, and Steve Burgess received an email dated 19 April 2010 from Richard Jeffrey (TRS00010706), which set out TIE’s position on matters in dispute. That email confirmed what we had been told verbally that the situation had broken down and there was no likelihood of Richard Jeffrey and the person who was negotiating on behalf of BBS ever agreeing on almost anything. Their relationship had broken down and we were being told in the email that TIE was being *“held to ransom”*. We were being told that BBS were being inconsiderate, hard-nosed and were claiming for things that they had no right to claim for and that TIE were defending their position and CEC’s position. It then came to our attention in an official way that the relationship between TIE and BBS had broken down to an extent where it was clear that it could not continue on that basis. There could not be two arms of a major project with such a wide gap between them in terms of how they were treating each other.
116. I cannot recall if CEC sought its own legal advice, independently of TIE. We were never told about the adjudication decisions. We were told that BBS had been unsuccessful and that TIE had been successful in the adjudications. It was only latterly that we found out that TIE’s description of success was the fact that they had managed to not give BBS the money that they sought in the first place and got less than they asked for. Nevertheless BBS got more than was in the contract but TIE was regarding that as a victory. Because we did not know what the adjudication decisions were, the implication and what the message that was passed to us was that BBS had been totally unsuccessful

and that then fostered the belief that they were being unreasonable. However, BBS were actually winning extra money through the adjudication process. We were once again told all of that was commercially in confidence and that TIE would like to tell us but could not. There was no way we could find out about what was happening unless we spoke directly to BBS.

117. I am referred to a meeting that took place on 21 April 2010 in Carlisle between TIE and BBS. I am also referred to subsequent emails sent on behalf of Richard Jeffrey dated 30 July 2010 (**CEC00387018**) and 4 August 2010 (**CEC00247389**). I was not aware of that meeting and I cannot recall being told about the meeting. I would have expected there to be regular meetings between TIE and BBS so I do not know why Carlisle was chosen as a venue but it was probably because it was convenient for whoever was going to attend. There was a change in the relationship between BB and CEC when Sue Bruce and Alastair Maclean got involved. The relationship between Richard Jeffrey and the representatives of BBS had broken down to the extent where there was no chance of any fruitful discussions taking place between them. I do not know if that was the start of the process with Sue Bruce and BBS. I know that she went through to Glasgow to a hotel in Lanarkshire and spent about two or three days there with the CEC team and the consortium team. They discussed a way forward on how to deal with the issues and did so successfully.
118. I recall that CEC were given an update on the Tram Project by means of a joint report by the Directors of City Development and Finance dated 24 June 2010 (**CEC02083184**). The view that we had at the time was that we knew that the original cost was going to be exceeded and we were a bit concerned that there seemed to be no finite sum that went into the Tram Project. We thought that it was a fixed price on a lump sum to start with a small contingency, and then the contingency was increased by 10%. At that time the word in CEC amongst elected members was that there was no way that the tram line was going to go from Newhaven to the Airport because there was insufficient money to build the line that far. It was like an open secret that the tram line would not go to Newhaven and that we would end up spending all of

the project money on half the line from Newhaven to the Airport. We knew the tram line was going to end somewhere in the city centre because it had to as far as we were concerned go at least to the city centre and by that time TIE knew that they wanted to go to the Airport. We knew about some of the overruns but we did not know the exact scope of them and we were kept out the loop in terms of who was arguing for what. We were not party to the end of Dispute Resolution Process (DRP). The TIE Board must have been informed of that and we had four Councillors on the TIE Board at that time and no advice came back from them that there was any great difficulty, in fact nothing was coming back from them.

119. At the time, we were told that a contingency of 10% would be normal, above the approved funding of £545 million. I did not consider that it was likely that the tram line could be built from the Airport to Newhaven for £545 million plus the 10% contingency. There were discussions that took place all over the City Chambers between elected members; we knew what was happening regarding the tram, it was at the forefront of our minds. We doubted at the very start of the project that £545 million would be sufficient and even those people who supported the Tram Project were then saying that action had to be taken to provide some part of the line. So it was being spoken about amongst elected members and again, more and more money was being spent. We were being told that having spent all that money it would be wasted if we did not proceed. I thought that members should have been advised that there was significant risk about the actual cost of phase 1a. CEC elected members should have been advised at an earlier stage that decisions were being taken as part of the DRP, which showed that significant additional sums were due. The implication from TIE was that they were winning these disputes and that BB was being unreasonable, but that was not the case.
120. I am aware that a newspaper article for the Edinburgh Evening News dated 24 June 2010 noted that I called on CEC to issue a formal apology to the people of Edinburgh (**CEC00295076**). That was on the basis of CEC embarking upon the Tram Project without ascertaining whether or not it had the support of the citizens of the city. Also for the delays, disruption and effect it had on

businesses; peoples' journeys to and from work; pedestrian journeys and all the disruption that had taken place throughout the city. I had said that whilst I understood that with £348 million already spent on the project, many people would have felt it was better to carry on. However, I also stated that the poll was a clear indication that there was not majority support for the Tram Project in the first place.

121. I note that on 8 June 2010, the Edinburgh Evening News reported me calling for a referendum on the question of whether to scrap the Edinburgh Tram System (**CEC00293988**) and (**CEC00293982**). I always held the view that if the people of Edinburgh had been asked formally through a referendum whether or not they wanted a Tram Project before the project had started, then that referendum result would have been against it because people would not have thought it was necessary or value for money. I asked that question of the CEC leader at the time, Ewan Aitken, whether or not he would agree to a referendum to ascertain the publics' views and he refused because everybody knew that the outcome would have been against it. The Tram Project was then at the stage with £350 million of public money being spent. Although there had been a case of throwing good money after bad, it was close to the stage where all the investment would have been wasted. All the MUDFA works would have been completed and all the disruption that people had gone through for a number of years including disruption to businesses would have been for nothing. I understood why people were totally frustrated and they wanted to see an end to the disruption. Even the people who were against the trams knew by then that the Tram Project was going ahead and that the tram line was going to be built. They wanted it built as soon as possible and with as much value for money as they could possibly get with an end to the disruption. In addition to all of the utilities diversion works that were taking place, there seemed to be that on every corner you turned in Edinburgh there was a view of roadwork's, temporary traffic lights and diversions and people were fed up and wanted the matter resolved.

122. I am referred to an email dated 8 January 2010 sent by Nick Smith to Alastair Maclean (**CEC00473789**) which attached a document named "*Tram-Potted*

History” (CEC00473790). Nick Smith stated in his email “*Be very careful what info you impart to the politicians as the Directors and TIE have kept them on a restricted info flow*”, which verified what I had believed and was also an outrageous statement. That was a clear indication from an official that we were not getting the information because they were fearful that the information would be used by politicians. If I had seen that email at the time then I would have raised that at the full Council meeting with the Chief Executive. The email confirms what I have stated earlier, that we were kept in the dark on a lot of issues and the officials were determined to either cover their own backs, get the project through, cover up for their own deficiencies and not allow politicians to know exactly what was going on. I was unaware of that and I was Deputy Leader of CEC at the time. It was interesting that Nick Smith said that “*dissemination of the actual history here could cause serious problems and we definitely don’t want to set hares running*”. It raised the question of ‘what were the serious problems that it would have caused?’ It would have exposed the inefficiencies that existed within TIE and it would have exposed the problems regarding the project in the first place with the budget. They were so far going down the road at the time of delivering the tram system that they had to keep us in the dark because that would have been a bombshell had we known.

123. I note that on 20 August 2010 CEC officials met with TIE representatives to consider TIE’s Project Carlisle counter offer (CEC00032056). I am aware that a record of the meeting noted a range of costs between £539-£588 million from the Airport to St Andrew Square and a range between £75-£100 million from St Andrew Square to Newhaven. That gave a total range of costs from the Airport to Newhaven of £614-£693 million. I was probably informed of those discussions. I recall that those type of discussions took place on a daily basis as to whether or not the tram line was to go to Newhaven, how much extra it was going to cost and there was talk about curtailing it at St Andrew Square. However, there was also a view if we were to continue then how much was it going to cost above the initial project price of £545 million. That told us that there would have been ramifications for CEC and we found that difference out when the Scottish Government said that they were not going to

give us a penny more. Information would have been provided to us for us to have said that we could not afford to take the tram line to Newhaven. We would have asked questions and all Councillors would have asked the question of how much it was going to cost to complete the tram line to Newhaven. Whilst I cannot recall that specifically, I am sure that it was part of the discussions that we had about how much the 'add on' to Newhaven was. Completing the tram line to Newhaven then took the total cost close to approaching £700 million.

