

**Edinburgh Tram Inquiry Office Use Only**

Witness Name: LESLEY HINDS

Dated: 20 July 2017

**THE EDINBURGH TRAM INQUIRY**

**Witness Statement of Lesley Hinds**

**Introduction**

1. My full name is Lesley Hinds. I am aged 60, my date of birth being [REDACTED] My contact details are known to the Edinburgh Tram Inquiry (Inquiry).
2. My current occupation is as a city councillor on the City of Edinburgh Council (CEC or Council) When interviewed in December 2016. I was a councillor throughout the entire period of the Edinburgh Tram Project (ETP) from 2003 to 2012. My main duties and responsibilities were:
  - 2.1. As a councillor (throughout the whole period);
  - 2.2. As Lord Provost of Edinburgh from 2003 to 2007; and
  - 2.3. As Transport Spokesperson for the Labour Group on the Council from 2011 – 2012; and
  - 2.4. As Labour Transport Convenor from mid-2012-2017.

**My background**

3. My curriculum vitae is attached as an annex to this statement.

**My history as a councillor**

4. I have been a councillor for over 32 years. When interviewed on December 2016 have been a Labour councillor representing Inverleith from 1984

onwards and currently represent the Inverleith Ward (though its boundaries have changed over time). I was Council Leader for a period as well for a period prior to 2003.

5. There have been a number of changes in the political group which holds power (which I refer to as the Administration) on the CEC in the time in which I have sat as a councillor:
  - 5.1. Prior to 1984, the Conservatives were the dominant group;
  - 5.2. The Labour Group then formed the Administration of the Council for the period including between 2003 and 2007;
  - 5.3. A coalition made up of the Scottish Liberal Democrats (SLD) and Scottish National Party (SNP) formed the Administration between 2007 and 2012; and
  - 5.4. Following the 2012 local government elections, power has been held by a Labour and SNP coalition.
6. I was a Board member of a number of organisations, on behalf of the Council, including CEC Holdings Ltd, Transform Scotland, Transport for Edinburgh Ltd, North Edinburgh Arts, One City Trust, Chair, of Edinburgh International Conference Centre (EICC) and Edinburgh Community Solar Co-operative. Over 33 years I have held positions including chairs of many Boards and community organisations. Currently I am Chair of Edinburgh Community Solar Co-operative and Edinburgh Mela. A Board member of North Edinburgh Arts and One City Trust.

#### **Labour Administration (up to 2007)**

7. I was part of the Labour Administration involved in the start of the ETP from around 2003 up to 2007. I was Lord Provost of Edinburgh between 2003 and 2007.

8. The Lord Provost is chosen at the Council meeting by Councillors. Each group has a Group Leader. The leader of the group with the largest number of councillor normally becomes the Leader of the Council (also known as the Council Leader) who is the political head of the Council. The Lord Provost is the civic /ceremonial head of the Council.
9. During the period from 2003 to 2007, the Council Leader was a Labour Councillor, Donald Anderson.
10. As a Councillor in the Inverlieth ward, which is located in North Edinburgh area, I was supportive of Line 1b in North Edinburgh. The Granton Waterfront was key for the regeneration of north Edinburgh in terms of jobs, homes, environment and investment. Public Transport infrastructure was essential for the success of the Waterfront. I discuss this later in this statement (at paragraph 171 below).

#### *System of government*

11. During this period (2003 to 2007) there was an executive system running the Council. In this system, instead of having separate committees which dealt with individual issues like transport or education, there was an Executive Strategy Group (Executive). This was made up of councillors, from the Administration, who were the main portfolio holders and issues would come to them to make a decision.
12. Instead of having committees making decisions, which could be referred to the meetings of the Full Council, you would have an Executive that took strategic decisions and then you would have Scrutiny Panels underneath that executive setup.
13. There was also a scrutiny process where other councillors sat on a Scrutiny Committee. Councillors could scrutinise some of the decision-making and could refer issues up to that Executive/Council if there were sufficient votes.

14. I believe Councillor Andrew Burns, of Labour, was the executive member who held the portfolio for transport matters for this period (Executive Member for Transport). I did not occupy any of the executive portfolios during this time due to my role as Lord Provost.

*Role as Lord Provost*

15. My role as Lord Provost was as the civic head of the Council and also involved chairing Council meetings (including casting deciding votes in the case of a tie). As Councillor for Inverleith I would get involved with local, ward issues. I still attended Labour Group meetings and briefings but I was not a member of the executive group during this time.
16. Attending Labour Group meetings was sometimes a challenge because of the Lord Provost's schedule, However, I made sure that I went to Labour Group meetings and any briefings so that I kept up to date with the issues.
17. There was a close relationship between the Lord Provost (the civic head of the CEC) and the Leader of the Council (the political head) because the Lord Provost was responsible for chairing Full Council meetings and making those Council meetings facilitate policy decisions. The Council Leader at this time was Donald Anderson and I had a very good working relationship with him. We met on a regular basis to discuss certain issues and to identify issues that were coming up to the Council. We also discussed who had responsibility for the various project and policies that were being progressed.
18. In terms of the interactions and relationships of the Lord Provost with the Council Officers, the Lord Provost is still an individual councillor, with a ward to represent so there is interaction on that level. There are also certain projects that the Lord Provost will be involved with. For example, as Lord Provost, I chaired the Edinburgh Tattoo Board and the International

Festival organisation. These are large responsibilities and there was a lot of interaction with CEC Officers relating to those.

19. In preparation for a Full Council meeting, the Lord Provost as chair would have an interface with Council Officers in going through the agenda, reviewing deputations (groups of people coming to address the Council) and ensuring the smooth running of Council meetings.

#### **In opposition (2007 – 2012)**

20. A coalition of the SLD and SNP came to power after the 2012 local government elections. Councillor Jenny Dawe (SLD) became the Council Leader and Councillor Steve Cardownie (SNP) became the Deputy Leader of the Council (Deputy Leader).
21. When the SLD and SNP came into power in 2007, they decided they wanted to change the Council structure from an executive system back to a committee system. They had always been against the executive system and scrutiny panels. This change began in 2007 but took a little time to implement as it would have required changes to the Council's Standing Orders (the Council's internal rules of procedure).
22. The Administration appointed the Convenors/Vice Conveners of each committee and those convenors functioned as the Administration's key person on the issues by the committee's remit. For instance, Councillor Gordon Mackenzie (SLD) was the Transport Convenor for a period. Each of the opposition groups would also have spokespeople whose responsibility it was to cover different policy areas.
23. For most of my time in opposition, I was the Labour Health & Social Care Spokesperson (2007 – 2011). In the final year of the SLD/SNP Administration (2011 to 2012), I became the Labour Spokesperson on Transport. Because of the way in which the ETP was going, I wanted to be more involved and so sought to be the Transport Spokesperson. This led to me

sitting on the Transport, Infrastructure and Environment Committee (TIEC) from 2011 onwards.

24. Prior to 2011, I did not attend the TIEC as a member. I would have occasionally gone to that committee to ask it to consider a ward issue. On those occasions I would have been marked as 'also present' (see, for instance **CEC01241182**). This meant I was just there to speak to that particular point. I did not attend the whole meeting and did not have any vote on committee business.
25. I sat on the Policy & Strategy Committee (PSC) from 2007 onwards as well. This committee consists of all of the convenors of other committees and senior councillors from different political groups. It is chaired by the Council Leader who, during this period, was Jenny Dawe (SLD).

#### **The current Administration (2012 – present)**

26. I have been the convenor of the TIEC (generally known as the Transport Convenor) from mid-2012 to the present day.
27. This role meant that I was involved in the later part of the ETP. The revised budget and timetable had been agreed prior to 2012 but both the CEC Chief Executive (Sue Bruce) and I were heavily involved in delivering the revised project on budget and on time.

#### **Transport Initiatives Edinburgh and Transport Edinburgh Limited**

28. I am familiar with both:
  - 28.1. Transport Initiatives Edinburgh (TIE); and
  - 28.2. Transport Edinburgh Limited (TEL).
29. I was not a member of the boards of directors of either of these companies at any point up to their removal from the ETP in 2011.

## **Councillors and the Edinburgh Tram Project**

### **Training and experience in relation to the Edinburgh Tram Project**

30. I have 33 years' experience as an elected member. I have experience at city and at local level in delivering and being involved with capital projects and budgets. For example, I was Chair of EICC for four or five years from the beginning of that project up to the time where the EICC opened for events. That project came in on budget and on time. The budget for that project, at that time, was one of the biggest capital projects in Scotland. That role extended beyond the conference center, as the project was also responsible for regeneration of the surrounding areas. It therefore included encouraging groups like Standard Life to relocate to the area.
31. Locally, I was involved in the redevelopment of the centre of the Muirhouse area. I also was a Board member of the North Edinburgh Arts Board. This role has involved supervising a capital project for a new arts building. I am involved in a number of other activities but do not list those in full in this statement.
32. I have had training over the years in finance responsibilities, governance, press relations and communications and on roles sitting on outside organisations. This training was not directly related to the ETP but it did involve considering capital and revenue aspects of projects, and the responsibilities involved; these were applicable to any project including the ETP.
33. I believe that you require actual experience of these matters as well as training. Experience is gained through sitting on an organisation's board or through supervising capital projects. What you learn from that as you go along is particularly valuable.
34. Training is provided both for new councillors and on an on-going basis for all councillors. This includes training on issues including governance, Standing Orders, your responsibilities as a councillor and finance. Other

training would be provided by outside organisations, particularly in communications and public relations. We also had external financial organisations provide training.

35. It is not just through the Council that training is provided though. In sitting on outside organisations, company boards and other groups, councillors will also often benefit from training organised by these bodies. Often these organisations will arrange their own forms of training in governance and finance provided by external providers.
36. I think the situation has improved since I first became a councillor. New technology has allowed a lot of the training to be delivered remotely. There is also the Convention of Scottish Local Authorities (COSLA) which is an organisation for local authorities. This provides the opportunity for elected members to take additional qualifications and I am aware that some Labour Councillors did this. I think the level and type of training is certainly more professional.
37. I cannot speak for those who sat on the boards of directors of TIE or TEL, but I felt, as a councillor, that I had enough information and training to deal with the ETP.
38. I am aware that other councillors were more involved with the ETP. In some cases there was more practical training. I was aware for instance that Andrew Burns, Labour Executive Member for Transport, and others went to tram projects in Europe. There were also deputations from other tram projects and from other local councils during the time I was Lord Provost, though I do not think I met them due to my busy schedule.
39. As Lord Provost, I did represent Edinburgh and went to other cities where I saw their tram projects in action. I had some exchanges with Council Officers in those cities. I was also involved previously with Euro Cities, which involved lots of European cities (with trams) and attending meetings and

conferences in those places. You would learn from other people about their projects. In terms of tram projects, Europe is far ahead of us.

40. Personally, I looked into the tram project in Dublin. I was in holiday in Dublin shortly after I took over the Transport Convenor role. During that time I spent a day looking into their tram project. I think this kind of 'hands-on' experience is helpful. Speaking to people who have experience is valuable. It might have been helpful in this case to learn from other projects and their experiences.
41. I think the guidance we received from Council Officers seemed sufficient at the time. We received regular briefings on the project. I would say that, between 2007 and 2012, I did not feel as informed as I had when I was in the Administration. Councillors got the briefings, asked questions and tried to get as much information as possible. There was sometimes a feeling that (because we were not in the Administration) we were not being told everything. Some Council Officers were better with dealing with the opposition councillors than others. As opposition councillors, there may have been a perception that we were not entitled to know everything.
42. It would have been helpful to have had further information in relation to how other tram projects operated. For example, I am aware of how the tram project progressed in Dublin and I am also aware that the Nice tram system was over budget and over time. It might have been useful to have more direct contact with those cities. That may have happened. However, as someone who was not part of the Administration, I was not aware of that occurring.
43. I have been asked about two key aspects of the ETP, finance and risk management, and whether there was sufficient information or tools to understand those aspects of the project.

44. Finance and risk management were two key aspects of the ETP. In the period between 2007 and 2012 particularly, we had many briefings on the ETP. However, on reflection and looking at some of the documentation, I do not think we were told everything we should have been told. There were briefings and councillors asked lots of detailed questions. However, it looks from some of the documentation now available to me opposition Councillors were perhaps not getting the full facts and things were being hidden.

### **Political positions on the CEC**

#### *From 2003 to 2012*

45. At the beginning, all political parties were in favour of the ETP. They could see the benefits to the city. The tram is a clean means of travel. It would be able to get large numbers of passengers around the city. It would also result in an increase in public transport passenger numbers. At the very beginning all political parties were in favour.
46. Between 2003 and 2007 Councillor Cardownie, who had been a Labour Councillor and Deputy Lord Provost, transferred from the Labour Group to the SNP. My recollection is that he was the only SNP Councillor at that time. At that point he decided to oppose the tram concept. Until that point, I had never heard him say anything against trams. In my opinion, he saw it as a political opportunity to differentiate himself and the SNP and to be seen to be against the trams.
47. From 2007 to 2012 I would say the SLD, Labour, Green and Conservative Groups were broadly in favour of the ETP and the SNP were against it. I think there were some within the SNP who probably were supportive. However, because they had previously taken a stance against the ETP, they did not speak out.

48. In terms of the Labour Group itself, I would say the vast majority of the Labour group believed in the principle of the ETP. We all had stood on a group manifesto involving a commitment to the ETP and that was what they were elected on.
49. Despite the wide support with the Labour Group, we felt frustrated between 2007 and 2012. People knew that the ETP had started with our previous Administration (up to 2007). The way in which it was progressing was very, very frustrating for us. Nonetheless, we wanted the ETP to be successful.
50. In my view, one of the main reasons that the ETP was unsuccessful was that not all political groups supported it. Between 2007 and 2012, the SNP 'sat on their hands' in that they were abstaining most of the time. Despite being part of the Administration, they did not want to be involved in the ETP at all. As a result, you only had half of the Administration actively in favour of the project. The SLD Group then relied on the opposition groups (Labour, Conservative and Green) to support them rather than the SNP who were the other part of the Administration.
51. As an opposition group, I think we had less information than those in the Administration. When I look back and see some of the confidential emails and letters etc, that have been brought up as part of this Inquiry, I do not remember whether we were given them.
52. As part of the governing Administration, the SNP would have had the same information as the SLD. They may have been able to use that information for political gain. A by-election was held in the City Centre Ward in 2011 and the SNP were vocally 'anti-tram'. I remember every single leaflet they put out was against the project. The difference with their position in the 2012 elections was pretty stark because the SNP ended up having to vote for the ETP in the last year of their Administration. Previously their

line had been that the ETP was nothing to do with them and they could not be blamed for the 'disaster'.

#### *2012 Onwards*

53. Following the Mar Hall mediation (in March 2011) and the revised budget and revised timetable, all of the parties were supportive of the ETP. It is only recently that the Conservatives have decided they do not want to support the proposed extension from York Place to Newhaven.
54. From 2012 onwards, as the Labour Transport Convenor, I had learned from the experience of the previous Transport Convenor and from the 'tram' perspective. ( learning the mistakes made over the five years) There were mistakes, I believe, that were made between 2007 and 2012 in that the Tram Project did not have all party support. I also often felt during that period that the SLD Councillors, would only come to the other groups looking for our support very late in the process. For example they might seek or agreement to a proposal the day before, or the morning of, a Full Council meeting. This was unfair because we did not really have the information we needed to make decisions. From 2012 onwards, as Transport Convenor, as well as trying to deliver the ETP on a revised budget and revised timetable, I saw that we had to learn from the previous five years.
55. As such, I needed to ensure that all the opposition members were kept informed of all developments to do with the ETP. I will come on to talk about the All Party Oversight Group (APOG) and those arrangements later in this statement (at paragraph 671 onwards below).
56. We ensured that all of the parties were kept up to date from 2012 onwards. For example, we set up the Transport for Edinburgh Board and made sure that it was an all-party group (ie had members from all the political groups). We also had the APOG. As Transport Convenor, I kept in contact with all the opposition Transport Spokespeople. If there is anything

that I have learned from this project, it is that unless you can get all-party support then party politics come into it. That can damage the project as a whole.