124. I am referred to a letter dated 13 October 2010 that BBS sent directly to Councillors giving their views on the dispute (**TIE00301406**). I cannot recall my views on that letter. I know at some time we were informed as to the outcome of the disputes and that surprised us and it surprised me because I had been informed all along that BBS were being unreasonable. We had been told that TIE had been defending its position and with a great deal of success, however the facts were completely different. That letter showed us that the people who we had running TIE were not capable of delivering the Tram Project. That was also probably why TIE gave us the line that they were being successful and robust in defence of the public purse and that we had to defend that. We in the SNP also wanted to defend the public purse and we were told that BBS were a hard-nosed German based company who had a track record of upping the costs on projects and that we were not going to allow that to happen, but that was not the case. Once more that letter was verification of what we all knew, that the people at TIE, the Directors and the Chief Executives such as Richard Jeffrey and David Mackay, were all known to senior CEC officials. It was not a robust recruitment exercise that was carried out to have the best people in for the roles at TIE because they were already known to people at CEC. It was almost like they were known to be within a kind of established circle and I do not believe that there was a proper recruitment exercise. I objected to Willie Gallagher being made the Chief Executive at the time and I was told it was only temporarily and I remember the meeting upstairs with Donald Anderson, who was Leader of CEC at the time. Then Richard Jeffrey became Chief Executive of TIE when he left as manager of Edinburgh Airport and we were not given any reasons as to why

they delayed the Airport job that he had. I believe Richard Jeffrey was an engineer, although he certainly did not have any great qualifications for the position. Once more, Tom Aitchison recommended that Richard Jeffrey was given the post, so recruitment was again handled unprofessionally for a major project. We did not go and seek the proper people for roles in TIE either nationally, in terms of UK wide, or internally. It was people who were free and on the market within the Edinburgh personnel and it was very much like people were brought on because they were now free and CEC knew of them. There were far too much personal considerations coming in than anything else.

125. I cannot recall at that stage if I actually saw what the adjudications' decisions were, but we were informed that TIE were not as successful in defending their position as they had told us and that BB appeared to have adopted a reasonable stance. We had previously been told all along that BB were unreasonable and that was not what the adjudicator had found. I cannot recall whether the adjudications decisions were made available to CEC members at that time. It would have been interesting to see what was going out for adjudication and also the costs; what BB had asked for; what they were awarded and what TIE's position was. It would have given us an indication whether or not TIE were up to the job. That information would have helped members to make informed decisions in relation to the adjudication decisions if we knew the outcome of them at the time. We had been told that we would receive all the information that we required. That was obviously not the case and information was kept back, although I do not know if it was kept back from me alone. I can only speak for myself as Leader of the SNP Group and Deputy Leader of CEC, but as an opponent of the tram line it may be that other leaders may say different. As far as I was concerned I was not getting the information that I needed.

126. I am referred to a report to CEC dated 14 October 2010 (**CEC02083124**) which noted that at the Council meeting on 24 June 2010 the Council had required a refreshed Business Case. I have no recollection of any discussion in that regard. I cannot recall what I knew at that time about the outcome of

the DRPs. I know that legal advice had been taken in relation to the contractual disputes but I cannot recall how much of that was given to us as elected members.

127. I am referred to an email dated 4 November 2010 sent on behalf of the Council Solicitor, Alastair Maclean (**CEC00012984**), which stated that CEC were to instruct their own independent analysis of TIE's position by CEC's QC. I am referred to a letter sent to Richard Walker from DLA dated 19 April 2010 (**CEC00245695**). I am referred to emails dated 22 and 30 November 2010 in which Mr Alastair Maclean expressed certain concerns about TIE and the legal advice received by TIE (**CEC00013411**), (**CEC00014282**) and (**CEC00012450**). I am referred to an email dated 30 November 2010 (**CEC00013550**) in which Nick Smith listed his personal view on the performance of TIE and DLA. I am also referred to an email dated 24 November 2010 sent by Richard Jeffrey to Alastair Maclean (**CEC00013441**). I was not aware of the actual detail in all of these emails and letters at the time. I cannot recall if I was aware that we had instructed an outside legal professional to have a look at TIE's position for us. That would be a manifestation of the fact that other Councillors, other than myself, were now asking questions about TIE's performance and TIE's personnel and whether or not they were up to the job. Richard Jeffrey had offered to resign from his position by stating that "*if the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation*", which I believe was what eventually happened. People lost confidence in TIE because, once more, we had not seen any movement and progress had slowed and we were constantly being told more money was required and we had not seen movement of work on the streets of Edinburgh.

128. I recall that BB wrote to myself and other elected members on 5 November 2010 following the resignation of David Mackay, the Chairman of TIE (**CEC00013011**) and (**CEC00013012**). I note that Tom Aitchison, the Chief Executive of CEC at that time, wrote to BSC on 15 November 2010 (**CEC00054284**), following a meeting that took place between BSC and John Swinney on 8 November 2010. I note that on 16 November 2010, CEC Leader

Jenny Dawe and Tom Aitchison met with John Swinney, following which Jenny Dawe tabled an emergency motion on 18 November 2010 which proposed mediation as a means of progressing the Tram Project **(TIE00306955)**. I recall that David Mackay had likened Edinburgh to the streets of Beirut. He made really disparaging comments about BB which were quite shocking actually in terms of the references he made to a private company and we knew straight away when we saw the comments that BB would not be happy with them. He described BB as being hard-nosed, too difficult to deal with and wanting to plunder the public purse, which I understood was quite damaging. That was another indication that the relationship between BB and TIE was virtually non-existent and no work was going to get done because they were so far apart. Some of the terminology used by TIE should have been left to, even elected members, who were in a bit of fearful position to make critical statements and political statements, but that was another indication that David Mackay was not the right person for the job. It would have been helpful had people had the wherewithal and the gumption to intervene sooner and talk directly to BB to try and get the matter resolved. It was evident to other people that matters had broken down and eventually the relationship had broken down. I was unaware of Jenny Dawe's meeting with John Swinney and any views discussed with him. CEC should have met with BSC earlier in an attempt to better understand and/or resolve the dispute.

129. I am referred to a note produced by Alastair Maclean for CEC's Monitoring Officer on 17 November 2010 **(CEC00013342)**, which set out Richard Jeffrey's concerns that he had in relation to events at the time the Infracore contract was entered into. I cannot recall any of that.

130. I am referred to a report on the meeting of the IPG on 17 November 2010 **(CEC00010632)** which noted that a range of cost estimates for the different scenarios had been produced. I cannot recall the detail of that as it was almost an everyday occurrence that we were getting different estimates. I cannot remember what happened on 17 November 2010.

131. I was aware that an exploratory meeting took place on 3 December 2010 between Alastair Maclean and Donald McGougan on behalf of CEC, Richard Walker of BB and Antonio Campos of CAF (**CEC02084346**). I did not know the specifics of what was discussed.
132. I recall that on 16 December 2010, Tom Aitchison provided CEC with an update on the refreshed Business Case (**CEC01891570**). I note that at the meeting an amendment was passed by members to request a review of the Business Case by a specialist public transport consultancy that had no previous involvement with the Edinburgh Tram Project (**page 22, CEC02083128**). There had been a CEC meeting earlier on 10 December 2010 and then six days later Tom Aitchison provided an update of the refreshed Business Case telling us that it was capable of producing the line to St Andrew Square within the original funding envelope of £545 million. I understood that there was commercial in confidence on a lot of those matters but it was used that often I did not know if the information was that sensitive or if it was just being used as a tactic just not to give the information. I had lost faith in the whole process. We were constantly told that information was commercial in confidence and I suspected that when something embarrassing came up they would restrict it, but I suspected a great deal of it was not. It was a tactic that was deployed to great effect. There were a lot of people who were covering their backs by that time.
133. I am referred to the Action Note of the IPG meeting on 1 December 2010 (**TIE00896611**). If the Action Note had been a lot longer, then we would not have had sufficient detail to enable us to come to informed decisions. That was reflected in the amendments that we put forward, for example, as recorded in the minutes of the full Council meeting on 16 December 2010 (**CEC02083128, page 23**). We stated in our amendment, which I moved, that *“given the history of this ill-conceived project based on proven false premises, the SNP Group had no confidence in the information provided in the Chief Executive’s report”*. From that amendment that we made we got 12 votes for it from the SNP and 45 votes against us. We had been given figures all along for the cost of the Tram Project and those figures had been surpassed and

updated and the budget was insufficient and timescales were wrong. There was clear evidence that the Tram Project had become a farce.

134. At that time CEC members knew that something had to be done because of the breakdown in the relationship between TIE and BB, but Tom Aitchison was still Leader of CEC at the time. The situation changed dramatically when Sue Bruce came in and one of her priorities was to resolve the situation regarding TIE and BB and she did that with Alastair Maclean. Tom Aitchison had been dealing with that from the very outset as that was his responsibility as he was Chief Executive. CEC members requested a review of the Business Case by a specialist public transport consultancy with no previous involvement with the Tram Project because we wanted an external body to look at the whole project. Also we were receiving conflicting information from our officials, from TIE, from the consortium and we needed somebody that had no locus, no interest or financial interest to have a look at the project and give advice. I cannot recall if a review was carried out and, if so, when and by whom. I considered that such a review absolutely should have been undertaken at an earlier stage. Our officials knew that there were issues and in Nick Smith's email he told Alastair Maclean not to let CEC elected members know because we had limited knowledge of what was going on by TIE, which was their policy. It would not surprise me that TIE did not want a third party to shed light on the Business Case.

2011 to completion

135. I am referred to the Highlight Report for the meeting of the IPG on 21 January 2011 (**CEC01715625**) which noted that both Nicholas Dennys QC, instructed by CEC, and Richard Keen QC, instructed by TIE, had advised that the best option was to seek to enforce the contract until grounds of termination could be established as a result of a failure to perform the works. I did not know about that information and I cannot recall it ever being discussed with members. At the time we were concerned that if we were going to terminate the contract through BB's lack of performance, then we did not know where

we would end up. We would have to re-procure, which would take months and we did not know what was going to happen regarding the streets that had been dug up in Edinburgh. It appeared to be that an aggressive stance had been taken and that was not in the interests of the people of Edinburgh. Matters were spiralling out of control and that was another indication that TIE were in a weak position. We were told by our officials and by Richard Jeffrey and others that TIE were in a strong position. We were also told that BB were in a weak position because they were arguing on matters on which they had no firm basis for doing so, and as it turned out, all the evidence was to the contrary.

136. I and other CEC members did not have any part in the preparations for the mediation talks that took place at Mar Hall in March 2011. That was when Sue Bruce got involved and took over from Tom Aitchison. My understanding was that at that meeting Sue Bruce, David Anderson, Alastair Maclean and maybe Nick Smith were all present. I know that afterwards that they worked through the night and I believe that Richard Jeffrey was not involved. Up until that time BB was not involved because the relationship was so bad. Sue Bruce had been to Germany as well and maybe when she was in Germany they agreed to have that meeting at Mar Hall. They wanted people who did not have a personal grievance to get together and to work out a solution. It was, as far as we were concerned, hugely successful in terms of resolving that standoff.
137. I did not consider that I and other members were provided with an adequate briefing in relation to the mediation at the time but afterwards we were. All the CEC members regarded the mediation talks as a success. It could hardly have been a failure given the state we had been in but Sue Bruce was actually commended. She was certainly commended by me as was Alastair Maclean and David Anderson for their work in securing the new agreement that we could then proceed. Matters would have been in such a sorry state if they had not gone through to Mar Hall and had not had those discussions. It could have got even worse with BB being thrown off the job and all the problems that would have entailed, so that result was something positive for CEC. I cannot recall how I and other CEC members were advised of the

outcome of the mediation. It might have been a briefing that we had or it might have been a letter but it was discussed at full Council. There may also have been a report that went to full Council.

138. I cannot recall if CEC members advised at the CEC meeting on 16 May 2011 or earlier of the outcome of the mediation or the sums discussed and agreed for the off-street and on-street works. Given that we regarded it as a success I would not see why we would not have been given that information.
139. I am aware that on 30 June 2011, CEC were advised of the options for the Tram Project in a report by the Director of City Development (**CEC02044271**). At that time the SNP did not express views on the Tram Project itself other than to be critical of all the aspects that I have mentioned. However, we did not intervene on whether or not the tram line should go to St Andrew Square or York Place. Privately, we recognised that it had to come into the city centre and we were told that there was an engineering problem from North St Andrew Street into York Place and that those engineering problems were costly. Those problems of the gradient and the turn had been overcome. We did not express a view but privately we knew at the time that the tram line was not going to go down to Newhaven. Later on we then stepped in and we voted for it to go to York Place because I am sure there was an amendment put forward that it should terminate at Haymarket, which would have been the worst option. The greatly increased cost of the tram line, for a shorter line, just bolstered our view that was consistent throughout, that costs were spiralling out of control and the one way that they had of trying to manage it was truncating the line. Therefore, we had gone from a tram network to a tram line, to half a tram line and as it turned out at the end of the day the cost was going to be almost double the £545 million that was envisaged the tram network would take.
140. I cannot recall what documents comprised confidential appendices to the report by the Director of City Development (**CEC02044271**). CEC started to develop a system where you could go and inspect documents in a room designated for that purpose. The room would either be provided in the City

Chambers or at Waverley Court and Councillors would sign in and out and could inspect all the documents but could not photograph them or take them out. There was a huge amount of documents and that was impossible for anybody to go through but Councillors did avail themselves of that and I did on almost every occasion. I was overwhelmed by the documents that were there laid out but we were given an opportunity and that was a way that they could make sure that commercially sensitive material did not find its way into the public domain. Notwithstanding all that had taken place beforehand, what Councillors wanted to know was what was going to be the final price of the Tram Project and when was it going to be completed. That was what elected members wanted to know and that was what the public wanted to know. Once more, we were given another sum and we were told that that sum would be required for it to go to York Place or St Andrew Square. People had started to support anything that was going to see an end to the project.

141. I recall that the four Councillors who were Directors on the Board of TIE were Ian Perry, Labour; Alan Jackson, Conservative; Phil Wheeler, Liberal Democrat and Gordon Mackenzie, Liberal Democrat. As mentioned earlier in paragraph 17, I moved an amendment at the full Council on 14 October 2010 and those four Councillors did not express any disquiet or criticism of the management of the Tram Project. They failed in their duty in terms of protecting CEC's position and telling us what was happening. It was a waste of time them being on the TIE Board. They were either complacent in it or they were inefficient.
142. The content of the report to CEC on 30 June 2011 (**CEC02044271**) was another indication that despite having been told that certain prices were fixed and there would be no more cost overruns they had increased again. My private view was that the tram line should come into York Place but we did not express a view because, politically, we had been against the Tram Project from the start and at the end of the day it had to be completed. There was so much work that had been done. The recommendations from the Director of City Development were likely to be carried out because people wanted to see an end to the project. We do not know if we received sufficient information,

there may have been other information available. We did give consideration to the interest that would accrue on the large sums that CEC was borrowing but, such was the view by those that supported the Tram Project, that it had become a political burden for those that supported it. Supporters of the Tram Project knew that the citizens of Edinburgh would be unforgiving for the political parties that supported the project and had not managed it properly. We kept the Tram Project at arms-length but all the other groups now wanted the matter finished.

143. I am referred to an emails dated 16 May 2011 between David Anderson and John Carson about costs for cancelling the Tram Project (**TIE00687940**). Claims were made that terminating the Edinburgh Tram Project would be more expensive than building it to St Andrew Square. There was an argument put forward that if the project was terminated then there would be an issue of compensation for BB because they did not agree. They could say that they took on the tender to provide a line from A to B, and we had now changed that so there was going to be cost ramifications for that. The best approach was to proceed and get BB's agreement to go to St Andrew Square and complete it to there or York Place for a fixed price and then that would be the end of the matter. Whereas, if we had told BB that we were not going to go to St Andrew Square then they could have received compensation which would have been more or less spending the same amount of money, if not more. Whether that was true or not we could only go by the figures that were provided to us.
144. I am aware that on 25 August 2011, CEC were given a further update by way of a report by the Director of City Development (**TRS00011725**), and at the meeting CEC members voted in favour of an amendment that a line should be built from the Airport to Haymarket. I am also aware that at a CEC meeting on 2 September 2011, CEC overturned that decision (**CEC01891495**). I recall that the Labour Group wanted to terminate the line at Haymarket and that it was to finish there. The Conservative Group wanted to terminate the project at Haymarket and then re-procure for another company to come in and extend the line from Haymarket into the city centre. We were all told it would cost £161 million to terminate the contract with BB at Haymarket and then to re-

procure would have taken months and the costs might have been even greater than those that we knew about taking the line to St Andrew Square. People were now politicking and jostling for position. The Conservatives position was absolutely ludicrous in that stopping the line at Haymarket and paying £161 million in compensation and then going out to the market and re-procuring to take the line to St Andrew Square. It was extraordinary that anybody could seriously propose that. The SNP Group, at that time, were still not going to give a view on the Tram Project itself because we were against the project, but we then recognised that it was going to end at Haymarket when the vote was taken. Lesley Hinds was interviewed by the BBC or STV outside the meeting room immediately after and she was asked what her thoughts were and she answered that she was quite shocked. Lesley Hinds had moved the motion to terminate at Haymarket and she was then shocked that it was carried. I have provided a copy of a press statement dated 6 August 2012 (**WED00000167**), which states that *“Lesley Hinds’ tram route dispute leaves city footing £1.4m bill”*. That was because of the delay it took while investigations were made into whether or not we could terminate it at Haymarket and what the costs would have been. It then came back to CEC and we, in the SNP Group, decided that the least the people of Edinburgh should have was a tram line to the city centre. To terminate it at Haymarket, not near any of the major hotels, meant that anybody coming in from the Airport would have to alight at Haymarket and then get another form of transport to their hotel or business meeting. It had reached a farcical situation and the SNP for the first time in the history of the Tram Project decided to vote in favour of the tram line going to York Place and told the Liberal Democrats and the press. I know that internally there was a calling within the Labour Party as to why their group had put forward that ludicrous proposal so they were under pressure internally. When they found out that the SNP was going to back the Liberal Democrats and take it to York Place, thereby securing a majority, they decided on the day of the meeting that they would also agree that it should now go to the city centre. The Labour Party’s proposal that they had put forward the week before was for the tram line to finish at Haymarket. They knew that when the Liberal Democrats received our support that the tram line would then go to York Place. They would have ended up being