## **Reporting, meetings and discussion**

*Council*

*Officers*

57. Council Officers generally refers to the employees of the Council responsible for carrying out its different roles and the policies set by councillors. These Council Officers are organised into different departments or teams such as the Finance Department and the Legal Services team (and might sometimes be referred to as Legal Officers or Finance Officers). These are headed up by a senior Council Officer called a Director or Head. The Council's Chief Executive heads up the Council Officers as a whole. The Chief Executive, Directors and prominent Council Officers such as the Head of Legal/Council Solicitor are sometimes referred to as Senior Officers.
58. The Chief Executive, the Director of Finance, Director of City Development, Head of Legal Services, and Director of Corporate Services all advised Councillors of developments relating to the tram project. They were the main people who were responsible for providing this information, although not every one of them would have attended or briefed councillors on every occasion. There were also other Council Officers, at a lower level within the departments, who might have worked on the project or communicated information to the Senior Officers. However, for briefings, it was normally the heads of the responsible departments engaging with the councillors.

59. Council Officers offered briefings and the Labour Group would also request specific briefings. For example, during the digging up of Princes Street, because of the concern regarding the project, the Labour Group asked for briefings to be delivered by the Chief Executive or the Director of Finance. We insisted that it was those Council Officers who came to our meetings to brief us. Similar briefings were requested during the dispute with the contractor and on other occasions.

#### *Full Council Meetings*

60. The Council can meet as the whole body of councillors, which is referred to as the Full Council. The Council also has all of its committees. In addition, each of the political groups organise their own regular meetings. The project was discussed at Full Council meetings, in committee meetings and separately by the political groups.
61. At Full Council meetings, you would then have a finalised report on an issue and there would normally be a debate between the political parties if there was to be a vote. There would not normally be detailed discussion. The way that Standing Orders were set up meant that the majority of the discussion on issues would happen before the Full Council meeting. There is a process at Full Council meetings where you can ask questions of Council Officers. However, discussion usually takes place beforehand whether in the TIEC (in the case of the ETP) or in briefings to each of the political groups in the lead up to the meeting. The final decision is taken at Full Council but all of the discussion, the briefing, the questioning of Council Officers (or others) and all that are normally done before the Full Council Meeting.
62. There were probably one or two occasions on which, because of the seriousness of the situation, the Chief Executive was called before the Full Council for questioning about the ETP. However, this was unusual.

63. In the Labour Group we have a weekly meeting called the Labour Group Executive. As the present Transport & Environment Spokesperson, I will go to that and I will report if there are any upcoming matters requiring decisions, look for advice or guidance from the group, but also raise certain issues which are coming up and how, for instance, they might end up in the press. So we have always had a process of weekly updates from our people who hold different responsibilities (portfolios). Then on the Tuesday before the Full Council meeting, we have Labour Group meetings where we go through the papers for the Full Council meeting and have discussions about those. There will be opportunities to have briefings from CEC Officers before the group meeting starts, we can then have a discussion or put questions to the CEC Officer involved. We then go on to discuss, in the course of the group meeting, what our decision would be at the Full Council meeting.
64. I think sufficient time was devoted to the ETP at Full Council meeting but that may just be the product of my experiences with the system over a long period. You need to ensure that you have got all of the relevant briefings, have read all of the reports and have clarified any queries that you have before you get to the Full Council meeting.
65. In terms of how the meetings ran, there was an opportunity for deputations which could present new voices in the meeting. Under Standing Orders, deputations are in theory supposed to represent an organisation or a group (they are not really supposed to just be individuals). However, I cannot ever remember a time that the Council did not accept a deputation. We are flexible because we want to be open and transparent about the process. I think it is useful for elected members to be able to listen to what groups and individuals might want to say on a Report.
66. As part of the Labour Administration (up to 2007), we changed process so that, following a deputation to a Full Council meeting, there would be a

break. This was because a deputation might affect how you felt about the decision or cause you to reconsider. In other cases, such as school closures which were always contentious, you could suspend Standing Orders and you could have a two hour break. That was to allow the Council Officers to come in and discuss issues raised by the deputations with the groups. If a deputation raises an important issue or you are unhappy and you want more information, then you can break from the Full Council. This allows you to get information or more briefings before you make a final decision.

67. There is a power under the Standing Orders to call a special meeting of the Full Council so long as a sufficient number of elected members agree. I recall there once being a special meeting on a Saturday which I think was in relation to the ETP.
68. Other than that, Full Council meetings occur roughly every month though there is a break over the summer. There is also a process, under Standing Orders, to have a matter referred from a committee to the Full Council. For example, if there was an issue in the Health & Social Care Committee that I felt strongly about then I could refer it to a Full Council meeting. It would then be discussed again at the next Full Council meeting so Standing Orders give you that opportunity if there is an issue you feel strongly about and that you want to deal with before the next Full Council meeting.

### **Councillors' concerns**

69. The Labour group was required to vote in accordance with the group's agreed position on all Council matters except licensing and planning decisions. Members of the Labour Group whip on all policy matters unless the group decided a free vote. Decisions on whipping would take place at Labour Group meetings. I cannot comment on how the other political groups operated.

70. However, all discussions and meetings within our group prior to voting were open. For example, even if a councillor was not a part of the Labour Executive Group, they were still able to attend and speak at meetings of that body. I think people were free to voice any concerns they had; most Labour Councillors were very vocal and wanted to voice their opinions. We had robust discussions but we did also try to come to a consensual decision. If you have a lot of votes within your group then that can lead to division and that is unhelpful, particularly when you are in opposition. No matter the period though, you want to have a united group who are working together for the benefit of the constituents in your area and for the benefit of the policies put forward in the group's manifesto. We did tend to have a more consensual way forward by working together to come to a decision.
71. The Labour group's manifesto contained a commitment to the ETP. At certain times, there were one or two Councillors who had doubts about supporting the SLD. However, following discussions within the Labour group, we realised that withdrawing support would be damaging for the project and damaging for the city. There was largely a consensus that we should continue to support the project. On occasions, there were one or two Labour members who were more against the tram than the body of the group. However, following discussions, their wording, or their proposals, would be incorporated within what we were proposing at the Full Council meetings.
72. The constituencies that were most affected by the ETP were those incorporating the West End of Princes Street and Leith Walk. The concern, particularly from constituents in Leith Walk, related to the affect disruption had on businesses and residents.
73. My ward was also intended to be covered by Line 1b (the Roseburn to Granton line). I had concerns at the time that line was dropped (and I say more about this later in my statement at paragraphs 213 and 385 below).

As a councillor, you have to balance representing your constituents in your local area with representing the city as a whole.

74. I remember that one of our councillors, who did feel very strongly about the ETP, would stand up at Council meetings and voice his opinion. He was given the opportunity to speak his mind but he also went along with the group consensus in Full Council votes.

#### **Information provided to councillors**

75. The main way we, as Councillors, were kept informed of developments relating to the ETP was through briefings from Senior Officers
76. When I became Transport Spokesperson for Labour in 2011, I was given more information about the transport policy area (which included the ETP). In the period between 2007 and 2012, whilst in opposition, I think we felt we did not have all the information that we felt we needed. The flow of information improved with the appointment of a Chief Executive for CEC (Sue Bruce) at the start of 2011. At that point, although we were still in opposition, I felt that we were getting more fully briefed and getting more information than we had previously.
77. Group Leaders and Convenors (or Spokespeople for the opposition) might have received separate briefings from the Council on certain issues. These would have been reported back to the Labour Group at group meetings. If there was a major issue group members would have been informed.
78. The political groups received separate briefings from each other. If the briefings had been all-party then certain members might have taken the opportunity for grandstanding in front of other councillors. Having separate briefings means that you can be more open. You can ask questions that might be exploited by others outside your group.

79. I have been asked whether, generally, I always felt that I was updated on significant developments relating to the ETP including, particularly, the problems that arose and the estimates of the costs that would be involved.
80. Between 2007 and 2012 we did not feel that we were being provided with all of the available information. We would be provided with information but would later find out that actually we had not been told everything that was relevant. During that period, I do not think we were fully updated. Once Sue Bruce (Chief Executive) was appointed I felt as if we began to get to be more involved in the project overall and more information was available to us. It was more open and transparent.
81. Prior to taking a decision in respect of the ETP, I would have expected to be provided with information about how it was going to be delivered. This would require information the finance, construction, the contract, the timetable, and the risks. The finance arrangements, the risks to the CEC involved and the relationship with the contractor were important matters. We needed to know how the project was going to be delivered.
82. The ETP was a large project. It was on most meeting agendas and was discussed frequently. Most councillors were aware that tram projects had been controversial in other cities such as Nice and Dublin. We were all aware that some tram projects had experienced difficulties in terms of finance, city disruption and timescales. I think we knew that we had to keep an eye on the project.
83. We had more information and more briefings about the ETP as time went on. The briefings increased as it became clearer that the project was not going in the right direction. Council Officers will tend to brief Councillors more and give them more information when things are going wrong.
84. In terms of the sufficiency of what we were given over all, at the time I believed that we were being given all the information. Councillors were given

a great deal of the financial, technical and timetabling information related to the project. At the time, I believed we were getting the information we needed through our briefings. However, reviewing the documents provided for this statement, I now believe that councillors were not being provided with all the information.

85. Consultants or special advisors were brought in to give councillors special assistance with some of the specialist subject matter involved in the project. At times we had employees from some of the consultancies that had been engaged speak to us. For example, Colin Smith, a construction and project management specialist, became involved in the project after the settlement discussions at Mar Hall. He would come to the Councillors and explain technical matters, risk and items of design. I felt that Colin Smith gave us a good understanding of those issues. However that did not occur until 2011.
86. I do not think that the information provided to Councillors was always clear and intelligible. An example is the information provided to us about the figures for patronage. This information was required in order to make a decision about whether the tram line should stop at Haymarket or St Andrew Square. The councillors were given advice regarding patronage figures and I asked for more detail. I got it but then I had also asked Lothian Buses for some information and it turned out they were only asked by CEC for information (their patronage in terms of figures) about going to St Andrew Square and not about going to Haymarket. So it was clear that I was not being given all the information.
87. The people responsible for supplying information to councillors had not sought all the information we were asking for because it was clear the Council Officers wanted the ETP to go to St Andrew Square. Therefore, the information and the figures were skewed to try to push us toward a certain decision. This is one example of where I asked more questions. I

asked for more information and felt unhappy that I was not being given the full picture

88. Between 2007 and 2011, we as a group felt frustration. We felt we were not being given answers to the questions we had been asking. There was a feeling amongst group members we were not be given the whole truth. We wanted the ETP, in principle, to happen and it was obviously not going in the right direction in terms of the timetable and its finances.
89. When we expressed our frustrations to the Council Officers, it almost seemed that they were trying to get out of the room as quickly as possible. Certain things stick in your memory. I remember at one meeting, briefing of the Labour Group, the Director of City Development, Dave Anderson (Andrew Holmes' successor), wanted to give the Labour Councillors more information. However, the Director of Finance, Donald McGougan put his hand on him and stopped him saying anything further.
90. At that time I felt that there were certain CEC Officers who wanted to give the Councillors more information, but perhaps felt they could not do this. That made us think we were not being provided with all of the information that we should have been given. We were putting more questions to the Council Leader, Jenny Dawe, at Full Council meetings. Questions were also being asked in committee meetings. We felt that we were being ignored though and, in the face of that, it was very difficult to keep going.

#### *Confidentiality*

91. A paper was prepared by the Council around the time that termination of the infrastructure contract (Infraco) was being discussed in late 2010 (CEC00013290, at paragraphs 12.1 and 15.2.6, pages 5 to 6). The word Infraco refers, at different points, to both to the infrastructure contract and the contractor under that contract. This paper discusses tensions between

openness of CEC decision-making and TIE's commercial sensitivity about confidentiality

92. It is very difficult to draw the line between democratic, open public information and decision-making and the need for confidentiality. Sometimes confidentiality is needed, particularly if you are dealing with a commercial contractor. If there was a dispute between TIE (and ultimately the Council given its relationship with TIE) and the contractor then making information and decisions open and public, would allow the contractor to know exactly what the Council thinking and what its position was. I have always believed that everything possible should be out in the open and that decisions should be made in a democratic and open way. However, I also understand that there are times that confidentiality is needed.
93. In retrospect, I think the TIE probably used the requirement for confidentiality to frustrate requests for information from councillors. More generally, I have always found that the Council and its structure are more open than other outside organisations. For instance, I used to chair NHS Health Scotland. When I first became chair of that organisation, almost everything was done on a confidential basis. I changed the basis it operated on so that there was a policy of openness.
94. In retrospect, I do not think that TIE had a policy of openness. TIE probably thought matters should not be made public because they were negotiating. However, there was a judgement that had to be made. That judgement ought to have been made in respect of each individual issue.
95. In terms of the CEC's processes under Standing Orders, there are certain accepted reasons for treating a matter as confidential and those reasons need to be set out if the decision is to be taken in private. That helps the public's perception of the matter as they are at least aware of why a decision is being taken in private.

96. There are certain methods of handling confidential decisions in Council. Normally a confidential item will be listed on the 'B Agenda' for Council meetings. The 'A Agenda' lists matters which the Council deals with in public session whilst the B Agenda lists matters to be dealt with in closed sessions. B Agenda items can, however, attract more publicity simply by being on that agenda.
97. In summary, I believe that there is a line to be drawn on confidentiality and that must be done on the basis of each individual issue. In general, I think we should always tend towards being open and public. However, there are matters like commercial contracting where there are interests in ensuring that the Council is protected in some ways and which give it the best negotiating position. In those cases, decisions may well have to be taken confidentially.
98. For each company or organisation controlled by CEC there would normally be an agreement between the Council and the company. That agreement would cover the way in which that company or organisation should address confidentiality in its relationship with the Council. Ultimately the responsibility for decisions overall was with the Council. Any process of making decisions was for the Council while the implementation of those decisions was for TIE or TEL.

### **TIE and the Council**

99. Staff from TIE or consultants working for TIE who would come to briefings given to Councillors. I remember Richard Jeffrey in particular coming to briefings. This tended to be when there was some kind of urgency or importance to the issue being discussed.
100. The elected members of Council make decisions based on the information provided to them in reports. The expert reports that I saw in relation to the

ETP had input both from TIE and from the Council Officers. In terms of scrutiny, it would be up to the Council Officers to scrutinise the reports.

101. If the Council Officers required input from TIE to prepare the reports then they could obtain that input. However, ultimately responsibility for the information relating to the ETP and reports to the Council belongs to Council Officers. Their responsibility is to the Council, and is to provide all the information needed for Councillors to make a decision. It is up to them to ensure that they are robust in their assessment of the material in any report that comes to the Council. That is their responsibility.
102. I do not have in depth knowledge about the relationship between Council Officers and TIE because I was not on TIE's Board. I was aware, later in the ETP, that there were tensions between TIE and the Council Officers. There were also a number of changes in TIE in terms of its Chief Executive and its Board Chair. In my judgment, there was a lack of trust between TIE and the Officers. I discuss these issues later in my statement at paragraphs 490 - 492..

### **Communication with constituents**

103. I did not receive many inquiries from my constituents regarding the ETP. There were more press inquiries than those from constituents. Some contact came from one constituent, Alison Bourne, who I discuss later in this statement at paragraphs 130 - 134 below. Apart from that then there were not that many queries.
104. I think elected members for Leith Walk, the West End or the city centre would have had more inquiries from constituents. As a councillor you attend Community Council meetings. There were also reports to Community Councils on certain issues. For my ward, there was a particular focus on Line 1b (which was intended to go to Granton).

105. In terms of what steps you would take to address constituent queries or concerns, some of them you would answer yourself, but others required input from CEC Officers. When an inquiry required further information, I would ask CEC Officers to respond to the points raised by email or during briefings. If there were issues raised by an individual constituent, or by a Community Council, I would follow it up and ask for more information from CEC Officers. I would then respond to the person or group that had asked the question.
106. There are two categories of people who were against the tram project. Certain individuals were against the project from the beginning. For them, it did not matter if the project was successful, if it was on time, or on budget. They were against the project in principle. There were other people, in the second category, who were not against the project in principle but had concerns regarding the way in which it was being delivered. Those concerns included the contract, the project's finances and the disruption that the project caused.