embarrassed as the group that proposed it should have stopped at Haymarket if the people of Edinburgh heard that there was a plan to stop the line at Haymarket. At that time I wondered if I was on the same planet as other so-called politicians not in our group. We were incredulous that we were discussing those matters about Haymarket re-procurement or finishing the tram line at Haymarket and not the city centre. We thought at the time that people would see sense and vote with the Liberal Democrats but when they did not, we decided to step in as a group and that was when Labour saw the writing on the wall and they changed their stance. That was why, after some research by a journalist, it had cost CEC £1.4 million of the public purse because of a stupid political move by a particular group on CEC, which was a lot of money to the public. The work should have been undertaken by any group that came along and made a proposal and they should have done their homework and research and asked questions about what were the financial consequences of that proposal. Also TS had already stated that the money they had provided was for a tram going into the city centre. The Labour Group did not think what TS's view would be, they did not alert officials beforehand, they did not find out what the cost of terminating the contract would be in terms of compensation to BB. They did none of that and yet they came along and moved that ludicrous motion and it cost CEC that amount of money before we got the matter resolved. TS were unwilling to provide a further payment of grant if the line had stopped at Haymarket and were quite right to say that they were not going to provide the money. I do not know who was behind that decision by TS but I would commend them.

145. I am referred to a report to CEC dated 19 August 2011 which included a confidential summary of a report by Faithful and Gould (**CEC01727000**). I cannot recall whether I was provided with the report or a summary of the report. I note that the report by Faithful and Gould noted, in the Executive Summary, that the current costs for the on-street works for Siemens were "*extremely high and not value for money*" and that the cost of the other on-street works was "*grossly inflated*". There were no surprises at that time and it would have been a surprise if anything had come in under budget.

146. I am aware that a Settlement Agreement was entered into on 16 September 2011 between CEC and BSC which resulted in a reduced tram line from the Airport to York Place being built for a total capital cost of approximately £776 million. We supported it on the basis that there was nowhere else to go. The tram line had to reach St Andrew Square or the city centre at York Place rather than Haymarket because if in any city that was building a tram to the Airport it had to reach the city centre. Edinburgh's reputation had been trashed internationally because of the Tram Project and it would have been irretrievably damaged if we had terminated the tram line at Haymarket. That was why we decided the SNP Group could not sit back any longer and watch a greater mess being made of the project than had been made up until then, so then we supported the settlement agreement. We knew the additional funding would come from CEC borrowing but there was no alternative.
147. I am referred to an announcement that Ministers/TS would oversee the Tram Project and that the grant would be re-instated that was made on 14 September 2011 (**TRS00012622**). I note that CEC appointed external project managers, Turner and Townsend (T&T), to assist the process and revised the governance arrangements and began to wind down TIE. I do not know what role TS or T&T played after the settlement agreement.
148. I am aware that at a meeting of CEC on 24 November 2011 (**CEC01891428**), Lesley Hinds noted that Jenny Dawe had requested an inquiry into the Edinburgh Tram Project and asked whether she would circulate that request to elected members. I believed that a public inquiry was necessary. I hoped a public inquiry would achieve two things in that lessons were learned so that other local authorities did not make the same mistakes that CEC made, thereby hopefully saving them and the public purse money. I also wanted people brought to book but, unfortunately, I knew that was not going to happen. The main protagonists involved in the Tram Project had all left CEC for one reason or another and had all retired or gone onto new roles. In terms of what an inquiry can do regarding the shortcomings displayed by certain individuals at that time, I am not sure. I was concerned about the cost of an inquiry, because if the inquiry did not come out with an effective conclusion

then the cost of the inquiry itself would not be value for money. It was not simply a question of apportioning blame but I did not believe that people who make those decisions and kept information to themselves acted appropriately. I believe that they acted inefficiently and claimed high salaries from CEC for the work that they were supposed to have undertaken. The appointments of people who were obviously not fit the job but were placed in their roles because they were known in the city and they mixed in the right circles and were recommended for their jobs without any proper vigorous recruitment exercise to get the right people in. All of that should be made known through a public inquiry as to why that happened. CEC did not have the right people involved in TIE from the very outset and it was mismanaged from the very outset. There were some politicians to blame, there were four Directors on TIE, as I have mentioned earlier, and I have to question what they did. At leadership level the responsibility was Jenny Dawe's as leader of CEC. In hindsight, I supported CEC's position as expressed to us by TIE in order to defend the public purse. That was the SNP Group's viewpoint that we wanted to keep the cost to an absolute minimum. Whether or not Jenny Dawe could have done more, I am not sure, that would be a matter for her to answer. Sue Bruce, Alastair Maclean and David Anderson showed that the dispute with BB could be resolved by virtue of the meeting that they had at Mar Hall. If they had been involved from the very outset then the situation could have been different. It took those new people coming in to resolve the dispute. From the SNP's position it was a fluid situation, it was not easy and we certainly were not involved in playing politics. We were in favour of a proper tram system befitting the capital city of Scotland and that was not what we were getting and we were seeing money being wasted and inefficiencies all over. Targets not being met; budgets being exceeded and we wanted nothing to do with that. The SNP Group only stepped in when there was a real danger of the tram line being terminated at Haymarket. The view at the time was that it would be too early for an inquiry and had to wait until the whole project was complete, so that was out of our control.

149. I recall that the main change introduced as a result of the Mar Hall mediation and the Settlement Agreement was that we had achieved a proper fixed price.

We knew how much it was going to cost and a timescale and we knew then that there had been a new relationship between BB and CEC by virtue of the intervention that was made at Mar Hall. The people who were responsible for disputes in the past had been removed from the discussion and a compromise was reached. CEC were happy and the project appeared to run reasonably smoothly after the agreements, certainly in comparison to previous events.

Project Management and Governance

150. CEC were the custodians in the Tram Project, basically it was our city, and it was our project. The project would never have started had it not been by virtue of the Business Case being approved by CEC and by Councillors. The main responsibility lay with CEC and TIE because CEC set up TIE to represent its interests. CEC were not able to exercise effective governance control of the Tram Project and a lot of that was down to the individuals concerned because we saw a marked change with the Mar Hall intervention. There were too many people out of their depth who were not suitable who had been appointed to positions that a lay person would understand right away. They did not have the qualifications to see their roles through but had been placed in their roles because they knew the right people, unfortunately.

151. The Tram Project was huge and we had never had a project like that in Edinburgh before so it was new to all of us as elected members. We were told the best way of going forward, that each of the organisations knew exactly where they fitted into the project and they should have been able to work together. However, when things started to get tough, instead of those people being able to resolve matters, there seemed to be more people trying to protect their position rather than getting together and seeing the work through. We were informed and it was recommended to us the best way to take the project forward and that was coming from our top advisors at senior official level.

152. In my view, CEC and TIE were ultimately responsible for ensuring that the Tram Project was delivered on time and within budget. CEC and TIE had the same responsibility as CEC had appointed TIE. CEC had set up TIE; CEC had appointed the personnel to TIE and agreed the main personnel in terms of the Chairman and Chief Executive. CEC also had four Directors on the TIE Board. Therefore, in my view, TIE was inextricably linked to CEC and TIE and was ultimately responsible for bringing the project on time and within budget.
153. I am aware that the report to CEC on 25 August 2011 (**TRS00011725**) noted that "*The existing governance arrangements for the tram project are complex and have not been effective*". My views on the conclusions noted were that they were written by people who were not the same people that had set up the governance arrangements in the first place. It was quite interesting to see what their views were. It was a moot question as to whether or not we would have gone down that route had they been in office at the time when we were starting the project.
154. I am referred to Jim Inch's Briefing Paper on Governance dated 20 July 2007 (**CEC01566497**) which had noted that it was "*vital that more rigorous financial and governance controls are put in place by the Council*". That was a matter for the leadership of CEC and for the Chief Executive. Jim Inch had worked for the Chief Executive and Jim was a very experienced official and he had flagged up that we needed more rigorous financial governance controls. Donald McGougan was Director of Finance and why it was not acted upon then I do not know. Maybe they thought that Jim Inch was wrong because as it turned out he was not. The Scottish Government had entrusted CEC with £500 million of its money to see through the Tram Project. Ultimately, the responsibility was then for effective governance arrangements, which lay with CEC as it was a CEC project.
155. I am referred to slides setting out a new governance structure (**TRS00014775**) which were agreed by CEC on 25 August 2011 and 2 September 2011. I cannot recall what changes were made to the governance structures at that time. I note that the slides show that I was a member of the All Party

Oversight Group (**CEC01890123**). I was only on the All Party Oversight Group in order to receive the information that they were getting. It would have been a bit incongruous for the SNP Group to be involved in a Tram Project that we were opposed to but it was to ensure that the SNP Group got as much information as we possibly could. I am not sure if that benefitted the project.