### **Media and councillors**

107. I think the media had an effect on the public in terms of how the project was perceived. I do not think the media coverage really had any effect on my perception of the project. I do not think that the headlines and articles made a great difference to how councillors made decisions. We considered the information that we were given and we made the decided on the best way forward based on that information.
108. I do not remember anything reporting of project or of TIE's activities which caused me to seek further information. I do remember headlines about TIE, particularly about one Chairperson of TIE made extremely unhelpful comments to the media about the contractor. If facts were discussed in the press that we felt we did not have enough information about then we would ask CEC Officers for more information on those matters. So in some

ways, there were things that came out at the time that we were not initially aware of.

## **The New Transport Initiative and the Creation of TIE**

109. I have been asked, as a councillor who was an elected member at the time the New Transport Initiative (NTI) was proposed, who was responsible for the creation of TIE in 2002.
110. Officers and Senior Officers would have had discussions about the best way to ensure the delivery of the Tram Project. Then report was then submitted to the council and agreed by Councillors.
111. I believe that the following were all important reasons for the creation of TIE:
  - 111.1. TIE allowed for all party scrutiny of the project because there was representation of all political parties (apart from the SNP who did not take that offer up);
  - 111.2. Management ability for a large capital project;
  - 111.3. Opportunity to engage non-executive directors, who were not councillors with experience in trams, transport projects, construction and those types of areas; and
  - 111.4. Opportunity and capability to review funding for projects.
112. TIE was originally set up with wider transport issues and projects in mind. Though initially it was concerned with the ETP, there was an opportunity for it to be involved with other projects.
113. I had been involved with a number of arms-length organisations which have successfully delivered large capital projects for CEC. I can give EICC as an example of a successful large capital project run by an arms-length company owned by CEC. I have also been involved with EDI, which deals

in property development and which is an arms-length company owned by the CEC. I am now involved with Energy for Edinburgh, which is an arms-length energy company, which has brought expertise in looking at energy projects.

114. In principle, I think arms-length companies are a good idea, but I think it comes down to the individuals who end up running those companies. At the time, I thought that the creation of TIE seemed like a good idea given that the tram project was a large and complex project. CEC Officers and the Councillors did not have expertise in engineering and tram systems. Setting up TIE allowed us to bring in non-executive directors, who were experts in those fields and who could sit on TIE's Board. For instance, I think it was Ewan Brown who was the first Chairperson of TIE. He was someone who had a very experienced background in the banking sector. I knew him from the Edinburgh Festival and other organisations and he was an Edinburgh person through and through. I did not have concerns because of my experience with other CEC arms-length organisations which had been successful.
  
115. In 2002 prepared by the Director of City Development prepared a Report in relation to the NTI and how it would be delivered (**USB00000232**). The appendices to that report (at page 64) suggest that scepticism about the ability of the CEC to deliver transport projects, including the ETP, was a reason for establishing TIE (references to page numbers in this statement are to the pages numbers of the documents as they appear in the Inquiry's document collection rather than the original page numbering of these documents). The Council has been responsible for large capital projects before and has delivered large capital projects before. However, it had never done a tram project before. TIE was set up because of the complicated nature of the project, the experiences of other European cities, and the fact that there was not the relevant expertise within the Council.

116. I was not aware that it was important that TIE be an 'off-balance sheet' company. The report suggests that it was intended to transfer risks away from the CEC and was intended to have tax efficiency and liability benefits (at page 64).
117. In terms of control, companies or organisations of this type have obligations to implement the Council's decisions and policies. It is the Council that makes strategic decisions. There would also be a shareholders agreement and there would be a responsibility for ensuring that agreement was delivered. Once again, the strategic decisions would have been made by the CEC and it would have been up to TIE to deliver on those strategies.
118. I know that, following the ETP, there have been changes in the way that these organisations report back to the CEC. The Chief Executive has taken a lead role in that respect and each of the companies now have an annual reporting system which is consistent across the different companies. In hindsight, that is something which should have been done before. Ultimately it was a part of the shareholders agreement that TIE would look to deliver the Council's decisions and policies.
119. I understood TIE to owe an obligation to the CEC to deliver the project, carry out the decisions and policies of the Council and abide by the shareholders agreement.

### **Initial Estimates for the ETP**

120. Various STAG (Scottish Transport Appraisal Guidance) reviews and business cases were produced in the period from 2000 to 2004. The main groups that I understood to be involved in preparing the initial cost estimates were Transport Scotland (TS), Council Officers and the various consultants involved in the project. There may also have been some in-

volvement from the tram operator (Transdev). This was, however, a considerable time ago.

121. I have difficulty recalling where the funding from the project was coming from at the initial stages of the project. Between 2000 and 2003 the Scottish Government was supportive of the project proceeding. I therefore assume that TS would have been involved to ensure that the Scottish Government was engaged with the project.
122. I cannot recall what involvement CEC Officers might have had in helping to prepare or review these figures contained in the STAG Appraisals. I do not recall whether I had any views on the various STAG Appraisals and business cases that were presented for the ETP.
123. I have been involved in other projects where appraisals came back negative and those projects were cancelled. I would expect that, at that time, the Scottish Government, TS and Council Officers wanted the project to be carried out successfully. The cost estimates for the project (including allowances for risk) would have to be positive for the project to proceed. The reviews and business cases must have been positive for the ETP to be approved and for it to continue.
124. At the time I was aware that the inquiry carried out into the overspend on the Holyrood building for the Scottish Parliament had highlighted issues in terms of design issues and in overruns in cost. In terms of how that translated over to the CEC's thinking on large projects, I think it needs to be remembered that that some projects will go over budget and over time. However, there are also projects that the CEC was part of, like the EICC (which was a large project at the time), or like schools projects, which were delivered on time and on budget but that these do not get the same publicity as those that are not successful.

125. Councillors were always aware of public scrutiny. When you undertake a project, you should know what your risks are and the process of review should be robust. For the ETP, there were processes like the STAG Appraisals. We expected the experts that had carried those out those processes to have done so robustly. In the end, Councillors have to make decisions based on the information that is provided to them. The information provided to us was produced by processes that were set up to ensure it was robust.
126. Councillors could not help but notice that tram projects were controversial. This could be seen from the experiences in Nice and Dublin. We were aware of the disruption they caused. We were also aware of the difficulties that could be experienced regarding timescale and costs.
127. The STAG Appraisals contained varying estimates for the proposed tram network. I do not think there was concern at this stage as all capital costs can vary at an early stage of a project. I think I would have been more worried if the reports had not shown some variation at this stage as that would suggest to me that the numbers were not being robustly scrutinised. At this stage, I think it was fine to expect some variation.
128. The STAG Appraisals set out different options included within the ETP (involving different Lines 1, 2 and 3). I cannot remember whether the different options caused any confusion in respect of the estimates given.
129. Appendix D to the STAG 2 Appraisal for the ETP carried out in November 2003 (**CEC00642726**) contains a list of consultees (at page 195). My name is included in that list. The consultations took place during the period that I was serving as Lord Provost. It was so long ago that I cannot remember what this consultation might have involved.
130. On 10 December 2003, Alison Bourne, an Edinburgh resident, sent an email to all councillors (**CEC02082850**). Alison Bourne had been part of a

deputation that spoke at the preceding Full Council meeting. In that email she raised a number of points about the ETP including variations in its costs (at page 3).

131. Alison Bourne was one of my constituents and she emailed me on a number of occasions and spoke to me as well during the ETP. I am not sure whether I would have my emails from that period so I am not sure of my responses but if she sent an email to me then I would have asked for the information for framing a response. Andrew Burns, also a Labour Councillor and Executive Member for Transport, has asked for a response from CEC Officers in a separate email which is also found in that document (CEC02082850). We would have come back with an answer to her queries.
132. The normal process, if someone emailed you about an issue before a Full Council meeting, would be to ask for a response from CEC Officers and then probably discuss it in a group meeting. For Full Council meetings, we would normally also have a meeting at 9 o'clock on the morning of the Full Council meeting. If there were any issues outstanding then we would have dealt with them there. We would normally go through the agenda for the meeting. If there was something we felt we wanted to consider in more detail, we would discuss it and decide whether we had received sufficient assurances or information from CEC Officers (or the Administration).
133. Alison Bourne's concerns in this email were largely about the location of a tram stop in Telford near the Western General Hospital. In terms of the costs points raised, I think we would have asked at the time for a clarification of the point she made and we must have been satisfied with the response that we received.
134. My recollection is that Alison Bourne was very diligent in terms of looking at all the documentation. She did not think that the ETP should go ahead. She was intelligent and had done a lot of research in respect of the ETP. If

I received information from her, I would ask for a response from CEC Officers because I knew that she had a detailed knowledge of the ETP. The issue she was raising would not be something you could simply dismiss or not take seriously.

### **The October 2004 Arup Review**

135. In 2004 Ove Arup and Partners Ltd, consultants, produced a report on behalf of the Scottish Parliament (**CEC01799560**). This was a review of the Business Case for Line 1. This report is from over 10 years ago and was prepared for the Scottish Parliament. I cannot remember if I saw it.
136. This kind of project would be the responsibility of the Leader of the Council and the Executive Member for Transport. I was the Lord Provost at this time. I obviously still had a responsibility as an individual councillor to make decisions and stay informed. However, I was not as close to this issue as others such as Donald Anderson (Council Leader) or Andrew Burns (Executive Member for Transport).
137. I understand that TIE prepared a response to the Arup report in November 2004 (**CEC01705043**). However, I do not recall seeing that document.
138. In terms of the Parliamentary process for the ETP, I was never called to appear before Parliamentary Committees considering the ETP. I believe that Donald Anderson (Labour Council Leader) and Andrew Burns (Labour Executive Member for Transport) were both involved in this process and would be the ones responsible for keeping the rest of the Labour Group updated. I cannot remember what occurred at the time. However, I assume that these documents (the Arup Report and TIE's response), would have been summarised for us by the Executive Member for Transport, the Council Leader or both.

### **2005 Road Charging Referendum**

139. In February 2005, following a referendum, the public voted against the introduction of road user charging. The income from the proposed road charging scheme was reasonably important to the funding of the proposals (including the ETP) under the NTI. However, it was not essential to it.
140. My recollection is that that road charging income would have provided finance for investments in transport in general. However, I do not think it was absolutely essential for the financing of the ETP. We were given assurances by CEC Officers that there would be other opportunities to look for funding and the funding would be sought from elsewhere.

### **The May 2005 Draft Interim Outline Business Case**

141. TIE produced a Draft Interim Outline Business Case (**CEC01875336**) in May 2005. From reviewing the document I see references to a possible shortfall in funding (at page 14) and to the "*challenging timescale*" of the project (at page 17).
142. I do not remember this report and I may or may not have seen it in 2005. I would assume, as with the previous documents (the Arup report and TIE's response) that there would have been an update from the Transport Convenor and/or the Council Leader in terms of the issues it raised.
143. I genuinely do not remember any discussion in relation to the potential shortfall raised in the report.
144. In terms of the timescale, I can only assume that TIE was keen to seek approval from the Scottish Government (and TS) so wanted to keep to the timescale they had previously set. Scottish Government and TS support might have been needed for the details of the legislation for Line 1a and 1b. In February 2005 there was no immediate political pressure as the next Scottish Parliament elections were not going to be held until 2007.

145. I do not recall any specific time pressure in terms of funding. There are always funding pressures on the Council. In particular there are demands on capital in terms of schools, care homes etc. There has always been pressure on the capital programme and that is why we have always looked at different mechanisms for funding. The questions would have been around how we could find the resources and how the project was to be prioritised. I am not aware of any specific grants or sources of funding that had to be accessed within this timescale. However, there would have been inflationary pressure on any money that was available.

### **2006 Reports to Council and Draft Final Business Case**

146. Andrew Holmes, then CEC Director of City Development, prepared a report to Council in advance of a Full Council meeting scheduled for 26 January 2006 (**CEC02083547**). The report is dated 26 January 2006 but this date actually refers to the date of the Full Council or committee meeting it was intended for (there was a Full Council meeting on 26 January 2006) rather than its date of preparation or publication. Council Officers would usually prepare and circulate a paper of this type at least a week before the meeting and there would be briefings on it during that week.
147. The report made certain recommendations for funding and phasing the ETP given that the total estimate for lines 1 and 2 was £634m and the total available funding was only £535m (comprising £490m from the Scottish Government and £45m from the Council)(at paragraphs 3.10 – 3.15, pages 3 - 4). It seems that the figures quoted in the report to the Council appear to be based on the Edinburgh tram progress report of September 2005 (**TRS00000209**).
148. I have been asked whether the apparent need to restrict or 'phase' the scope of the tram network caused me any concerns about the reliability of the initial cost estimates, the overall affordability of the ETP or TIE's capacity to deliver it correctly.

149. I would have had concern but at briefings officers gave assurance the project was on track.
150. The Directors of City Development and Finance (Donald McGougan and Andrew Holmes) prepared a joint report to Council which is dated 21 December 2006 (**CEC02083466**). That report asked councillors to approve the draft Final Business Case for the Edinburgh Tram Network with the estimated capital cost of Phase 1a (Airport to Leith Waterfront) being £512m if built alone.
151. The report identifies (at paragraph 4.28, page 11) the most significant risks to the timeous completion of the project within budget as:
  - 151.1. The advance utility works;
  - 151.2. Changes to project scope or specification; and
  - 151.3. Obtaining consents and approvals.
152. The report states (at paragraph 4.32, page 12) that to maintain control over the capital cost of the project certain steps would need to be taken:
  - 152.1. Enabling works, including utility works, should be authorised to proceed on a timetable that would not disrupt the main infrastructure programme; and
  - 152.2. Negotiations with bidders should continue with a focus on achieving a high proportion of fixed costs in the final contracted capital cost.
153. Following receipt of the report Councillors received briefings on it. At this stage, my general impression of the Draft Final Business Case was that it represented a positive way forward for the ETP based on the report.

154. In terms of the significance of the risks involved, I think the utilities works were those that most concerned the Labour group. That may not have been directly prompted by the Draft Final Business Case. We were aware that the information regarding utilities was not complete. We knew that there it was not possible to identify how many utilities (pipes, cabling etc) there were to divert or where they were located. We knew those enabling works would be a challenge. Obviously Edinburgh is an old city and there was a potential to find things other than the utilities when the works commenced. Those could lead to stoppages and we were concerned that that could halt progress on the timetable or programme for the ETP. We wanted assurances about those works, what unexpected discoveries would do to the timetable and whether there was enough planning for those possibilities.
155. We knew the difficulties that other cities had encountered when undertaking utility works. The unknown challenges involved in it being a historic city, meant careful preparation was needed in order to start the project. After getting the briefings and asking a number of questions, I think we were satisfied that this had all been considered.
156. There was also concern about the cost risk and ensuring there were fixed costs for the project. I think it might have been around about this time, during a briefing in the old Regional Chambers that we asked detailed questions about finances and we were given assurances about the costs being 95 per cent fixed costs. Obviously our concern was always about the state of the finances.
157. General disruption to city life was also a concern. I think I had visited Nice , on holiday, by this point. When I was there the city centre had been dug up and there were lots of diversions in place. When you already had a

challenging historic city centre, even without having road works or a major project going through it, this was clearly an issue.

158. In terms of keeping control of the capital costs, I expected TIE and the Council Officers to monitor the capital expenditure throughout the project. This would involve, for example, keeping tracking sheets showing what expenditure should have been incurred at a particular point and what expenditure had actually been incurred.
159. My recollection is that we asked a lot of questions about the level of contingency included in the Draft Business Case. You will always discuss contingencies and the level that it should be fixed at. Each project is quite different. I could not tell you the exact details of the contingency at this stage. However, contingency is pretty important, particularly in a project like this. If you know you have a straightforward project then the risks are low in terms of expenditure. However, where you know that you have got risks, like those arising from the unknown utilities and the historic city, you will be expecting the contingency to be higher than for a more straightforward project.
160. In general, I would have expected the procurement strategy to aim for the best value, delivering on budget and a realistic, competitive price. It had to be a fixed price contract. We were told that 95 per cent of the costs were fixed price. That figure remains prominent in my mind. In terms of the utilities diversions, those needed to be finished on site before the tram works. Those were the issues in my mind at the time.
161. The decision to have two separate contracts for the utilities works and the Infraco was discussed with councillors. In terms of the arguments for splitting it up, utilities diversions were with a separate company so that could be delivered and then move onto the next one. At the time we were advised to have separate contracts and contractors for utilities and the tram project.

## **Events from the beginning of 2007 to May 2008**

162. As I have already discussed, the Administration of the Council changed following the May 2007 local elections (at paragraphs 20 - 24 above). The infrastructure contract (Infraco) for the ETP was ultimately signed off in May 2008.
163. I discuss the period which covers events such as the elections, the Final Business Case and the award of the Infraco in this section.
164. The Infraco was awarded to a consortium of Bilfinger Berger (BB), Siemens and CAF (the tram provider). This group was commonly referred to as BSC or as the Consortium. Sometimes it was also just referred to as BBS (Bilfinger Berger and Siemens) as CAF played little, if any, role in the delivery of the actual infrastructure works.

### **January to November 2007**

165. A highlight report was prepared for the CEC Internal Planning Group (IPG) which took place on 20 March 2007 (CEC01565481). This report noted:
- 165.1. Design for the tram system was progressing slowly and TIE had committed to carrying out an organisation and culture review to improve its approach (at item 3, page 3). As part of that review it was noted that six CEC staff would hot-desk at TIE's office to assist with the approvals process.
- 165.2. Briefings from Council Officers would be given to the Transport Spokespeople for each political group with the intention of informing councillors affected by Line 1B (Roseburn to Granton) (at page 14).
166. I understand that the IPG was a group of Council Officers organised by the CEC Chief Executive (at this point, Tom Aitchison) to monitor the ETP. On a project of this size and importance, which can have an effect on public

reputation, the Chief Executive is ultimately responsible along with the elected members. The Chief Executive was responsible for the nitty gritty of the project and being able to ensure that TIE was delivering what we wanted. I assume that he would have had a process for ensuring that the key people were brought together for that to happen.

167. Councillors were not involved in this group and I had not seen this document prior to the commencement of the Inquiry. I was not aware of the issues surrounding design which had not been brought to my attention by March 2007.
168. I am aware, having been involved with a number of previous capital projects, of the importance of design. For a capital project to be successful you need to ensure that every single design issue is absolutely 'nailed down' before you sign the contract. In my experiences of working on capital projects with people who have delivered them on time, if you do not finalise design issues there will be problems.
169. If the slow progress of the design had been brought to my attention I would have been raising it as a major issue. One of the key issues for me was having all of the design absolutely sorted before a contract was signed with any contractor. I was aware of contractors seeking to increase costs in the past due to changes in design. If the design is all sorted then you cannot have a contractor saying that there has been a change by the Council and claiming for an increase in price. If the issues with the design had been brought to my attention I am sure I would have done something about it.
170. The Action Note (at page 14) suggests that Allan Jackson (Conservative Transport Spokesperson), Phil Wheeler (SLD Transport Spokesperson) and Ricky Henderson (Labour) were to receive one to one briefings. This was likely because they were the relevant spokespeople on transport at the time.

171. In terms of the attitude to Line 1b (Roseburn to Granton), I was supportive of building that part of the route. The regeneration of the Granton Waterfront was important to me, Elizabeth Maginnis and Billy Fitzpatrick. The key to the regeneration would be to put infrastructure in such as the ETP. Key organisations had moved, or were about to move, to the area on the assumption that Tram line 1b would go there. We were involved in persuading Telford College to move to that area and in persuading Scottish Gas to keep its headquarters in the area. We probably received sufficient updates on Line 1b. However, I always had the sense that Council Officers were not keen on it and that it was not a priority. I always felt quite frustrated about that. I questioned whether we were getting all of the correct information regarding Line 1b. We always got the impression that the Officers did not want 1b to happen.

*Local government elections 2007*

172. The SNP, who were 'anti-tram', put the issue of the ETP to the forefront of the 2007 elections to the Council. They were clear that they would not support the ETP. It was clearly very contentious and I think the SNP used it as a stick to beat the other political parties. It also allowed them to differentiate themselves as all of the other political groups were in favour of the ETP

173. I think the change in the Council Administration had a massive effect on the ETP. The coalition was made up of the SLD and the SNP. The SLD took the posts of Council Leader, Finance Convenor and Transport Convenor, all of which were important to the ETP.

174. The SNP basically said that they wanted nothing to do with the project. There would have been some discussion between political groups in order to form an Administration. My understanding in this case is that the SNP approached the SLD with a deal and that was agreed. Though importantly, as part of the agreement, the SNP would not support the ETP.

175. I remember thinking at the time that it was almost mad to have an Administration running such a major project when one part of that Administration wanted nothing to do with the project. That meant the SLD Councillors took the lead roles on the project. They had not had any previous experience of being in the Administration. Nor had they managed major projects as they had previously been in opposition. The SNP were slightly different in that their Group Leader, Steve Cardownie, had previously been a Labour Councillor. He had previously been a convenor and the Deputy Lord Provost. He had the experience but did not want to be involved with the project.
176. Where there is a change in the Administration, councillors do not tend to make arrangements for the transfer of knowledge between the incoming and the outgoing Administration. People could have asked to discuss issues, or for advice, and I would have done that. However, I do not remember that happening. This would tend to be dealt with by the Council Officers. It would have been Council Officers who would have briefed the new Administration on the relevant issues.
177. There was no formal handover and you have to understand that this change came after Labour had been in control of the Council since 1984. You then had a SLD/SNP coalition who were very dependent on using the casting vote of the Lord Provost as they only had 29 seats (out of a total of 58). The Council was often split. There was concern at the time and people were asking whether it was the best way to run a city. You can contrast it to how things are now (post-2012) with a Labour/SNP coalition which has quite a large majority within the Council. I think it ensures better running of the Council and better decision making processes.
178. In terms of whether any tension or difficulties arose from the SNP's position on the ETP, basically I did think SNP undermined the SLD on this issue. The SLD members would be better placed to confirm the position.

However, the impression I got was that the SNP just did not want anything to do with the project and did not provide any input into it.

179. In May 2007 I still supported the project. I agreed in principle with the ETP. By that time it had gone through that a number of years of development. Budgets and business plans had been prepared.
180. However, I had concerns regarding the political leadership and changes in convenors. Councillor Phil Wheeler, who was the SLD Transport Convenor, was deposed by his own group after a couple of years and they brought in a new Transport Convenor. Phil Wheeler was then moved to Finance Convenor which was also a role closely connected with the ETP. I understand that there were votes on both of those decisions. This was the gossip at the time in the Council. It was a Council that was divided in terms of the ETP.
181. In terms of addressing our concerns, we would ask questions at every Council meeting. In advance of the meetings we would agree which questions to ask the Council Leader. We also had discussions within the Labour Group about the ETP. We wanted to ensure support for the ETP but we wanted to ensure that our concerns were addressed as well.

#### *Scottish Parliament Elections 2007*

182. Scottish Parliamentary elections were also held in May 2007 and resulted in the formation of a minority SNP Administration which replaced the previous Labour/SLD Administration.
183. There was a debate and vote in the Scottish Parliament on the future of the ETP and Edinburgh Airport Rail Link (EARL) projects in June 2007. As a result, the Scottish Parliament ended up calling on the SNP Administration to proceed with the ETP within the £500 million budget limit set by the previous Administration.

184. I think this was a massive change at both the national and local level. The election of the SNP as a minority administration was probably a bit of a surprise at the time. They did not have a majority and, in response to the funding vote, which they opposed, a number of people have said that they 'just threw their toys out the pram'. The SNP were very upset that the ETP had gone through a democratic process and the majority of MSPs had voted for it. I think the national party just believed, a bit like the SNP on the Council, that they could withdraw their support for the project. I discuss the consequences of this later in my statement (at paragraphs 730 - 737 below).
185. I do not think the SNP liked the decision. I think even now, if we look at the city deal, proposals for funding from Scottish Government/ Westminster Government and the extension to try and finish the trams, that there is still that resentment of the trams in Edinburgh. From that 2007 period until now, the SNP nationally and locally, though particularly nationally, have seemed 'anti-tram' to me.

*Governance and costs as at 2007*

186. In preparing this statement I have reviewed a number of documents from this period:
- 186.1. A briefing paper dated 20 July 2007 prepared by the Director of Corporate Services (Jim Inch), for the Chief Executive (Tom Aitchison) (CEC01566497) in relation to the governance arrangements of TIE. The paper stated that those governance relationships were "complex", and that it was "vital that more rigorous financial and governance controls" were put in place by CEC. It is noted that "Transport Scotland have previously urged the Council to implement a more robust monitoring of TIE's activities in delivering the project".

- 186.2. An email dated 3 July 2007 (**CEC01556572**), in which Council Officers recorded that Councillor Gordon Mackenzie (then SLD Finance Convenor) was requesting information on a number of different points about the ETP. This included information regarding what contingency plan needed to be set up in case of a financial overrun on the project.
- 186.3. A letter from Malcolm Reed of Transport Scotland (TS) to Tom Aitchison dated 2 August 2007 (**CEC01666269**) which explained that the Scottish Government (through TS) would provide up to £500m in funding for the ETP.
- 186.4. A highlight report to the CEC Chief Executive's Internal Planning Group (IPG) on 30 August 2007 (**CEC01566861**) (at paragraph 4.1, pages 8 - 9) noted that the capping of the grant from TS changed the risk profile for CEC. The report sought guidance on the procurement of resources necessary to provide a risk assessment and analysis of the Infraco contract for CEC.
187. Though I was aware that funding was going to be granted to the project, I do not remember any of these documents being given to councillors generally. By this point, I was an opposition councillor and I felt that we were not sometimes being given full information. I cannot comment much further on the matters mentioned in those documents and I was not aware of the discussions on risks and liabilities that they disclose.
188. I do not remember getting the briefing note in relation to governance (**CEC01566497**). If it was the case that the governance arrangements were too complex, then that should have been discussed with members. The governance arrangements were obviously quite important. If there was a concern from Council Officers regarding TIE and the Tram Project Board (TPB) then we should have been adjusting the governance proce-

dures. That is obviously a key issue for all elected members to be briefed on.

189. I attended at the Full Council meeting on 23 August 2007. Minutes of that meeting (**CEC01891408**) show that item 22 on the agenda related to the ETP. The minutes show (at page 31) that here was an update including a report of the Chief Executive. That report contained a number of recommendations which councillors approved, including:

189.1. Setting up a revised governance structure;

189.2. Agreeing operating agreements with TIE and TEL;

189.3. Reviewing the roles of the Executive Chairman of TIE and the Chief Executive of TEL with a view to clarifying their responsibilities;

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

189.5. The Chief Executive establishing a scheme of delegation for the various parties.

190. Councillors were also asked, at that meeting, to note the Chief Executive's report on the revised funding and the *"implications for the transfer of financial risk to the Council"*.

191. I genuinely do not know what changes to the governance structures were made in the second half of 2007 and the first half of 2008. Nor do I recall when these changes were made. I am assuming that the concern regarding TIE and TEL was that there was not enough scrutiny. I also believe that there was poor political leadership. That may have been why both officers and Conveners felt maybe they needed to set up the subcommittee, the delegations and so on.

192. Looking at the Chief Executive's recommendations, they ask councillors to note the transfer of financial risks to the Council. Council Officers were saying there was a financial risk to the Council. If we were concerned about that financial risk to the Council being transferred, and also the issue between TIE and TEL, I would probably say that we needed councillors to oversee the project.
193. The establishment of the TPS would have been debated in the Full Council. After a sub-committee is set up, it is really the Convenor and the Vice Convenor that decides, along with Council Officers, how often a sub-committee is to meet. Those individuals also decide the remit of the sub-committee to review and to oversee decisions. In respect of the ETP, leadership by both officers and elected members was needed in terms of that sub-committee. I cannot say how or whether that happened as I was not on the TPS. However, I am assuming we got reports back from it or were kept up to date on its activities.
194. I have been asked what I understood were the changes that needed to be made or the concerns that were expressed in relation to the Executive Chairman of TIE and the Chief Executive of TEL.
195. There were so many changes at this time and I have forgotten all of the details of those changes. At the time, I was quite sure there were personality clashes. Quite a lot of people fell out with each other within the Council and within TEL. I had heard about it from discussions I was having with people around the time.
196. Members of the Labour group were all concerned about the oversight and the scrutiny of the ETP. Therefore, we would have been supportive of anything that put more rigorous financial and governance controls in place.
197. Governance of the project became an issue after the May 2007 elections. Previously there had been a political leadership in respect of the project.

Following the elections, around half of the Administration wanted nothing to do with the project. A small number of people in the Administration were left dealing with the whole project. Council Officers recommended that more rigorous financial governance controls be put in place. They may have thought that this would result in better oversight of the ETP by more people. Ultimately, it would be for Council Officers to explain why they made these recommendations.

198. I have reviewed the minutes of the Full Council meeting of 20 September 2007 (CEC01891423). At that meeting, a further update on the ETP and its governance arrangements was provided (at item 8, pages 18 - 19). The Council required the Chief Executive to produce a timetable for the conclusion of the governance streams of work.
199. I cannot remember if that timetable was published and adhered to. I assume that it was done; it is the kind of detail that you cannot really remember all these years later. There is certainly a process in place within the Council now that, following every Full Council or committee meeting, committee clerks will go through the meeting and prepare a list of follow up points. If the Council's decision was for the Chief Executive to publish a timetable then you would expect that would happen.
200. I have been reviewed a set of minutes for a joint meeting of the TIE Board, TPB and the Legal Affairs Committee which took place on 15 October 2007 (CEC01357124). The attendees were advised that the bids for the Infracore were primarily based on preliminary design (at page 11).
201. I had not seen this document prior to the Inquiry provided it to me. I was not aware of these issues around design. If I had been aware about these design issues then I would have been asking about them. I would have been worried and concerned about the state of the project, as I came to be later on. I am quite shocked to find that this was happening back in 2007.

Detailed designs should be sorted out before you sign a contract or consider bidders otherwise major concerns arise.

*The ETP Final Business Case – Version 1*

202. A meeting of the Full Council was held on 27 October 2007 and considered the Final Business Case (FBC) for ETP. I have reviewed:
- 202.1. The FBC (Version 1), dated 3 October 2007, which had been prepared by TIE (**CEC01649235**).
  - 202.2. A presentation given to the Council by William (Willie) Gallagher (TIE), Andrew Holmes (CEC) and Neil Renilson (TEL and Lothian Buses) at a meeting on 25 October 2007 (**CEC02083536**).
  - 202.3. A report by Andrew Holmes (CEC Director of City Development) and Donald McGougan (CEC Director of Finance) to councillors (**CEC02083538**). This report discussed the FBC and recommended that councillors vote to approve it (at page 16). According to this report, the estimated capital cost of Phase 1a (Airport to Newhaven) was £498m (which included a risk allowance of £49m) and there was a 90 per cent chance that the final cost of phase 1a would come in below the risk adjusted level (paragraphs 2.4 and 4.2, at pages 1 and 8 – 9). Tender evaluations would also be reported back to the Council (at paragraph 3.19, page 6).
203. There is a further document that was key to my understanding and evaluation of the FBC (Version 1) at this time. This is a report by Audit Scotland (AS) prepared in June 2007 regarding Edinburgh transport projects (**CEC00785541**). This report had been prepared in response to doubts about the ETP and EARL by the SNP minority government at Holyrood. The Auditor-General for Scotland and Audit Scotland are well respected, independent bodies. This June 2007 report made clear that arrangements

were in place to manage the project and that those arrangements appeared sound (at paragraph 15, page 6). The report was robust in terms of the recommendations it made. As at June 2007, we were saying that the project appeared sound and that appropriate governance was in place to manage the project.

204. In October 2007, I was supportive of the FBC. I did not have any concerns about it because of the AS Report that had been provided earlier in that year. That report played an important role due to the independent nature of AS and their conclusions.
205. It was clear that AS believed that the costs and time targets for the ETP budget had been developed using robust systems. I think there was a lot of respect for AS and the report's conclusions. In October 2007, when the FBC was being considered, I would have been positive about the ETP because the AS report had concluded that it appeared to be sound.
206. In terms of any possible changes that might have occurred and effected the conclusions of the AS report, the period between June 2007, when the AS Report was issued, and October 2007 was not a particularly long time. There would have been information on the FBC that became available during that period. Where further information was provided, questions would have been asked about that information and answers to those questions would have been provided. I would not have accepted a final business case for any project, or voted to approve it, unless I felt at ease with the document.
207. External scrutiny of the FBC was also provided by consultants involved in the ETP. There were consultants that were used to evaluate some of the documents and some of the assumptions involved as well.
208. I recognise the presentation that was given to councillors in support of the FBC (**CEC02083536**). We received many presentations on the project.