TIE

156. In my view, CEC did not have a lot of means by which they exercised oversight and control over TIE. We agreed who the Chair of the TIE Board should be and I remember the discussions with David Mackay and Willie Gallagher. There was no way that the Chair of TIE and the Chief Executive of TIE would be appointed to their positions without the approval of CEC. We also had Directors on the TIE Board, so CEC should have had a firm grip of it. The wrong people were put in those positions and it appeared that CEC Directors on TIE did absolutely nothing about defending CEC's position. An outsider looking at it would have thought that CEC was a crucial partner in that as the main partner, and CEC had control over who the senior officials would be in TIE. CEC had four elected members on the TIE Board, and there were regular reports to CEC about what had happened and I thought that the responsibility to ensure the effective governance arrangements were in place for CEC. We did have oversight, or we should have. As it turned out the means existed to have control over TIE by CEC. Wrong decisions were made by CEC in terms of the personnel that it appointed to positions. The wherewithal was there but it was not exercised properly. I had concerns about the performance of TIE when I asked for Willie Gallagher to resign. I liked Willie Gallagher and I got on well with him, however I thought he was the wrong man for the job. I had only heard some personnel issues which he had cited, he did not go into detail but I knew what they were because he took me into his confidence and he cited personal reasons for resigning. I asked for his resignation because of the disruption in the city centre on one particular day when there was gridlock and, of course, I said that responsibility stopped with the Chief Executive and that Willie Gallagher should consider his position. As

an individual I liked Willie Gallagher and got on well with him, so I had no personal grudge against him. He was a nice guy but I thought he was the wrong person for the job. I also thought that Richard Jeffrey was the wrong person for his job as I did not believe that he had the expertise. He did not have the right manner to get involved in trying to seek compromises through arbitration. There seemed to be an awful lot of TIE employees on a lot of high salaries and there seemed to be, from what we could find out, a lot of overlapping of duties. That was all coming from the budget pot that we had, so the performance of TIE was lamentable. I did not know the performance of the individual TIE Board members other than the Board members that CEC appointed, the elected Councillors, and I cannot say what their performance was because they never ever reported anything that I can recall at any time. I do not know whether they were involved in any meetings, whether they had discussions with Tom Aitchison or Sue Bruce and if they had expressed any concerns. I was unaware of any meetings that the Councillors on the TIE Board had with any senior official. Tom Aitchison, Sue Bruce, Alastair Maclean and Nick Smith never mentioned that those elected members had come to him expressing disquiet over the performance of TIE. I had never seen in any writing or subsequently that they expressed any concern. The performance of the four TIE Directors from CEC was rather less than should have been expected of them.

157. I recall that CEC's senior officers and members would have received information and updates from TIE through informal briefings and meetings in Jenny Dawe's room. I am not sure I was taken into any account in as many occasions as I should have been because of the position that the SNP had adopted. It was unfortunate because, although we were against the Tram Project, we were elected Councillors in CEC and we were determined to defend the Council as much as we possibly could. Information from TIE was always through the Chair coming into talk at a small informal meeting or the Chief Executive with the Chair and/or written reports to CEC.
158. I recall that consideration was later given to instructing an organisation such as a firm of civil engineers, with an established track record to assist CEC

and/or TIE in project managing the Edinburgh Tram Project, which should have happened earlier. Colin Smith came in to help to resolve matters. The public sector organisations that were set up in terms of TIE, I am quite sure, given their performance, did not want anybody shedding any light on their performance nor did senior CEC officials. Senior CEC officials were as culpable as the people who were under-performing in TIE because senior CEC officials recommended that those people be appointed. That did not include all the senior CEC officials. That was why the commercial in confidence restriction was used all the time and there was a lack of information that came out. The information that was being spun was that TIE had achieved victories in the disputes when they had not achieved victories at all. TIE did not want any light shed on their performance, so there would not have been any suggestion from them that a third party of civil engineers, or company, be appointed to oversee the situation. Colin Smith took over the project management for CEC and was used as an advisor. His advice was held in such regard that he was then taken on as a consultant and a direct employee of CEC. I believe he was a consultant and worked closely with Sue Bruce and Alastair Maclean.

159. I am referred to a TIE report on Ingliston Park And Ride One dated 14 September 2007 (**CEC01465362**) which noted lessons learned. I cannot recall that report and I have mentioned earlier my concerns regarding TIE's project management. I am also referred to an article in the Sunday Herald on 12 July 2009 (**CEC00784171**). I cannot recall that report or article at all.
160. I am aware that a report to CEC dated 26 June 2003 (**CEC02083550**) noted that a performance related bonus scheme had been introduced for TIE staff. Our view was that some of the TIE staff should have handed back some money rather than get a bonus. We were told that TIE staff had been vilified in the press, TIE's reputation had been tarnished and that people working for TIE had been under a great deal of pressure. For me, TIE's performance, as part of a team, did not merit bonus payments. We did not exercise sufficient and effective control over those bonus payments. I am sure CEC members were aware. There were press reports on the matter as well because it had

come out of the public purse. I am sure that there might have been questions asked by the press.

161. I am referred to an email dated 23 September 2009 (**CEC00672873**) in which David Mackay sent Tom Aitchison a paper (**CEC00672874**) containing proposals to revise the TIE bonus scheme and also an accompanying slide presentation (**CEC00672875**). I am referred to an email dated 25 September 2009 in which Jim Inch set out a number of concerns in relation to TIE's proposed revised bonus scheme (**CEC00673126**). I am also referred an email from Richard Jeffrey to Jim Inch dated 9 October 2009 (**CEC00674778**) and an email from Jim Inch to Tom Aitchison dated 23 November 2009 (**TIE00034046**). I did not know the subject or the detail of any discussions but I knew that bonus payments were being paid. I was not given an opportunity to influence matters. I cannot recall that these matters were discussed with me. I remember it being discussed at Council but how it arose I cannot recall. It may have come up by virtue of a question. It absolutely should have been discussed with me and other CEC members by CEC officers.
162. I am aware that the post of Chief Executive of TIE became vacant around June 2006 and that Willie Gallagher acted as both Chairman and Chief Executive of TIE between around June 2006 and November 2008. Willie Gallagher's appointment as both Chairman and Chief Executive of TIE was discussed with me. My views were that I opposed it because it was never good to have a Chair and the Chief Executive being the same person, and that was a CEC view. We got into a bit of trouble because we voted against Tom Farmer being Chair and Chief Executive of Kwik Fit in which we had shares and Tom Farmer was apoplectic. However, the advice that we had been given was that it was bad governance to have the Chief Executive and the Chairman being the same person. Willie Gallagher happened to be in the right place at the right time by being Chair and then made Chief Executive, but he was the wrong person for the job. I was told at that time, and I remember the meeting well because Phil Wheeler was at it, that all parties were represented and I said that that was a wrong move and questioned what qualifications Willie Gallagher had for the job. I was told that they understood

all the points that I had made, however, it was a crucial time in the project and it was only a temporary measure to tide them over. I had seen temporary measures before and what could happen. What I expected to happen was that they start off being temporary and then become permanent and that was what happened in Willie Gallagher's case. I was proven right in that I did not think Willie was the right person for the job even though I liked him as a person.

163. I did not receive any advice from CEC officers as to whether Mr Gallagher being both Chair and Chief Executive of TIE on that matter could be detrimental to the TIE Board's ability to exercise independent and effective oversight over the company. We received advice about good corporate governance regarding Tom Farmer's situation and I raised that, and CEC appeared to be going against what we had determined was the right way of voting at an AGM on Kwik Fit because we had shares in Kwik Fit. We turned that advice on its head because it suited CEC and because Willie Gallagher was such an affable bloke. CEC told us that he had knowledge of the Tram Project and it would be a seamless transition because of his knowledge and because he had been in the position of Chair. If Willie Gallagher had the qualifications for the job then the job should have been advertised. The job was not advertised and I was told it would be advertised at a later stage and that Willie Gallagher was only there temporarily until a new permanent Chief Executive could be found. Willie Gallagher's position was then approved at a later date.

The City of Edinburgh Council

164. I had concerns whether CEC officers and members were able to exercise effective oversight and control over the Tram Project. There was conflict of interest because some CEC officers had expressed concern and it had now come to light in terms of some internal emails and Jim Inch's report. CEC officials had the ultimate authority to oversee anything that was happening on TIE and on the project, and for whatever reason, they either exercised the authority erroneously, or did not exercise it at all.