There was always a certain structure to them. They would always set out why we were undertaking the project, then an update would be provided in relation to financial matter, the timetable, the risks and so on.

209. At the time that approval was sought for the FBC, considerable costs had already been incurred in respect of the ETP. Obviously you do not want to see wasted expenditure. However, at this stage, I do not think the existing expenditure was a key point in our giving approval. The AS Report led me to believe that there were robust systems in place within the ETP. At the time the FBC appeared to be sound. That was the key point.
210. My understanding of how the estimated capital cost of £498m for Phase 1a had been arrived at came principally from the report from the Council Officers (**CEC02083538**). That report detailed how it had been arrived at and there was also material within the FBC on the financial implications of the project.
211. The presentation given to councillors (**CEC02083536**) also contains some information about the capital costs (at page 14). That states that there were firm prices already established for the design, 'legals' and trams. It also states that 99 per cent of costs were fixed. However, my recollection is that we were frequently told that 95 per cent of costs were fixed.
212. That presentation and the FBC gave the assurance that the project was developing properly. While there were some increases in costs, the presentation went through some of the financial costs. It seems, from the presentation, that the risks and everything else involved were aligned with the reasons for the project set out at the beginning.
213. At this time information regarding the ETP was being provided from a number of sources. Information mostly came from Council Officers. How-

ever, Willie Gallagher who was from TIE and Neil Renilson of Lothian Buses also provided information on occasions. I cannot remember every single briefing. Normally the briefings would be given by someone from the Council, though sometimes there would be people from TIE and sometimes there would be consultants as well.

214. We have procurement strategies for projects and so tender evaluations would have been part of the procurement strategy agreed by the Council. At the time we were told that TIE had chosen the Consortium on the basis of price and their proven track record. Later on that was shown not to be the case. We were also told that all companies (BB, Siemens and CAF) had reputations, had experience in terms of their past projects and would all be working together. CAF, who are Spanish, was responsible for providing the trams and had experience of delivering throughout Europe. Siemens was responsible for providing the equipment and had a worldwide reputation. I recall that BB were regarded as the main contractor. We were assured that their reputation for delivering projects was good.

### **December 2007 to May 2008**

#### *December 2007*

215. I have seen an email sent by Alan Coyle (CEC Tram Project Finance Manager) to Andrew Holmes (Director of City Development) and Donald McGougan (Director of Finance) on 3 December 2007 (**CEC01397538**). Alan Coyle attached a briefing note (**CEC01397539**) setting out some perceived issues in relation to the ETP and the approval for the FBC.
216. I was not aware of this email prior to reading it as a part of the Inquiry. It appears to be internal to Council Officers and I doubt councillors would have been shown it.
217. Equally, I was not informed of these concerns at the time. I do not know if the Administration was aware of the concerns, or whether, if they were,

any decision was taken whether to tell others. In order to maintain support for the ETP or a project of this nature, you would need to keep all elected members up to date and informed of any challenges or any concerns that Council Officers might have.

218. If the Labour group had been aware of these concerns, we would have tried to scrutinise what was happening with the ETP. It is hard to know what exactly we would have done since we did not have the information at the time. We might have asked Alan Coyle, for instance, to brief the Labour Group on the contents of the note and ask questions about it. If our concerns were still not met, then we would have proposed a motion in either the TIEC or Full Council asking for a hold on the project. If we had had that information, then it would have been clear there were concerns about the project. If those concerns were not resolved through briefings or further reports then I think we would have asked for a hold on the project until more detail could be provided.
219. I do not remember there being any commitments in place, or process of briefing, to keep councillors updated following approval of the FBC.
220. I have been seen an email sent by Duncan Fraser (CEC Transport Officer) to Geoff Gilbert (TIE Tram Project Commercial Director) on 14 December 2007 (CEC01397774). That email was copied to others at CEC and TIE including Andrew Holmes and Donald McGougan. Duncan Fraser's email refers to a presentation given by TIE staff the previous day. Duncan Fraser raised questions about the Quantified Risk Allowance (QRA) and provision for risk given the likely change in the project's scope due to outstanding design and possible extensions of time.
221. I was not aware of these issues at the time. The issues around design and the 'fixed price' nature of the NFRACO only came to light later on. I could not give a precise date for when these were pointed out to us. However, it was not until a later stage.

222. The Council required to give approvals and consents in respect of the planning applications and diversions associated with the project. Normally, where there is a large public or private sector project ongoing, the Council will allocate people within each of the CEC departments as the appointed contact for the project. Those people do not work on the project on a full time basis. They would however deal with all issues relating to the project. For example, if there was someone within Transport who was doing Transport Regulation Orders (TROs) or Temporary Transport Regulation Orders (TTROs) then we would expect that person to be in close contact and co-operation with the person running the project. That would mean a good liaison between TIE and the Council Officers in order to facilitate the work. I would expect a timetable to be set out by Council Officers to define that. When I have been involved with other projects, Leith Walk for example, have been detailed explanations of the timeframes, how long the TRO would take to be put into place, and the start and stop points for the works. You would expect to have all that worked out between TIE and the Council.
223. I have been asked whether in the lead up to the FBC and ultimately to the sign-off of the Infraco (in May 2008), there was any information on how the Council and TIE were working together in planning terms. I do not remember being provided with any information regarding how the Council and TIE would work together on planning matters prior to the approval of the FBC or the finalisation of the Infraco contract.

*Wiesbaden Agreement – December 2007*

224. I am advised that between 17 and 20 December 2007 negotiations took place at Wiesbaden, Germany, between representatives of the Consortium and TIE. On 20 December 2007 an agreement, or heads of terms, were reached (the Wiesbaden Agreement). I was not aware at all of these discussions at the time and I do not think it was ever brought to the attention

of councillors. In general, it was expected that TIE would go away and conclude a contract for the Council's approval. TIE was to update the Council on how matters were progressing. However, it was for TIE to deliver the project. They were managing the project and were to facilitate the conclusion of the contract.

*The ETP Final Business Case (Version 2) – December 2007*

225. There was a further Full Council meeting held on 20 December 2007 at which councillors were presented with an updated version of the FBC.

226. I have reviewed the following two documents:

226.1. The FBC Version 2 (**CEC01395434**) prepared by TIE and dated 7 December 2007.

226.2. A report (**CEC02083448**), dated 20 December 2007, prepared by the Directors of City Development and of Finance (Andrew Holmes and Donald McGougan). This report sought Full Council approval for the FBC Version 2. It also sought approval to instruct TIE to award the contracts, subject to price and terms being consistent with the FBC and the CEC Chief Executive being satisfied that all remaining due diligence was resolved (at paragraph 10, page 8). The estimate for Phase 1a of £498m (inclusive of a risk allowance of £49m) as reported in October 2007 remained the same in this version of the FBC (at paragraph 8.2, page 5).

This report came in December 2007 and only a short time after the Council had approved the initial version of the FBC. If the report was saying that there were major differences between the versions of the FBC then we would have expected to be updated on those.

227. My understanding at the time was that the design, approvals, consents and utility diversion works were all complete or nearing completion. As

previously stated, I would have expected any difficulty regarding design to have been sorted out before the contract was signed.. I would have had the same approach to utilities. I would have expected any issues regarding the design or the utilities works to have been dealt with prior to the signing of the Infraco. I am assuming this contract when the utilities works contract was complete, that contract was ok to then move on to the other one.

228. At this stage I still believed that the Infraco was a "fixed price" agreement. I always believed the Infraco was fixed price and was influenced by that. From all the briefings we had, it was always put forward that it was a 95 per cent fixed price contract. Now that I have seen some of the information which we were not given at the time. We were not being told the full facts.
229. There is a considerable discussion of the risks approach of the Council in the Council Officers' report (**CEC02083448**). It appeared to me that the Council was saying (at paragraphs 8.11 – 8.19, pages 6 - 8) that it would only become committed to the project once these risks had been resolved. In particular it is stated that: *"Only then will the Council become contractually committed through execution of the Guarantee supporting [TIE]'s financial obligations to BBS [the Consortium]"* (at paragraph 8.12, page 7). The idea was that risks would be reduced to a minimum before the signing of the contract.
230. I have been asked what my understanding was of the allowance that had been made for risk including who had been responsible for that and whether Optimism Bias had been allowed for.
231. I do not recall the specific allowance that was made for risk. I would have asked questions about that. In general, if the risks were higher than you would have a higher percentage figure for contingency.
232. In voting for the FBC, I considered the procurement strategy of the ETP had been met. We had set out the policies to be met in terms of procure-

ment and we would have expected them to be met. At that stage, I considered that the price and terms of the Infraco were consistent with the FBC.

233. I see that the report to Council (**CEC02083448**) refers to an allowance made for the risk associated with detailed design work which would not be completed at the time of financial close (at paragraph 8.1, page 5). It also states that the "*fundamental approach*" had been to transfer risk to the private sector including risks associated with incomplete designs (at paragraph 8.10, page 6).
234. I was not aware at the time but obviously design issues began to become apparent. Where delays are possible, it is necessary to have a contingency. I expected allowances to have been made regarding this kind of risk.
235. Looking at the wording of the report (at paragraph 8.1, page 5), it was now beginning to be clear that some of the detailed design work had not been completed. There remains a question as to what that meant. Reading the report, it suggests that an allowance had been given for the detailed design work not being completed. That would mean that cost allowances had been made in the project. It may be that this conceals more than it reveals.
236. Looking at some of the paperwork provided by the Inquiry, there is obviously more detail that we, as councillors, were not aware of at the time. Some people within the ETP might have been aware of it, but we certainly were not aware of it. Was this information being kept from Councillors?

At the time, I was not aware that cost allowances had not been made for delay resulting from unforeseen ground issues or utilities diversions.

237. I have been asked whether there was any discussion about postponing the award of the infrastructure contract design and utility works were complete. As far as I can remember this did not occur either within the body of councillors or within the Labour Group.

238. Approval of the Council Officers' report involved granting authority to the Chief Executive of the Council (Tom Aitchison) to approve TIE entering in the infrastructure contract. I have been referred to the report's discussion and recommendation (at paragraph 8.12, page 7 and at paragraph 10.2, page 8) that the Chief Executive approve the award of the Infraco subject to completing due diligence. I have been asked what remaining due diligence needed to be carried out in order for the Chief Executive to be satisfied that it was appropriate for TIE to award the Infraco.
239. Giving approval to TIE to award the contracts came at the end of a process. First we agreed to accept the report. That report contained the conditions on which the Council would give approval to TIE awarding the contract. Then we delegated responsibility for approving the contract to the Chief Executive, as the most senior Council Officer. I do not know what due diligence he did before giving that authorisation. I therefore cannot say whether the conditions had been satisfied. We, as councillors, entrusted the Chief Executive to undertake that task. Before he gave approval to the signing of the contract, he had to be satisfied at the conditions were met. It is a question of trust in the Chief Executive.
240. We trusted the Chief Executive, Director of Finance and all the other Senior Officers. I think it is only now, when I look back at some of the documents, that I realise that perhaps that trust should not have been put in them.
241. This process of delegation of authority to the Chief Executive to do certain things was common. It allowed things to be progressed. There would be processes in place to ensure that it was done properly. If the issue is a significant one then the Chief Executive would also consult with the relevant convenor or another member of the Administration to ensure that they were content with the approach. We, as councillors, usually delegate powers and it is about trust.

### January to May 2008

242. I now understand that, between January and May 2008, there were a number of increases in the price of the infrastructure contract. If my memory serves me correctly, I was not aware of these increases at the time.

### January to March 2008

243. TIE issued a progress report to TS, dated 14 January 2008 (**CEC01247016**). This report noted that discussions with the Consortium had resulted in the signing of an agreement agreeing a price (as a precursor to the Infraco) on 21 December 2007. It stated that this was “*essentially fixing the Infraco contract price based on a number of conditions*”. The key points of the agreement were said to be the transfer of the design development and scope changes risk to the Consortium and the exclusion of certain items, all of which were said to be well understood, from the fixed price of the contract. I was not aware of this report to TS. I can recall TS being involved from 2012 onwards and being involved with briefings then. However, I cannot remember TS being mentioned in 2008. I discuss that later that in terms of their responsibility (at paragraphs 730 - 737 below).

244. I have seen a series of exchanges amongst the Legal Officers and other more junior Council Officers which took place in the preparation for the Infraco (see, for instance **CEC01567522**, **CEC01400919**, **CEC01399016**, **CEC01401628** and **CEC01401629**). These raised concerns including: a £10m rise in the Infraco price; the project timetable running three months later than predicted; the risk of approvals and consents not being taken by the private sector; and a residual risk associated with design. I was not aware of these concerns at the time. I do not know if other members of the Council were aware of them. If we had known about these concerns they would have needed to be considered by a committee or by the Full Council.

245. The Consortium produced a document on 18 February 2008 (DLA00006338). This was a due diligence report on the state of design for the ETP and reported (at page 3) that *“more than 40% of the detailed design information”* had not been given to the Consortium. It also raised a number of other concerns. I was not aware of this report or the matters mentioned in it. My understanding of the design, coming from Senior Officers, was that the designs were complete.
246. As I have already discussed, the design needed to be complete in order for there to be any certainty on price. It is quite difficult to determine precisely when I became aware of particular issues within the ETP. However, in February 2008, I was not aware of this suggestion that 40 per cent of the detailed design information had not been issued. That is a pretty massive figure. You would expect 2 or 3 per cent of it would be outstanding at the most. I do not remember being aware of the design issues until significantly later on in the process.
247. In terms of my understanding of how the price related to the state of the design work, I assumed that there would be discussion, communications, and appropriate allowances made for risk. In terms of potential disputes and claims, you would have to be looking at design changes to be able to know what might happen. However, the risk allowance in the Infraco budget was never going to be able to deal with 40 per cent of the design work being incomplete.
248. I have reviewed a number of documents relating to the legal issues around the Infraco negotiations:
- 248.1. A letter, dated 12 March 2008, (CEC01347797) in which DLA, TIE’s legal advisors, advised CEC on the Draft Contract Suite;
- 248.2. A series of emails and exchanges prior to that letter showing that employees of TIE, particularly Graeme Bissett, had input into DLA’s drafting of the letter to CEC (and into subsequent letters)

**(CEC01551064, CEC01551066, CEC01541242, CEC01541243, CEC01474537 and CEC01474539); and**

- 248.3. Earlier emails, dating from August 2007, in which Council Officers had discussed the possibility of seeking external, independent legal advice on the Council's position and the risks arising from the Infraco (**CEC01567522 and CEC01560815**).
249. I was not aware of these documents at the time they were sent or being discussed. Nor was I aware that TIE had input into legal advice that DLA was providing to the Council. In terms of the appropriateness of TIE's actions, I would not have seen it as inappropriate. It would have seemed reasonable as there was a close relationship between TIE and the Council. I would therefore assume that TIE would provide help and support where they could.
250. I do not remember there being discussion, at this stage, of the Council seeking its own independent advice. It would not be unusual, however, as the legal section of the Council are not experts on every single area of law. The Council frequently seeks independent advice.
251. In early 2008 I had no awareness of DLA's involvement in the project. I therefore didn't know whether they were advising TIE, the Council or both.
252. A meeting of the Full Council took place on 13 March 2008. The agenda (**CEC02083387**) and minutes (**CEC02083388**) show that there was no update on the ETP at this meeting
253. At this point, the Infraco contract was close to being concluded (it would be signed on 14 May 2008). It would normally be for the Administration to determine the content of the agenda for Full Council Meetings. It would be the Lord Provost (George Grubb, SLD) and the Council Leader (Jenny Dawe, SLD) who would be responsible, along with Council Officers, for determining whether they felt there should be a report to councillors. I do not

know why there was no update to councillors at this meeting. We did not get an update on the ETP at every single meeting. I am assuming we would have got an update if there had been a decision which was ready to go to the Full Council. If there were any decisions to be taken then you would expect those to go to the Council.

254. There was a lot going on in the period between December 2007 and May 2008. In terms of whether there were any gaps in reporting on the ETP, it may have been that councillors were not updated when they should have been. Since we did not know what was going on then, we were not able to call for reports from Council Officers.
255. I have been seen an email sent to Alan Coyle (CEC Finance Officer) on 14 March 2008 (**CEC01386275**) and its attachment (**CEC01386276**). This was a note, to be signed by Donald McGougan (Director of Finance), Andrew Holmes (Director of City Development) and Gill Lindsay (Council Solicitor) confirming that it was appropriate for Tom Aitchison (Chief Executive) to authorise TIE to immediately issue a Notice of Intention to award the Infraco contract to the Consortium. The final contract price was £508m and the risk contingency had been reduced from £49m to £33m (**CEC01386276** at page 1). I was not aware of these emails at the time. I was not aware whether the appropriate authority had been given to TIE to sign the agreement. In hindsight, I doubt whether it was appropriate
256. I am not quite sure why Tom Aitchison (CEC Chief Executive) authorised TIE to enter the contract when it was not his responsibility to do so in terms of delegation from the Council. I would question why that was done and whether it was appropriate.
257. In terms of the increase in price set out in the note, I do not think I was aware of this and I was not aware that the risk contingency had reduced.

258. I have seen two letters sent by Council Officers to TIE in March and April 2008 while preparations for awarding the Infraco were in progress. These are:

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

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

259. I was not aware of these letters or of these concerns more generally at the time. I cannot speak for others on the Council. I do not know if they were made aware. If the difficulties suggested in these letters existed, then additional costs would be incurred and there would be delays in the start of work. I think we should have been made aware of these issues.

260. If you had these kind of difficulties then you would presume there would be dialogue. I would expect there to be discussion and negotiation to try to get an agreement. This would be to deal with the potential for an increase in the price if there was a serious change.

*Lead up to Infraco Signature – April and May 2008*

261. I have seen a chain of emails amongst Council Officers (**CEC01401109**) including:

261.1. An email, dated 11 April 2008, from Colin Mackenzie (a CEC Solicitor) to Gill Lindsay (Council Solicitor) notifying her of a difficulty that had arisen with the prior planning approval for the Russell

Road bridge. This raised the question whether the £3m allowed in the Quantified Risk Allowance for SDS delay was sufficient. Colin Mackenzie noted: *"This is getting very close to calling upon the Monitoring Officer to become involved"*.

- 261.2. An earlier 11 April email from Alan Coyle expressed concern that the costs of the SDS delay were contrary to the concept of risk transfer to the private sector. It was also stated that insufficient information had been provided by TIE for CEC to accept the risk on these matters. This led him to ask: *"how many more of these things are going to come out of the woodwork?"*
262. The Systems Design Services (SDS) contract was the agreement under which design work was being done for the ETP. At the time I was not aware of these concerns though there was a later issue with the Russell Road bridge that I recall. I cannot say whether other councillors were aware of it. I would have expected the senior councillors or transport spokespersons from all parties to have knowledge of them.
263. These emails suggest a deep concern on the part of these Council Officers. The Council Monitoring Officer (CMO) is a position within local authorities charged with maintaining propriety and proper standards. The CMO would be called in if there were deep concerns financially or legally as to what was going on.
264. If we, as councillors, had been made aware of these concerns, we would have asked for more detail regarding the issues and scrutinised the documents. We would have asked what else there was 'to come out of the woodwork'. We would have considered the information and responses received and we might have asked for a halt to the project while we looked for any further issues. People were getting ahead of themselves.
265. I have seen an email dated 14 April 2008, in which one of the Legal Officers, Colin Mackenzie, set out certain concerns for other Council Officers

(CEC01256710), His view was that it would be "*prudent and proper*" to report again to councillors before Financial Close of the Infraco was authorised. This was due to a number of changes which had become evident since the December 2007 Full Council meeting (at paragraph 225 onwards above). These included: "*the new final estimate of £508 million; a four month delay to the revenue operating date; and continuing concern over the risks to the Council arising from the SDS programme*".

266. I was not aware of these concerns and I do not know if others were. I think these concerns should have been brought to our attention. Reflecting on the period from 2012 onwards, when I became Transport Convenor, if I was getting emails or briefings from Council Officers expressing concerns then I would try to share those with the opposition Transport Spokespeople. That was to let them know that these issues were coming up but also to build trust. It ensured that we trusted each other. Perhaps the reason why we were not given this information at this time was that there was not that trust in 2008.
267. It has been noted that Colin Mackenzie was a Principal Solicitor within CEC's Legal Services team and sat below the Council Solicitor and Director or Corporate Services in terms of the Council's organisational hierarchy. Normally, whether in the Administration or in opposition, you would not deal with Council Officers of this level. It would usually be the more senior Council Officers that we dealt with on these kinds of projects. It was different for local issues (such as cleansing or roads) where you tended to deal with the local office and the local Council Officers. Normally, however, the Council Officers have got a hierarchy. Someone further down that hierarchy is not expected to be able to deal with councillors.
268. I have seen a series of emails and documents received and sent by CEC's Legal Officers in mid-April 2008 (CEC01245223, CEC01245224, CEC01245225 and CEC01247679). These discussed the draft Schedule 4

(Pricing Provisions) to the Infraco, They also discussed whether a revised statement was needed from TIE confirming that the risk allowance was still sufficient.

269. These appear to be internal documents, I am not aware of them coming to Council. I did not sit on the TIEC at this point so do not know if they were provided to that committee. I do not think that members were advised about the pricing provisions of the Infraco.
270. Full Council Meetings normally occurred about 10 times a year but in May 2008, there were Full Council meetings on 1 May 2008 and 29 May 2008. There was also a meeting of the PSC between the Full Council meetings in May 2008 (at paragraph 298 onwards below). The Infraco contract was ultimately agreed on 14 May 2008
271. In advance of the meeting on 1 May 2008, Colin Mackenzie (Legal Officer) sent an email to Gill Lindsay (Council Solicitor) (**CEC01241689**) which stated that: *"You may know this already, but BBS have increased the price by a significant amount. Urgent discussions underway at TIE this afternoon. Wonder how this leaves the report to Council tomorrow!!"*
272. The *"report to Council"* referred to in that email was the report by Tom Aitchison (CEC Chief Executive) prepared for the 1 May 2008 Full Council meeting (**CEC00906940**). The report sought a renewal of the delegated powers previously given to the Chief Executive to authorise TIE to enter the contracts with the successful bidders for the Infraco and Tram Vehicle Contract (also known as Tramco)(at paragraph 6.1, at pages 3 – 4). It noted that:
- 272.1. The cost of the project had increased from £498m to £508m (made up of a base cost of £476m and a revised QRA of £32m) (at paragraph 3.4, at page 2). That increase was said to be largely down to the firming up of provisional prices into fixed prices,

currency fluctuations and the *“crystallisation of the risk transfer to the private sector as described in the FBC”* (at paragraph 3.5, at page 2).

272.2. The combined Tramco and Infraco costs were 95 per cent fixed with the remainder being provisional sums which TIE had confirmed would be adequate (at paragraph 3.4, page 2).

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

273. The 'headline' date of this report is 1 May 2008 and that refers to the Full Council meeting it was presented to. The document appears to have been signed off by the Chief Executive on 23 April 2008 (at page 4) and reports were normally circulated a reasonable time in advance of Full Council meetings.

274. I question what steps might have been taken to update the Council if there had been changes in the prices which were known on 30 April 2008. I had not seen Colin McKenzie's email prior to the Inquiry. I might have expected that there to be an update from the Chief Executive on that. There is no mention of an update on prices or a supplementary report from the Chief Executive in the minutes of the Full Council meeting of 1 May 2008 (CEC02083356).

275. All in all, while we were advised in the report that there had been a price increase from £498m to £508m, I do not think we were advised of any

price increase that would have followed or increased the figures in the report.

276. In terms of the increase from £498m to £508m, I believed that the figures secured the best deal possible for the Council within the agreed funding envelope. Although it was an increase of millions, we would take comfort in the fact that it was well within the agreed funding envelope. However, I was not told about any further increase beyond £508m, as might be suggested in Colin Mackenzie's email (**CEC01241689**). I do not know if other councillors were advised of the increase..
277. I did not have any knowledge of the "*new risk area*" referred to in the Report to Council (at paragraph 3.10, page 3 of **CEC00906940**) or the steps that had been taken to deal with it.
278. The Report to Council made reference to efforts having been made to transfer risks to the private sector (**CEC00906940** at paragraphs 2.3 and 3.5). This contrasted what we had previously been told about risk in December 2007. However, at this stage the costs would have been confirmed. You would expect that. I presume that all the risks were within the budget, including continuity, if not then of course you would have concerns.
279. The Chief Executive's report (**CEC00906940**), provided no mention or explanation of the pricing provisions in Schedule 4 to the Infraco despite these having been provided to CEC Legal Officers in April 2008. I think that if we had been told the costs were escalating, as set out in Colin Mackenzie's email, there would be a recording of that. We would have asked questions about it at the Council if we had been told about it.
280. Council members always understood the Infraco contract to be 95 per cent fixed costs. I do not think there was any misunderstanding; if you look at some of the emails, they were not being open and upfront. They were tell-

ing Councillors that the contract was 95% fixed costs rather than explaining the reasons why it was not fixed price. Even the Chief Executive's report was still saying that the Infraco contract was 95% fixed. The understanding of elected members at that Full Council meeting would have been that there was not a problem because the Infraco contract was 95 per cent fixed costs.

281. The Chief Executive and the Senior Officers should have been keeping an eye on this information and ensuring that accurate information was provided to Councillors.
282. I have seen an email (**CEC01248988**), dated 8 May 2008 from Stan Cunningham (CEC Committee Services Manager). This email was in relation to a further report on the Infraco negotiations that was to be submitted to the PSC rather than the Full Council. The PSC was meeting on 13 May 2008 and the report noted a further price increase as I discuss later in this statement (at paragraph 298 onwards below). As Stan Cunningham noted, the proposed timing of the distribution of the report to the PSC meant: *"it may be the first time that many of the members are aware of this matter. This is not satisfactory..."*.
283. The Council's final approval of the Infraco contract was sought from the PSC rather than from the Full Council. If there were any changes to the finances of a decision then it would normally go to Full Council. Under the Standing Orders if there are any significant changes, and in particular to do with finance, it should go to the Full Council.
284. I sat on the PSC in 2008. However, the control of that committee and the control of its agenda was very much still with the Administration. Determining the agenda was a matter usually done by the Administration in partnership or by way of understanding with Council Officers. Opposition councillors on the PSC would only know about this report, or any other business that was coming to the PSC, when it was publicised through the committee

agenda. I do not know who ultimately determined that this report and the decision on the ETP should go to the PSC rather than Full Council.

285. It is possible to have matters referred from a committee to the Full Council for a decision. I genuinely cannot remember whether either the Labour Group or the opposition considered that in respect of the approval of the Infraco contract. We did have discussions about issues that we wanted to take to the Full Council. It might have been discussed. However, if it was, I imagine that we would have been told by Council Officers that transferring the matter to a meeting of the Full Council would hold up the ETP. That would cost more money. There was no discussion of calling a special Full Council meeting either.

286. I have reviewed a report submitted to the PSC by Tom Aitchison (Chief Executive)(**USB00000357**). This advised councillors that the estimated capital cost for Phase 1a (Airport to Newhaven) had increased to £512m. In return for that increase in price, TIE claimed to have secured a range of improvements to the contract terms and risk profile (paragraphs 2.9 and 2.11 on page 2). I have also reviewed the minutes of the meeting of the PSC on 13 May 2008 (**CEC02083836**).

**CEC02083836  
should be  
CEC01891564**

287. As I have already discussed, the PSC was chaired by the Council Leader as convenor of that committee. Convenors were normally appointed in May of every year.

288. The minutes note (at paragraph 11) that notice that approval would be sought for financial close and notification of contract award had, apparently, been given "*at the start of the meeting*". I am not sure whether this item was on the agenda for the meeting and, even if it was, the minutes of the meeting suggest that it was on the B agenda for the meeting. I infer this from the exclusion of members of the public (see page 7). It may be that we only received the report at the beginning of the meeting but that is an assumption on my part.

289. The reference to the “*material change in circumstances*” is a reference to a rule in Standing Orders. This rule provides that you decision cannot overturn decision within six months unless there is a material change in circumstances. Presumably the material change in this case was the change in the information regarding the contract.
290. I genuinely cannot remember how long it took to consider the ETP items at that meeting. If this represented a change and we were talking about increases in costs, it might have made for a long meeting. However, I do not know how we spent on each of the ten items. Sometimes the PSC would proceed quickly and sometimes it would not. I do not remember in this case.
291. A number of councillors were noted as board members of TIE or of TEL in the minutes (CEC01891564 at page 7) under “*Declarations of Interest*”. It is normal practice for councillors who are appointed to an arms-length company of the Council to declare a non-financial interest. To be clear, councillors were not paid any directors fees for these roles. Being appointed to the board of a company by the Council always presents challenges in terms of conflicts of interest. You are supposed to act in the best interest of the board to which you are appointed. At the same time, when you sit on the PSC, you are supposed to take responsibility for that. It is always a difficult line.
292. In this case we were required to consider the issue as a matter of urgency. I do not think an issue as important as finance should ever be tabled as a matter of urgency. However, we did not have real power on the PSC as there were 4 Councillors sitting on the committee. My understanding is that something with financial consequences like this price increase should, under the Standing Orders, have been referred to the Full Council. However, we did not control the committee so we could not do that.

293. This report was produced eight years ago, while I have reread it, I think most of our understanding regarding the contract terms and the risk profiles would have been based on the advice of Council Officers and TIE. At that point we still had trust in them to finalise the contract.
294. I have been asked whether the Schedule 4 (the pricing schedule of the Infraco contract) was discussed at this meeting and whether there were any discussions of the concepts of Pricing Assumptions, Notified Departures or possible changes to the contract with resulting increases in the contract price.
295. I would expect this to be the case but I cannot remember.
296. The decision of the PSC authorised the Chief Executive and giving him delegated authority to approve the signing of the contract. It was then for the Chief Executive to sign off on the contract on behalf of the Council.

*Signature of the Infraco*

297. The Infraco was signed on 13 and 14 May 2008. I understood that some changes had been made to the contractual arrangements between December 2007 (the approval of the FBC) and May 2008 (the signing of the agreement). I think the range of changes that were involved were discussed in the PSC meeting and in other briefings.
298. I have been asked which party I understood to bear the risks coming from incomplete design, outstanding approvals and delays in utilities diversion. If you start right at the beginning of the project, we were given an understanding that the risks coming from incomplete design, outstanding approvals and delays in utilities diversions would lie with TEL. That was then to be dealt with by the contract. As regards the design and utility diversion works that appeared to change. All the risk was being passed to the Council.

299. To the extent that risks were to be retained by the Council, they were to be managed by negotiation and agreement. I would have expected these risks to then be within the Risk Allowance Funding.
300. The Infraco contract contained provisions entitling the contractor to seek further payments where there were variations to the work under the contract. I was not aware of these provisions or this possibility. Nor was I aware that the Pricing Assumptions in Schedule 4 were based on design drawings from November 2007. In terms of design, we always believed that the design would have been sorted out by the time of the contract and there would not be many changes to be made.

### **Events between May 2008 and December 2008**

301. At a TIEC meeting in June 2008 there is reference to a concordat between the Council and utilities companies regarding utilities works at a June 2008 (CEC01241184). This related to a general concern over the state of roadworks rather than anything specific to the ETP.
302. Around this time, I submitted a motion to the TIEC. Council Officers reported back on that motion at the 23 September 2008 meeting of the committee (CEC00455436). This motion related to the Edinburgh Road Works Ahead Agreement (item 7, at page 6) and proposals for improving the co-ordination and management of road works. Again, this related to roadworks and utilities in the city generally and to Fixed Penalty Notices rather than to the ETP specifically. I only attended the meeting because of my motion. I was not a member of the committee.

### *Embargos*

303. In late 2008 there were discussions within the Council around the concept of the embargo periods. In particular, there were discussions as to whether

works would be suspended over Christmas that year. As a councillor, I am familiar with the concept of embargos.