165. I did not consider that CEC members who sat on the TPB and the Boards of TIE and TEL had sufficient experience and expertise of major infrastructure projects to inform their decisions as members of those Boards. I recall that Gordon Mackenzie had made a point on television and he was lambasted for it because it came across wrongly. Gordon was then put in charge of the Tram Project as Convenor of Transport and he had said that he relied on expert opinion because he was not an expert in projects such as the Tram Project, which was true. Out of a pool of 58 Councillors, given that we had a ruling party, it was very difficult to see who amongst those lay members, trade union officials, solicitors and members from all different walks of life would have had the expertise in that project so it would be almost impossible to satisfy that requirement. However, we should have been able to take on board information, understand what they were being told, be able to read reports and spread sheets effectively and have some financial acumen. CEC members who were involved should have been inquisitive and fully aware of the responsibilities in terms of reporting back and seeking approval for matters and that did not happen. There were certain things that they could have done that, as far as I recall, they did not do but in terms of having expertise in that project, it was almost impossible. They could have gained sufficient experience and knowledge by allowing them to exercise the kind of control you would expect an elected member to exercise. I do not know if any training was provided but I would imagine it was.

166. I did not believe that any conflict of interest, or potential conflict of interest, arose from Councillors being members of both CEC and organisations with responsibilities for delivering the project such as TPB, TIE and TEL. That happened quite a lot with Councillors and as long as they declared if they had an interest, it usually wasn't a problem. There were certainly no pecuniary interests involved. We in CEC and TIE Board members did not receive any other remuneration. I know that it was done differently in different local authorities and in Glasgow; in particular, people were given allowances for being Directors of Boards. To my knowledge that had never happened in Edinburgh and none of our Directors received anything other than the money

they were paid by CEC already. There were one or two exceptions to that in the health area but not in Transport.

Tram Project Board

167. The Tram Project Board was just like a sounding board. The real authority lay with the full Council and with the Policy and Resources Committee and later it became the Policy and Strategy Committee.
168. The TPB was supposed to provide an overview; however, because matters were regularly reported to other bodies within CEC, there were a lot of ad hoc meetings taking place and briefings. There were discussions at the Policy and Strategy Committee, there were discussions at Finance and Resources, and there were discussions at the Transport Committee and at full Council meetings. The TPB would have had information that had been provided elsewhere but they may have received additional information as well. However, it did not seem to be effective in any way, shape or form because all the main decisions were made by full Council. I cannot recall what powers were formally delegated to the TPB. I would not have thought they were for minor matters but it may be for them to question some things rather than to take actions. I cannot recall to whom the TPB formally reported. I cannot recall if those matters changed over time. Elected members who sat on the TPB did not report back to CEC as far as I was aware. We received reports from other officials and, for me, it was the Directors that we had on TIE that should have come back and told us.
169. I cannot recall if there was representation of all the parties on the TPB but I would imagine there was. The SNP Group had a desire to see that the Tram Project was brought in as quickly as possible at minimum cost without ever saying we supported the project, because we did not. The only time we made a positive move in the project was to ensure that the tram line went to York Place rather than terminate at Haymarket. Up until then we had to ascertain whether or not it was consistent with our position to get involved in some of

the organisations that were set up, knowing that final decisions on budget and timescale would come back to the full Council. We did not want to be inveigled as part of the overall management of the project because we were against the project and wanted to maintain that independence as a group and as a party, and in our party manifesto we were against the tram line. We had to tread carefully about what we got involved in and what we did not. I had concerns on everything regarding the Tram Project.

170. I am referred to a joint report to CEC on 20 December 2007 by Andrew Holmes and Donald McGougan (**CEC02083448, para 4.2**) which sought approval for the proposed new governance arrangements and that the TPB would be formally constituted as a committee of TEL. I cannot recall when the TPB was formally constituted as a committee of TEL and what powers, duties and responsibilities had been formally delegated to the TPB. That report was on 20 December 2007, just after I had voted on an amendment that I had put up to terminate the Tram Project and I was the only one that voted against the project or the line, but not the network, which I would have supported. In fact the SNP Group view at present is that it should be extended. Taking into account costs and lessons to be learned, the only way that tram line could now be improved is by extending it because it is insufficient in that it only goes from York Place to the Airport. It should definitely go down to Newhaven, notwithstanding the costs and how the costs would be met, and it should definitely go up to Little France to the Royal Infirmary and also to Quarter Mile. The SNP Group were not against the tram per se, we were just against what we saw was an ill-fated project and a rush to qualify for the money from the Scottish Government that then led us into problems.

TEL

171. I cannot recall all the details but, TEL was another one of the groups that were set up to give CEC the oversight that was required. I am referred to an email from sent on behalf of David Mackay, Richard Jeffrey and Steven Bell dated 8 February 2010 (**CEC00475228**) which attached a paper relating to the

Corporate and Governance Model (CEC00475229). It was crucial that the tram was not in competition with Lothian Buses and that it was an integrated transport system. I was of the view that when the whole Tram Project first came out it said that if the line had ran from Newhaven to the Airport it would have taken 17 buses, not routes, off the streets of Edinburgh including bus number 22 in particular. It would have reduced congestion by less than 2% and less than 6% of the population of the city would live within 300 metres of a tram stop if the line went from Newhaven to the Airport. Those figures were a lot worse than if the line were to go from St Andrew Square to the Airport. At the very outset my view was that it was a huge amount of capital outlay for very limited gain. It was a vanity project and people wanted to see a tram in Edinburgh because they thought it was trendy. It was deemed good for Edinburgh and people thought it would be an achievement they could be proud of if they could deliver the whole tram system. However, it was crucial, that the same ticket policy operated so that a ticket for the tram and a ticket for the bus were interchangeable. We were keen to show that buses would integrate with the tram and not compete against the tram because they were both public companies and ultimately it was TEL's responsibility to ensure that that happened. I cannot recall if any powers were formally delegated to TEL. There may have been references to TEL in reports but I do not believe that TEL reported to the full Council, but there may have been references about the work TEL were undertaking. There would have to have been references to us to let us know what had had happened.

172. TEL was an organisation that was set up to deal with the mechanisms of what was happening. They were not going to be able to determine what should happen in terms of the actual tram line itself and cost, budget and timescale. TEL was there to help to manage the situation so at that time we thought it may well have been a worthwhile move because the tram had to work with Lothian Buses. My view at the time was that Lothian Buses was more than capable of taking over the operation of the trams. I remember having a discussion with Neil Renilson and he said to me, whether in bravado or otherwise, that he could come in the morning and ensure the tram was running smoothly for that particular day before he had a bacon roll and that

Lothian Buses were perfectly capable of taking it over. There was a concern that the needs of the tram would override the needs of Lothian Buses and, therefore, Lothian Buses would be threatened. What I was keen to ensure and I put a motion up to say was that Lothian Buses would not be privatised in any way, shape or form in order to make up for the shortfall in the Tram Project monies. I achieved that through full Council because they all knew politically it would be a big mistake if anybody voted against that and threatened Lothian Buses. However, because the tram was CEC's vanity project, there was a view that certain aspects of the bus operation would be sacrificed to accommodate the tram operation. My view was that the Lothian Buses Board and the personnel on Lothian Buses, were more than capable of running a transport system that included the buses, the Airport buses and the tram itself. There was also a view that the Airport bus was going to be threatened because it was very competitive to the tram going out to the Airport. TEL was set up, to a certain extent, to appease and to show people that it was not being left to those involved in TIE to run Lothian Buses. TIE had blotted its copybook but there was the fear that Lothian Buses would be subsumed into the tram organisation rather than them working together.

173. I am referred to the papers for a meeting of the TPB dated 7 December 2007 **(CEC01400187)** which contained a status update on the TIE/TEL operating agreements from Graeme Bisset. The SNP Group's view was to ensure that we could be aware of the actions that were being taken and we did not want to dilute the authority of the full Council. We recognised that day-to-day decisions had to be made by TIE and the Tram Sub-Committee but I do not recall the details regarding the two operating agreements, including authority granted to CEC officials. Once more the officials were charged with the responsibility to come back and seek approval from elected members should they seek to do something which was new policy or departure from policy.

Transport Scotland

174. I am aware that following the debate and vote in the Scottish Parliament in June 2007, TS's role in the governance of the Tram Project changed. That was a decision that was made by the Scottish Parliament. That must have been fully discussed within the Scottish Government circle prior to a decision being made about what TS's role should be. I know that some people tried to use that as an excuse because the role of TS had changed and that somehow that decision was responsible for the debacle that we found ourselves in, which was just nonsense. I do not know if regular reporting to TS took place after that change but I would think that it had to.
175. I am not sure if TS provided any oversight. I am sure they would have been aware of the mechanisms set up by CEC and I would have thought that they would be of the view that those mechanisms were competent to deal with the situation in terms of full Council, TIE, TEL and everybody else involved including the Oversight Board. TS would have looked at the governance, as a structure, and that the structure was there. I do not know to what extent they knew how that was operating or if they wanted to intervene. The Tram Project was brought in the Scottish Parliament in 2007 without the support of the major parties.
176. I do not believe that TS's changed role had an adverse effect on the management, oversight or delivery of the Tram Project. People were looking for a scapegoat and I had not seen any evidence that TS's involvement had changed anything. I do not know if TS was able to exert influence on what was happening. I do not know what information TS had but CEC were exercising control, or should have been exercising control, and TS would have been aware of the governance structures that we had put in place. It looked as though CEC just threw money at the Tram Project without any control, but the governance procedures were there. If it had been handled properly there would have been no reason for getting involved in the debacle, but people were hiding matters and were not acting properly. TIE were out of their depth

and there was a whole mismatch of circumstances which need not have happened had the right people been chosen for the right positions. If only people had had the gumption to say enough was enough. It was seen as a political project, and it had to be delivered. It was a so-called vanity project and once it had started it snowballed in that it had to be finished because of all the disruption in the streets of Edinburgh. Unfortunately, for major projects, politicians would look to the next election and how it was going to look in terms of their opportunity to be re-elected and in their party to be elected, which all politicians do. A lot of that would have involved politicians considering if they did something would that then be a vote winner or loser. Some parties were disappointed that the SNP were opponents of the Tram Project because they would rather all of the parties were of similar mind-set. That was so the electorate could not discern between us or any of us because we would all have been in favour of the Tram Project. The very fact that the SNP Group as a major party was against it was something that other parties found rather irksome in that, if the electorate did want to express their displeasure by voting for a party who was not in favour of the tram, then the vote would have come to the SNP. However, had we supported it then the electorate would not have been given that opportunity because all parties would have been supportive of it. There was always the political aspect of it as well running through peoples' minds.

177. I am referred to a paper summarising the proposed governance and management model in the construction period as it stood in December 2007 (CEC01387398). I do not know the details of TS's role in the governance of the Tram Project at that time. I would be of the view that TS would have been kept fully informed of what was happening throughout the whole project. Some of the problems were very evident in terms of, you could see what was happening on the streets. What was happening internally with TIE and the management of the Tram Project and the relationship with senior CEC officials, I am not sure how much of that would have been known. A lot of people did not want any light shed on their operations and their role within those operations. I do not know how much information was forthcoming to TS but the modus operandi appeared to be to give the minimum amount of

information that was necessary to keep business moving without exposing the frailties of individuals and decisions that were made within those organisations.

Audit Scotland

178. I am aware that Audit Scotland produced reports on the Tram Project in June 2007 (**CEC00785541**) and February 2011 (**ADS00046**). I would read those reports at the time as I read everything that came out regarding the trams. Audit Scotland was hugely important and CEC were getting the financial position almost on a daily/weekly basis and nobody was satisfied with what was happening. I cannot recall exactly what the conclusions were, 2007 was at the start of the project, but it was perfectly evident by 2011 that matters were not as they should have been. I relied on the conclusion of the Audit Scotland Reports. I would have taken them into consideration but the SNP Group had already formed a principle position against the Tram Project.

OGC Reviews

179. I am referred to a report on the Office of Government Gateway (OGC) Readiness Review that was carried out on the Tram Project in May 2006 that was then delivered to the Chief Executive of TIE on 25 May 2006 (**CEC01793454**). I cannot recall viewing that report at the time. I am also referred to a second OGC review that was carried out in September 2006 (**CEC01629382**). I cannot recall viewing that report at the time.
180. I am referred to a third OGC Review that was carried out in October 2007 (**CEC01562064**). I cannot recall if I saw a copy of the report at the time. There were reports from different people in different organisations. I am not sure if I saw a copy of the report or if it was included in part of another report that was provided to CEC. There may have been a couple of paragraphs devoted to OGC Reviews, however I cannot recall the details.

Public relations and communications

181. I am referred to emails between CEC, TIE and Carillion dated between 29 July 2008 and 28 October 2008 discussing communications with the public **(CEC01141370), (TIE00438069), (CEC01063375), (CEC01298101)** and **(TIE00147176)**. I am also referred to an email dated 16 May 2008 from Leanne Maberley, Client Manager in CEC, to others in CEC and TIE **(CEC01231803)** which discussed tram works in Leith Walk. There was very little information provided to the public in relation to the Tram Project. The public received information through the media but there was a great deal of unrest in Edinburgh about the lack of action. People could see with their own eyes the disruption to the roads, to the network and all the diversions. It was good for the newspapers as it gave them something appealing to write about. It was covered by the Evening News in particular and the reputation of Edinburgh went downhill.
182. In terms of the reputation of Scotland, it was concerning, especially for people who believed that Scotland should be an independent country. It looked to an outsider that Scotland and Scotland's capital were unable to manage a project of that nature, therefore how could anyone have had confidence that Scotland could manage to go it alone, and that was not a view that was only held by the SNP Group. There were views held by members of other parties that the Tram Project did not do the country's reputation any good and, in particular, Edinburgh and CEC's reputation.
183. In terms of public meetings there were meetings regarding the tram route and what was going to happen in terms of road closures. There were meetings with traders, although perhaps not enough, because I know for a fact that traders in Shandwick Place were complaining that they were not consulted properly about what was happening and there was a detrimental effect on their businesses, as was the case on Leith Walk. They were the two areas, because they were small businesses and shop fronts owned by families. These were not consortiums and big companies like Boots, who could

perhaps have put up with disruption for a number of months in terms of the income coming from a particular shop. These were people whose business centred round one shop or one shop front and were being severely hampered in terms of their ability to maintain their custom. I know there was disquiet by the public there about the road closures, not only that they were not consulted but that their views had not been taken into account. Therefore, the public were not given enough information because even from the information the public had, it was evident that the public was fed up. The public had not wanted the project to start in the first place and were fed up with it. Queries or representations by members of the public were addressed individually and Councillors would deal and reply to members of the public. There was also the opportunity for deputations to full Council and also the Policy and Strategy Committee. If it was on the agenda then a deputation could come three times but it was supposed to be bona fide organisations that were either set up or existed, such as community councils. I do not believe that I was kept fully informed of developments. The communication to the public could have been better handled but I believe that some people did not want the public to know everything that was happening.

184. I recall that there was not a great deal that was done to mitigate the adverse effects of the tram works. Some people were of the view that some of the traders were blaming the tram works for shortfall in their businesses when there could have been other reasons for why their businesses were not as successful as they should have been. I am not sure what was done to compensate individual businesses in rate relief, which was not handled by CEC but was independently handled. The Lothian Valuation Joint Board handled business rates and I am sure there was compensation payments made directly to companies if they proved that the tram works had affected their businesses. I know it was talked about but I cannot really recall if it was acted upon.

185. I am referred to an action note from the special Tram Internal Planning Group dated 1 December 2008 (**CEC01069093**), which stated that a single communications plan for the whole project needed to be developed. I cannot

recall if that was done. At that time it was very early in the Tram Project and, in principle, I was against the project. I would have known and been concerned with how the public were going to be kept updated. It did seem to make sense to have a single communications plan.

186. I am referred to emails between Colin McLaughlan at TIE and others in CEC all dated in January 2008 (**TIE00147176**). Some CEC members were updated on PR issues but others would not have been. The public had to go directly to the press and then the press would contact CEC and not all members would have been told. Members would be told there had been an enquiry or a Freedom of Information request. When I was Leader of the SNP Group and Deputy Leader of CEC, I met every Monday morning with the Leader and the Chief Executive of TIE and the officials who were necessary for the agenda. The meeting started at 10 o'clock and that covered a whole host of issues and was held in the Leader's room. We were told at that time about matters such as the Evening News having been in contact because a member of the public had contacted them about a particular matter or issue.
187. I am aware of the minutes to the Transport, Infrastructure and Environment Committee meeting on 6 May 2008 (**CEC01241182**) which noted that the Committee agreed to hear a deputation for a request that CEC hold a referendum on the Tram Project. That call was resisted because the administration knew what the outcome would have been and the outcome would not have been an outcome that they would have welcomed. I had also asked for a referendum and I was quoted in the media and received support from the editorial Evening News to get a referendum, but people in CEC did not want to trust the Tram Project to a referendum of the public. They were sure of the outcome of a referendum, and that would not have been favourable to the Tram Project so the public were deliberately side-lined in terms of that.
188. I am referred to an email dated 26 October 2007 from Graham Russell, Chairman of the Federation of Small Businesses Edinburgh, to Willie Gallagher and Jenny Dawe (**CEC01507257**), which requested that TIE give

consideration to increasing the funding behind the small businesses compensation scheme. I cannot recall if the public's expectations were properly handled. Graham Russell was in contact with CEC on a number of occasions representing small businesses. He wanted to see the funding extended so that there was money designated for compensating businesses that could actually prove that the Tram Project had had an adverse effect on their business and what the extent of that effect was in monetary terms. TIE were quite stringent on the trader providing proof and Graham Russell's view was that if savings had been reported on the project of £47 million then the compensation funding could have been extended and TIE could have been a bit more flexible in terms of dealing with traders. I wanted traders to be compensated because I could see the disruption with my own eyes. If the public had to walk across wooden planks to get into some shops, then that was bound to have had an adverse effect on businesses. The public could not park their cars to shop, and Leith Walk and Shandwick Place were the two hotspots for that.