304. The concept of an embargo on utilities works and resulting roadworks predated the ETP. Utilities companies cannot do any works during the Festival period (in August) and the Christmas and New Year period. In terms of the Festival period, this is down to the number of people in Edinburgh. The city's population nearly doubles during this time. People need to be able to get around and businesses want to be accessible. For the Christmas and New Year period, it is a busier period for businesses.
305. Works can occur during the embargo period, like the recent example of gas works down Leith Walk. However, it is quite unusual and would require some special circumstances. Formally, the Council sets policy on the embargo. The local elected members and the relevant Convenor would normally all require to agree to the embargo being lifted. There would also be consultation with stakeholder groups.
306. I am not certain what happened in relation to the Christmas 2008 Embargo. Certainly, when I became Transport Convenor from 2012 onwards, I was more involved in issues around the ETP, the embargos and the effect on businesses. From that point on, I had open meetings with groups in churches and in other places. I met with the business community to discuss the project and what support and help we could provide.

*Line 1b*

307. I have seen the following two documents:

307.1. The report to the Full Council meeting on 1 May 2008 seeking its approval for the FBC (Version 2) (CEC00906940) which I have already discussed (at paragraph 284 above). This had noted an increase in the costs of the project though a reduction in the amount of the QRA (at paragraph 4.1, page 3). There were then

subsequent increases in costs recorded in the Chief Executive's report to the PSC in mid-May 2008 (**USB00000357**).

- 307.2. A report to the Full Council Meeting on 18 December 2008 (**CEC01043168**) from the Directors of City Development (by this time, Dave Anderson) and Finance (Donald McGougan) discussing the position on Phase 1b (Roseburn to Granton) of the ETP. The report noted that the indicative costs were £87m. A decision on whether to progress with Phase 1b would be required by March 2009 (at paragraphs 4.1 and 5.1, page 3). It also noted that TIE were engaged with the contractor on re-programming Phase 1a to address the slow start up of construction (at paragraphs 5.3 and 5.4, page 3).
308. These documents suggest that, in spite of cost increases, the Council continued to consider the development of the network as including Line 1a (Airport to Newhaven) and Line 1b (Roseburn to Granton).
309. It was intended that Line 1b would assist the regeneration of Granton Waterfront. As a councillor from that area, I was particularly concerned about that regeneration. We also wanted to retain the option of having a tram network. Those were the reason it was still considered in this time period. Resources had been spent on it and we did not want to rule it out at that time.
310. Part of the challenge for me was that, at the beginning of the ETP, councillors were being told we would be able to complete Line 1a and 1b within that funding envelope. All of a sudden we were now being told that we were not going to have enough money to create Line 1b.
311. Many questions were asked about this at the time. We wanted to know why this had happened and why the costs had increased. We had initially been told that we could have Line 1a and 1b. At that point a lot of alarm

bells started to ring as it became clear we could only have Line 1a within the funding.

312. There have always been discussions about how the Council could fund Line 1b. We considered whether we could get European funding, bond funding or raise the funds in other ways. Now, obviously some issues have come later on in terms of the City Deal, funding from Scottish Government/Westminster Government. There were ways to borrow money on the assumption it would bring in business rates later on. There were a number of different mechanisms. Despite these doubts, it has been noted that a report to the CEC Chief Executive's Internal Planning Group (IPG) (CEC00860021) dated 29 April 2009 continued to discuss the options, including postponement of Line 1b. The view from officers had always been lukewarm re Line 1b

*Global recession*

313. It has been noted that, in 2008, the effects of the global financial recession were being felt around the world. This was a matter considered by Council Officers in their report to the Full Council meeting on 18 December 2008 (CEC01043168 at paragraphs 3.6 – 3.10, page 2).
314. I remember there was discussion at that time across a number of projects and there were a lot of issues raised by the downturn in the economy. For example, the original construction of the EICC had been due to start during the previous downturn in the economy (in the early 1990s). At that time we assessed the situation looking at all the options. As a Council, we decided to take the risk of building it even though there was a downturn. I am assuming that the downturn would impact upon the ability to borrow. Consideration would also be given to jobs and housing in both Leith and Granton Waterfront. They might be affected as would the revenue coming in from them. I do remember discussions about how they believed the recession would affect the city and what the situation would be.

### *Delays in start up*

315. There were delays in starting up the project. Looking again at the report to the Full Council Meeting on 18 December 2008 (**CEC01043168**), it referred to slowness in the mobilisation of the Infraco . It also noted that TIE was engaging with the Infraco to try to re-programme Phase 1a to address this (at paragraphs 5.3 – 5.4, page 3).
316. My assumption was that the delays related to getting the project organised. Often you will have contractors who will say they will start construction on a certain date and it gets delayed. Often there are delays in mobilising the correct staff and equipment for a job. Perhaps just getting the project organised was more difficult than we first envisaged.

### **January to April 2009**

317. I have been seen an action note following a meeting of the special tram IPG on 29 January 2009 (**CEC00867661**). The note (at page 2, under the headings "*Cashflow*" and "*Public Realm*") stated that absolute clarity was still needed on the price of the Infraco contract and noted that there was concern the Consortium's costs, for works in the public realm, did not represent value for money. The public realm is a term used to denote the common spaces, such as footpaths and roads, around Edinburgh for which the Council was responsible. I did not have any knowledge of this meeting and I did not hear of these concerns from any of the Senior Officers involved at this time.
318. There was a meeting of the TIEC on 10 February 2009 which discussed issues relating to the ETP (the minutes of which are **CEC00455422**). I was not a member of that committee. I was only present for part of the meeting and for the purposes of discussing the Crewe Toll Roundabout.

29 January  
2009 should be  
28 January 2009

## Princes Street Dispute

319. A dispute arose between TIE and the Consortium prior to the planned commencement of works on Princes Street in February 2009. I have seen an email which was to be sent by David Mackay to the Infraco (the Consortium), on Friday 22 February 2009 (CEC00867359). The email stated that the Consortium's response to: *"questions in relation to Princes Street is typically overlaid with extraneous comments and bold statements of Infraco's position which are not backed up in any reference to the terms of the Contract."*
320. I am not sure of the precise date when I became aware of the breakdown in the relationship between TIE and the Consortium. I may have become aware of some of the issues from comments in the press. I may have become aware of some of the issues through briefings. We did have access to Council Officers and briefings on the dispute. I was certainly aware that there was a breakdown in communications. I may have first become aware of it through the press. However, I think there must also have been briefing on the dispute as I became aware that the issues were to do with funding, design issues and utility work delays.
321. My views on the dispute at the time were ones of frustration. I didn't think the Council Officers and more senior councillors, for example the Chief Executive were taking appropriate action.. Everyone was blaming each other. We had been told by Council Officers that BB (as part of the Consortium) were an excellent contractor and had an excellent reputation. All of a sudden we were being told they had this other reputation worldwide. For example, we were told about projects in Canada and other places where they were in disputes regarding prices and other terms. I found it extremely disturbing that we were initially told BB was a good Contractor and then, when they all fell out with each other, BB was painted as a dreadful contractor. My question was why, if this was the case, it had not

22 February  
2009 should be  
20 February  
2009

been known at the beginning. Surely a basic search would have revealed it? Presumably, as part of the bidding process, they would have had to give examples of projects they had been involved in and what they had delivered. You would have thought that TIE or Council Officers would know that.

322. I think that there was just a breakdown in the relationship. When this dispute was at its height later on, tools were put down and no work was happening. At every Full Council meeting there was an opportunity to ask questions of the Council Leader. I remember Andrew Burns (Labour Group Leader) asking Jenny Dawe (Council Leader) at every Full Council meeting around this time what she was doing or what actions she was taking. It seemed they were doing nothing. The Labour Councillors were frustrated that the Administration were sitting back and saying it was nothing to do with them.
323. My experience is that, whatever you do, you need to communicate with people and you need to try to build up a relationship. If there is a breakdown in the relationship there is no benefit in simply attacking the other party. As far as I was aware, there were no discussions between the Council Leader and the relevant people, (the consortium). I think there are times when, as someone in a senior position, you need to take a hold of an issue and take it 'by the scruff of the neck'. You need to get involved and get it sorted out. If Donald Anderson (former Labour Council Leader) had been the Council Leader at this point then he probably would have been on a plane over to Germany to meet with the contractor to try to sort it out. We were therefore frustrated that there was no political leadership. Also Council Officers did not seem to be taking it. (Senior councillors and officers) Everyone was blaming BB. Whether that is true or not, that was our understanding at the time. We were advised it was all the contractor's fault. We were told that they were a 'very bad contractor' and were involved in disputes all over the world.

324. At each Full Council meeting, Andrew Burns would ask the Council Leader (Jenny Dawe) for an update or a report on what action she had taken to try to resolve the position. It was really frustrating because the answer came back that either nothing, or very little, was being done. We did not really know what else we could do. Other than a vote of no confidence in the Council Leader, or some kind of mechanism, there was not really anything we could do. It was very frustrating because we were not in control of the Council. All we could do was try to embarrass the Administration by saying they needed to take some action. The Transport Convenor also seemed unwilling to do anything about the situation. When I reflect upon the situation the issue was a lack of political leadership.
325. I thought TIE's approach to resolving the dispute was aggressive. They were not communicating and I do not think they were open and transparent about the whole thing. The impression through this period was that David Mackay (Chair of TIE) was very aggressive. He made some very disparaging remarks about Germans (both BB and Siemens are German companies). I thought that was unhelpful.
326. As I understood matters, the disputes were to do with design and whether the finalisation of designs changed the contract. We did have briefings on this issue on more than one occasion. However, it would have been up to the Administration to determine the way forward. I remember being briefed by Council Officers and having TIE representatives attend some briefings as well. We were told about the dispute resolution procedures (DRPs). We asked some quite robust questions about how many disputes there were, what evidence there was, whether TIE would win the dispute and why that was so. We were given assurances that the outcomes would be more favourable to TIE.
327. I think we felt frustrated later on when it became clear that TIE (and CEC) were losing adjudications. At the beginning, there was a robustness in

terms of what we were being given by the Council and by TIE. We were told that the contractor was not acting in accordance with the contract. We were told that TIE's position was correct and that TIE would win any adjudications. As the dispute progressed, it became clear that we were not winning the adjudications.

328. My understanding of the dispute was based on briefings from the Senior Officers with Legal Officers. It would also be usual to go to an external legal advisor (sometimes a QC) for an evaluation of the chances of you winning the dispute. I cannot remember the details in this particular case. However, I do remember being given assurances that the adjudications would be in favour of the Council and TEL and not the contractor.
329. My views changed over time as it became quite clear that we were losing these adjudications and the rate of 'wins and losses' can be found within some of the documents as I discuss later in this statement (at paragraph 471 onwards below).
330. I think at that time it was TIE that had responsibility for progressing the resolution of the dispute. Initially, TIE was leading the project. As a result of the problems and challenges we had, control of the project ended up within the Council. However, that was at a later stage. In February 2009 it was TIE that was dealing with the contractor. I remember the Chair of TIE and David Mackay (Chief Executive) being very bullish about the dispute. They were clear that would win and that they were not going to be told what to do by 'these Germans' as I think he described them. The Council had some involvement with the dispute as well.
331. Councillors did ask questions about the risks associated with the disputes. I remember asking what would happen if we lost the adjudications. We were told we would not but that, if we did, there were the contingency amounts that would cover the increased costs. I do not think there was any discussion of a need for extra funding at this point.

332. I was not aware of TIE being reluctant to use contractual dispute resolution procedures. I think we were told about the use of the contract in briefings at around this time. I just had the impression that TIE did not seem to want to involve anyone else in resolving the problem.
333. The Councillors did not have any direct contact with the Consortium throughout this dispute. Council Officers and senior councillors were blaming them for the dispute and the line remained fairly resolutely negative throughout.
334. Information about the dispute was leaked to the media. I think BB got upset because of certain front page stories. The parties had started attacking each other. The parties were focussed on who was to blame rather than trying to discuss and resolve the matter.
335. It is noted in the papers I have seen that Donald Anderson, a former councillor and the former Labour Council Leader was engaged by the Consortium on communications. Donald Anderson had stepped down from the Council in 2007. I am not sure whether he was engaged around this time. That probably was the case, it would have made sense in terms of the dispute as he knew how the Council operated and might have been able to assist in reaching some resolution.

*March 2009*

336. I have been referred to a letter (CEC00870592), dated 5 March 2009, from Tom Aitchison (CEC Chief Executive) to TIE instructing TIE to take measures to keep the Council updated about any disputes. That letter was not copied to me as a councillor and was marked as "*Private and Confidential*". I had not seen it before this Inquiry. While I was a senior councillor at this time, I was in opposition and I do not think I spoke to Tom Aitchison about this. Looking at it now, it reflects the basic frustration of the Council in terms of David Mackay's attitude and the fact that the ETP not

moving on. As the letter notes, the Council would be held accountable financially and the Council was offering anything that could help with the situation. I think the frustration was that TIE were not dealing with the dispute reasonably. TIE were acting very aggressively and very confrontationally. There did not appear to be any communications with the consortium. I am assuming the Administration and the Senior Officers felt they needed to try to help that along.

337. Around this time, I think I became very cynical about the flow of information from TIE to CEC. I did not know who was telling the truth. That was a discussion we had after many of our briefings with Senior Officers and with TIE at that time. As I have already discussed, there is an element of trust given to Council Officers. I think we came to a point where we were beginning to ask whether we trusted what we were being given by Senior Officials and TIE. The question of who was at fault in the dispute was a big question mark for us at this point. The whole thing caused me to lose trust in both Council Officers and TIE representatives.
338. There are both formal and informal processes that can be used to convey to the leadership of the Council that you are unhappy with information that is being provided to you. There were occasions when Councillor Gordon Mackenzie (the SLD Transport Convenor) would come to see the Labour Group to seek our support. That would be done at the last minute. Nonetheless, we would voice our concerns regarding the ETP and the dispute.
339. I believe the other opposition groups, the Conservatives and Greens, were also feeling similarly frustrated. In order to get anything through the Council, the SLD needed opposition support (at least on the ETP). They would come to us at the last minute because they knew that, as a matter of policy, we would support the ETP. The SNP meanwhile just sat on their hands and did nothing to help support the SLD.
340. I have seen the following documents:

- 340.1. An email from Andrew Fitchie of DLA (TIE's solicitors) dated 6 March 2009, in which he sent the Council Solicitor the position papers of the different parties in relation to the dispute about Princes Street (**CEC01031402**).
- 340.2. An email, dated 11 March 2009, (**CEC00869667**) in which Colin Mackenzie (CEC Legal Officer) suggested that Council Officers did not know whether the Infraco contract was sound. He also raised the possibility that the contract was not robust enough (making affordability of the works an issue). He noted that Council Officers felt they were lacking the requisite information, certainty and confidence at that point.
- 340.3. A report by DLA dated 12 March 2009 (**DLA00001357**) responding to questions posed by Council Officers about the DRP.
341. I do not remember any of these matters being brought to my attention by Council Officers at this time. In particular, I do not remember being advised that the parties interpreted the contract differently.
342. I have seen two documents which detail meetings that were taking place around the time of this dispute in February to March 2009. These are:
- 342.1. An email dated 27 February 2009, from Councillor Phil Wheeler (Transport Convenor) the Council Leader (Jenny Dawe) (**CEC00868427**) informing her about his meeting with Richard Walker of the Consortium.
- 342.2. An email dated 11 March 2009 (**TIE00446933**) in which Mike Connelly (TIE Stakeholder Relationship Manager) advised David Mackay (TIE Chairman) of his meeting with Alison McInnes and Margaret Smith (both of whom were SLD MSPs).
343. I do not have any knowledge of the meetings. Margaret Smith was my MSP and Alison McInnes may have been the Transport Spokesperson for

11 March 2009  
should be 13  
March 2009

the SLD at Holyrood. I was not at the meeting. I therefore cannot comment on whether it was appropriate for them to meet directly with the Consortium. Our frustration was that no one seemed to be speaking to each other. I am not sure if this was helpful or not. TIE might well have seen it as undermining their position.