189. I am aware that the Leith Business Association (LBA) sent me and other Councillors an email on 30 November 2010 noting that due to the lack of accurate plans, the utility works took far longer than was anticipated or communicated to the businesses on the route (**CEC00127068**). I note that the LBA made a number of demands of CEC. I cannot recall how CEC responded to that email. CEC's response would have been that those utility works were all necessary and individuals who could prove that they had a claim, should claim through the appropriate channels. The LBA would have been assured that all their requests would happen but reinstatement of all the trees removed from Leith Walk on both sides would require advice on whether or not trees could be put back in. A lot of those trees had given us problems right from the very start, which I know because it was my responsibility. There were underground chambers in Leith Walk and the roots were hanging doing nothing. At one time we could see the trees were dying and there was a big rush for them to be watered. There was a particularly hot summer and, although CEC did go through the process of watering the trees, we were told by our people in the Parks Department that because there was no underlying

earth for the roots to take place that the trees were suffering the effects from carbon monoxide and salt. It was not the right species of trees and the roots were not able to bring up enough supplement to keep the trees going. There would have been a view taken and there was an argument put that we wanted Leith Walk to be a boulevard because it was the main route down to Ocean Terminal, to the Royal Yacht Britannia for tourists and also for the people of Leith who had put up with a lot of disruption. The view would have been, and has been, that Leith Walk should be upgraded and there was talk about trying to upgrade the shops as well. There was a whole mixture of all different kind of shops, shop fronts, charity shops, empty shops, bars, betting shops and there was a view to try to get some symmetry on Leith Walk to make the street more aesthetically pleasing. CEC did not consult with those constituents throughout the project but they informed constituents about disruption in their area. There was disruption on school routes and people had to be told where their nearest crossing was going to be and how long the works were going to take place. Therefore, there would have been consultation with the constituents but they were not consulted on the fundamentals.

Cost Overrun and Consequences

190. I was first aware from day one that there was likely to be a significant cost overrun, including that the total capital cost of the Tram Project was likely to exceed £545 million. As mentioned earlier, I moved an amendment in 2006 that the Business Case had not been established and that there were too many optimistic projections. There was too much speculation about patronage of the trams, fares and cost. I had said from day one that the Business Case had not been met and the Tram Project should be terminated and that was back in 2006. I had received support from Councillor Shields therefore the amendment was minuted. I voted for my amendment and one other Councillor stayed out of the room, Councillor Mackenzie of the Conservatives, who was then suspended for three months for that. It might sound flippant but that was why I posed the amendment as I was confident that the Tram Project would not come in at £545 million.

191. Following the Mar Hall mediation, the additional contribution by CEC would be financed by prudential borrowing. It was decided that CEC would borrow money as we had huge debts, as all Councils have, and ultimately by that time there was no alternative. We recognised that there would be a huge debt on-going as it was in terms of the school building programme that we undertook under a Private Finance Initiative. There was an on-going debt but at that time of the Mar Hall intervention, it was welcomed by all parties because an end to the Tram Project was in sight. Given that the Scottish Government's position was that they were not paying a penny more, then it fell to CEC to find additional expenditure and we did not have it. We did not have any money sitting aside in our capital programme that had not been committed therefore the only way it could have been done was through borrowing. It was called an 'opportunity cost' because we had to devote that money to the Tram Project and lost the opportunity to use the money for other matters.
192. In my view, Councillors were not kept properly informed of the risk and likely amount of a cost overrun throughout the Tram Project. Latterly the issues could not be hidden but in order to get the project up and running CEC were kept out of the loop by TIE. Because of the way CEC operated, TIE had to then ask for permission to exceed the budget and they could no longer hide the issues with cost overrun and there was nothing else that we could do about it. We were not kept properly informed and a lot of the time we were informed of matters after the event and left with a take it or leave it choice. The alternative was too horrible to contemplate so CEC were left with no choice, although it was given to us as though we might have had a choice in the matter. Ultimately when looking at the consequences of not doing what we were being asked to do, TIE had forced Councillors to increase the budget by X amount, by Y amount and then by Z amount. It all built up until we were in too deep and that was the rationale and tactic behind that from TIE.
193. In relation to the main consequences of the failure to deliver the Tram Project in the time, within the budget and to the extent projected, the public now have a lack of confidence in the ability of CEC to extend the tram given what has

happened. That is a shame, because it can only be improved by extending it but the public would look at the mess and the overrun in time and the overrun on budget from what we have now from York Place to the Airport. How could the public have confidence that CEC can run an additional line or extend the current line down to Newhaven and elsewhere. Therefore, if there is a decision made by the next administration to extend the route they will have to use the lessons learned from before and CEC will have to gain the confidence of the public that we are not going to repeat the mistakes that were made in the past. There was a big discussion about whether or not the line that we had was over-engineered. A lighter touch could have sufficed in terms of providing what was supposed to be a light railway system that would not have been as costly. There was talk about it could be provided for a lesser price with a different engineering structure. Another consequence was that internationally our reputation suffered as a country and as a city, although we were doing rather well in terms of our investment in the city with new hotels opening and finance companies coming here. We had managed to withstand damage to our reputation with a lot of hard work. The consequence for the constituents was the amount of public money from Edinburgh's public purse that was spent. The money devoted from the Scottish Government could have been used on other transport projects throughout the country and maybe some of them could have been in Edinburgh. Another consequence for constituents was the disruption to them in terms of difficulties in being able to go about their business in the city.

194. The whole project started out as a tram network with line 1 from Newhaven to the Airport; line 1b from Roseburn to Granton; line 1c from Granton to Newhaven and line 3 from St Andrew Square out to Little France. That was the tram network and when it became evident that the money set aside was not going to provide that, then steps were made and missed early on. The line that we have was not dictated by transport considerations, it was dictated by political considerations and monetary considerations. The most profitable part of the line was going to be down Leith Walk because of the number of flat developments, tenements and people using public transport and yet the line did not reach there. Therefore, there was the big move to make sure that the

line reached the Airport and there was almost a disastrous decision made to terminate it at Haymarket, which would have been a loss to the city centre. After all the disruption that all the people of Edinburgh had put up with, to tell them that the tram line was only going to go to Haymarket was just complete folly. CEC had got itself in too deep to actually terminate the project, which they could have done so at an earlier stage. They got in too deep and they had to progress it, which meant that the objectives of the Final Business Case were not met.


Final Comments

195. In my view, the main reason for the failure to deliver the Tram Project in time, within the budget and to the extent projected was because it was an ill-conceived project from the outset. There was far too much party politicking in terms of qualifying for money for the project and getting the £500 million from the Scottish Government. That was seen to be a gift that could not be turned down therefore a blind eye was turned to a lot of the shortcomings that existed within the project in order to qualify for that gift.
196. The wrong personnel were also involved in the project, which I have tempered all my previous comments with, and included the role of TIE, CEC officials and the role of CEC Directors. The Tram Project should never have started and there was an impasse that was created between TIE and BB, which a lot of was down to personalities. Certain individuals had created a situation that cost the public purse a huge amount because there was a downing of tools until matters were resolved. There were also too many people in TIE who were responsible for delivering the project who tried to preserve their reputation which cost the public a lot of money. They took matters personally and came in with a big macho image that did not do Edinburgh any good in terms of reaching a compromise.
197. There were too many failings in terms of the personnel that were employed in TIE because they did not have the skillset to deliver the project and, therefore,

the people who recommended their employment were also culpable in that regard. Those failures might have been avoided had a more robust assessment of the project been carried out rather than the speed in which it was assessed in order to qualify for the money promised by the Scottish Executive and paid by the Scottish Government. A proper robust recruitment exercise was required for people in TIE rather than choosing individuals because they were recommended and known to certain people within CEC. That might have helped in terms of having the real expertise within TIE to deal with a project of its size.

198. I hope that people are taken to task, which may include myself, for our role in the Tram Project debacle as the public were badly let down. I have used the tram, however I do not use it frequently because I have no need to use it in terms of where it goes, which is in common with the vast majority of people of the city who have no need to use the tram. For all that turmoil over all those years and all that money spent in comparison to what Edinburgh has received, I would defy anybody to say it has been anything like a success because it is not. That is why we are now having a Public Inquiry, because the Tram Project was a failure, not because it was a success.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 96 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature.....
Date of signing..... 7 August 2017