344. I do not recall being approached by the Consortium at that stage. I am not aware of anyone else in the Labour group being approached either.
345. By February or March 2009, I was concerned about how matters were progressing. However, I was not aware that the contract was not in fact 'fixed price' at that stage. The Labour group was in opposition. Unless information was reported to a committee or the Full Council, it was unlikely that we would know about it.
346. I have been referred to a report by Tom Aitchison (CEC Chief Executive) prepared for the Full Council meeting on 12 March 2009 (**CEC01891494**). This appears to be the first report to the Full Council to refer to contractual difficulties between TIE and BSC. There was, however, an earlier report to the PSC as I discuss later in this statement (at paragraph 365 below). The report to Full Council included:
- 346.1. The text of a public statement made by the Council (at page 5) which made reference to the contractors wishing to impose unacceptable conditions in order to start the works. The details of those conditions are not identified.
- 346.2. A comment by the Chief Executive that: "*members will appreciate that I am restricted on what I can say while commercially confidential negotiations are taking place.*" (at paragraph 3.2, page 2)
- 346.3. The Chief Executive's comment that TIE was maintaining: "*a clear, consistent and determined approach to what was agreed*

*after tough negotiation before the contract was signed.” (at paragraph 3.3, page 2)*

347. This report effectively said that the contract was about to restart in Princes Street. Commercially confidential negotiations taking place as there were still outstanding issues between TIE and the Consortium. My concern was that we were not being given full information. I was concerned that Councillors were not being trusted with the information. By this point, the trust between Councillors, particularly opposition Councillors, and Council Officers had suffered. Councillors and Council Officers did not trust each other which was not good situation to be in.
348. There was also a good deal of leaking around the dispute. There were people, we were never sure who, ensuring that a great deal of information made it into the Evening News in particular.
349. I do not honestly remember when Councillors were told that works would be restarting in Princes Street. I just remember that we were all very pleased when it happened. I do not know whether we were given a full explanation about the resolution of the dispute. If my understanding of the previous processes of disclosure is correct, then I doubt we were given that information.
350. I note that the Chief Executive's report to the Full Council (**CEC01891494**) states again that the contract was *“fixed price”* (at paragraph 2.2, page 1). I think by that stage I was starting to realise that the contract was not really fixed price.

We were consistently told that the contract was 95 per cent fixed price. I began to be clear that there was a breakdown in relationship between the Council and TIE, and the Contractor. I think there was a breakdown from everything. I think at that point I was beginning to realise that there was not a fixed price contract.

351. The Chief Executive prepared a report for the PSC meeting on 24 February 2009 (CEC00682449) which also discussed the dispute. This was prior to the Full Council meeting I have just discussed. As far as I can remember, there was a comprehensive briefing to the PSC about this report.
352. My assumption would be at the time that the Council would be seeking legal advice from an external advisor who may well have been asked to review the situation. I do not, however, remember whether I as a councillor, or as a member of the PSC, was told about any steps to take legal advice.
353. An agreement to resolve the dispute about Princes Street, the Princes Street Supplemental Agreement (PSSA) was concluded in March 2009 and I believe that works resumed.

#### **April 2009 – post-PSSA**

354. I have seen an email, dated 7 April 2009 and titled "*Edinburgh Tram; Strategic Options and DRP*" (CEC00900419). In this Colin Mackenzie (CEC Legal Officer) made certain observations on the dispute between TIE and the Consortium. He also brought certain concerns to the attention of other Council Officers.
355. By email dated 9 April 2009 (CEC00900404) Colin Mackenzie and Nick Smith (Legal Officer) circulated a report on the dispute between the Consortium and TIE (CEC00900405). The report noted that in April 2009 there were disputes over 350 Notified Departures. The disputes could be put under a number of different headings including determining the responsibility for design management and evolution. The Consortium viewed all changes to design as TIE's responsibility. The report noted (at pages 1 - 2): "*The main problem here stems from the fact that design was not complete at Financial Close*".

356. We were briefed on the disputes. We were also briefed about the outstanding Notified Departures. However, I do not recall when those briefings were given. In particular, I am not sure if, and if so when, I was aware of the numbers involved. I think that councillors were told about these matters because they were seen as so significant. We were concerned about this high number. I questioned how TIE had managed to end up with as many as 350 disputes or changes outstanding. This gave me fundamental concerns about the shape of the contract and what was being done by TIE.
357. At this point in 2009, pressure was being put on people to explain what had happened. When we were briefed there would be questions about how the project could possibly have got to this point when we had been told it was a 95 per cent fixed price contract. Equally, we had been told that all the designs had been put into place. We were asking why we were in this position when we had been given these assurances previously.
358. I have seen a report by Dave Anderson (who had replaced Andrew Holmes as the Director of City Development) and Donald McGougan (Director of Finance) to the Full Council meeting on 30 April 2009 (**CEC02083772**). Council Officers made a number of points in this report:
- 358.1. There had been negotiations between TIE and the Consortium which had led to the conclusion of the PSSA. Construction of the Princes Street infrastructure works would proceed on the basis of "*demonstrable cost*". The Infraco would be paid on this basis where they uncovered unforeseen ground conditions (at paragraph 3.3, page 2).
- 358.2. It was stated that this did not represent any further risk to the public sector (at paragraph 3.3, page 2). However, it appears to be an agreement to reimburse the Consortium for the costs that

they actually incurred in carrying out the works. This would place the whole of the risk of additional, unforeseen costs on CEC.

- 358.3. Similarly, the report set out that the matters that had arisen could impact on both cost and timescale (at paragraph 3.2, page 2). The report did not state, however, that the practical effect of these disputes was that costs were increasing and the budget would be exceeded.
- 358.4. Council Officers stated the Council and TIE had undertaken work between them to consider any strategic options they could be using (at paragraph 3.9, page 3). This was said to involve providing a range of confidence and cost levels for Phase 1a. These were not, however, provided. The report stated (at paragraph 3.11, page 3) that: *"the range of numbers indicates the base case scenario remains that the full scope of the project can be delivered within previously agreed funding levels"*.
- 358.5. In terms of the project timing, TIE was conducting a review of the entire programme with the Consortium to try to reach a revised, commercially agreed programme (at paragraph 3.13, page 4). This clearly envisaged delay but the report did not clearly state what the scope of the delay would likely be.
359. I have a vague recollection of this report. It was now beginning to become clear that Line 1b (Roseburn to Granton) would not be happening. It was also clear that Line 1a (Airport to Newhaven) was going to cost more money than expected and that there were difficulties for the Council regarding TIE.
360. Having re-read this 2009 report, I think the general indication at this time was still that the contingency would be high enough for the Council to be able to pay for extra works by the Infracore. My understanding was still that the contingency would provide for extra resources and overruns.

361. I would not have had any involvement in the PSSA itself or in the press coverage around it. The Council Leader and the Transport Convenor would have been involved in that. There were a lot of briefings on the ETP at this point and it is hard to recall with any certainty if we kept informed about the PSSA. I had no knowledge of it being finalised but it was reported back to the Council.
362. I understood the commercial rationale being the PSSA to be to get the works back on track. However, I was not a board member of any of the relevant bodies and so did not have a close involvement with those issues. I have been asked whether, given that the PPSA appears to have been concluded very quickly, councillors were given a proper opportunity to consider and comment on the supplementary agreement.
363. The PSSA was concluded very quickly. It may well be that the councillors in Administration had the chance to consider it. However, as far as I am concerned, it appears to have been taken quickly. I do not recall there being any consultation with Councillors.
364. The concept of 'demonstrable cost' in the PSSA changed the basis on which the works on Princes Street were to be priced. I do not think there was sufficient explanation of this at the time. It was something we became aware of later on.
365. I have been asked whether I regard the statement that the full scope of the project could be delivered within previously agreed funding levels (at paragraph 372.3 above) as correct or whether it was misleading in any way.
366. The report was continuing to say that the ETP could be delivered with the previous agreed funding. In retrospect, it was obviously misleading. It should have been made clear to Councillors that it was likely to go over budget. I do not know whether it was made clear to others at the time but it was not conveyed to me.

367. A meeting of the Full Council took place on 30 April 2009. The minutes (CEC01891440) record that there was a motion (moved by the SLD Transport Convenor, Councillor Phil Wheeler) reaffirming the commitment to deliver the ETP within its budget (at item 11, pages 8 - 9). There were two amendments to the motion:
- 367.1. An amendment from the Labour Group noting the financial deterioration of the project and "*severe concerns over [its] fiscal and political management*". This amendment also sought an updating report on the financial position of the ETP including its budget and the state of the contingency. The amendment also regretted the postponement of Line 1b.
- 367.2. A SNP amendment confirming their opposition to the ETP, casting doubts on the financial assumptions behind the project and calling for it to be "*scrapped*".
368. It became clear to us as a Labour Group that we were not being fully briefed on the issues and were not always being fully included in the project. In addition to the issues on Line 1a, our amendment also sought further information from the Director of Finance on alternative funding options for Line 1b within two cycles. By this I mean normally two months. We wanted to voice our concern that we were not being properly briefed. We wanted to note the deterioration of the project following the 2007 elections. We also wanted to make a point about the fiscal and political management of the ETP. Our amendment suggests the project was spiralling out of control.
369. The SNP amendment was easily defeated in the Council with only 12 votes out of 57. There would normally be 58 votes but Councillor Buchan of the Conservatives had a conflict of interest in respect of the ETP.
370. The Labour amendment was also defeated but by a vote of 29 to 28. This must have meant that the SNP voted in favour of the motion.

371. In terms of Line 1b, I considered that an important tool for the regeneration of the Waterfront area was being lost. This was a view shared by a number of Labour Councillors who came from North Edinburgh. A lot of this line would also have been off-road as well which would have meant less disruption. This seemed like the first time that councillors were definitively told that Line 1b would not be proceeding.
372. Councillors reacted differently to the news that Line 1b would not be going ahead. There were different views as there were some people who were very much against the ETP. In the North Edinburgh area, we had an active group who wanted to see proper public transport infrastructure put into the Waterfront. There was also significant interest from Telford College (who had shifted from Crewe Toll to Granton), Scottish Gas and Forth Ports. A lot of redevelopment and housing had been considered on the basis that there would be a tram there. Those who had proceeded on that basis were obviously upset about it.
373. In general, the SLD and the SNP did not listen to the concerns that we had been putting forward. I think it is quite interesting to reflect back on the SNP's amendment at that meeting in which they were saying they were totally against trams. However, they then voted along with the SLD to push through the SLD proposals. While they were removed from any involvement in a lot of ways, when it came down to it they supported the SLD. This was even though, as you can see from the report and from our amendment, there were concerns at this time that the project was spiralling out of control. There was a lack of confidence in terms of its financial and political management.

## **May to December 2009**

374. On 13 August 2009, Richard Jeffrey (then Chief Executive of TIE) sent an email (**CEC00679723**) to members of the TIE board, including councillors who were board members, to inform them about developments in the

working relationship between the Consortium and TIE. The Consortium had just informed TIE it was not prepared to start works on Shandwick Place unless that was done on a "*cost plus arrangement*".

375. I was not one of the recipients of this email as I was never on the TIE Board. Councillor Ricky Henderson was the TIE Labour Group representative and then Ian Perry until 2011. I took over the role of Labour Transport Spokesperson in 2011.
376. I do not remember getting any feedback from other Councillors about this. If you are on the board of an organisation you are supposed to act in the best interests of that organisation. Confidentiality of board discussions or material kept being raised with the Councillors sitting on boards in organisations involved with the ETP. This meant that they were not able to report back on confidential matters. I do remember that many of the TIE Board members would say they had been told something was confidential and that they could not tell other Councillors. How you resolve the conflict of sitting on a board and still being a Councillor, has always been unclear. I do not remember getting any feedback from other councillors about this though.
377. I have been asked whether, in my view, the PSSA might have paved the way for the Consortium to claim further costs in respect of other on-street works (such as Shandwick Place) by changing the basis of payment under the contract meaning the Infraco was no longer fixed price.
378. The PSSA altered the basis on which payment was to be made to the Consortium for works on Princes Street. In my experience, if a contractor believes it is likely to get its own way and that you are not playing 'hard ball' then it will try to get what it can. It will try again and again once you have conceded on some point. That is my experience.

379. A report by the Directors of City Development and Finance (Dave Anderson and Donald McGougan) was issued in advance of the meeting of the Full Council on 20 August 2009 (CEC00308517). This report contained a number of different points about the state of the ETP in the second half of 2009. In particular:
- 379.1. The Full Council was told for the first time that it would be very difficult to deliver Phase 1a of the ETP (Airport to Newhaven) within the funding envelope of £545m (at paragraph 3.12, page 3).
  - 379.2. There was no agreement on a revised programme (timetable) and commercial baseline (at paragraph 3.5, page 2).
  - 379.3. The report noted that utilities diversions had created additional costs of £7m (at paragraph 3.8, page 2). This was due to programme slippage and additional costs associated with measured works. The report stated: *"While the slippage to the programme is regrettable it should be acknowledged that it has been a very challenging project with unexpected ground conditions, including the discovery of a number of underground chambers and inaccurate data held by utility companies and the Council having a significant impact."*
  - 379.4. TIE were invoking formal contractual dispute mechanisms and had taken the opinion of counsel (an advocate or barrister). However with the nature of the process and the complexity of certain issues, TIE could not reasonably expect that all adjudication outcomes would be decided in its favour (at paragraph 3.11, page 3).
  - 379.5. The Council Officers noted that, due to these disputes, it was not possible to give an accurate forecast of the likely end costs of the ETP (at paragraph 3.12, page 3).

380. In relation to the utilities and what investigations had been done, problems were encountered in respect of the utilities. We were told that the records of the locations of utilities were very poor. Another issue was that it is an old city. There was uncertainty about what was under the ground. When they began to dig, they found interesting artifacts. We were told that surveys were being carried out, by going along the ground and finding out what was underneath. However, I cannot remember the detail of what investigations were carried out.
381. It was obviously an issue. It became more significant as a result of the position of the Consortium following on from the utilities diversion works. It was a particularly big issue.
382. In terms of the amount of the additional utilities costs and the remaining headroom in the project's £545m funding envelope, I note that the report to Council (at paragraph 3.8, page 2) stated that the additional costs of the utilities diversions were 12 per cent of the works value which is a reasonable sum. Normally you would also have a certain provision for that in contingencies. From memory, because utility works were known to be difficult, the provision for contingencies would have been higher than normal. I accepted this work had gone over the works value. However, on the basis that we knew utilities works involved uncertainties, it was not massively concerning.
383. I do remember very clearly that we kept being told that TIE had a strong case and we would win the disputes with the Consortium. I therefore understood TIE's prospects of success in any dispute to be good. I based that on briefings. We asked questions at the briefings. We were challenging them on why they thought they were going to do particularly well. The answer we got was that they had taken advice. I do remember there were Labour briefings where we gave them quite a hard time about the suggestion that they were going to win all of the disputes.

384. These statements came from a mixture of sources. Sometimes it would just be Council officials but I do remember there was some involvement from Richard Jeffrey. He was the Chief Executive of TIE at the time. I would say that part of the difficulty with the ETP and with TIE was that the chief executive changed quite regularly. I do remember particularly on this issue, for our group, that it would have been TIE as well as Council Officers giving us reassurances that we would win these cases.
385. My view of TIE's prospects of success did change over time. I cannot remember exactly when this was but I do remember it became clear that the Consortium were winning the majority of the disputes. I remember being told about this in a briefing and it may well also have been in later reports.
386. In terms of the financial aspects of the project (as noted at paragraphs 393.1 and 393.5 above), the report noted that it was not possible to forecast the final outturn of the ETP. I was concerned about this. I tried to get confirmation from TIE that they would not keep losing cases. I remember pressing them very hard about the cases that were lost. I questioned whether we should continue with the dispute resolution process. It was costing time and costing money, including large amounts in legal fees.
387. I do not think that it was clear at this stage that the project would exceed its contingency. That probably became apparent when we became aware that we were losing the disputes that went to dispute resolution proceedings. Losing cases costs you money. If you lose on a design issue, or all of the relevant issues, then the contractor would be in a position to claim more money and that would put pressure on the funding. We were starting to wonder just where things were likely to be going.
388. I have been asked why, given the inability to accurately foresee costs, the Council remained committed to providing the whole of the tramline to Newhaven.

389. Despite the inability to accurately foresee costs, the Council remained committed to providing the whole of the tramline to Newhaven. People forget that the ETP was all about redevelopment of the Waterfront. It was not about providing a link to the airport. It was about providing a link to the Waterfront to ensure that the infrastructure was in place to enable redevelopment.
390. I have seen a document entitled "Overview of Adjudicator's Decisions" that DLA provided to the Council Solicitor in November 2009 (CEC00479382). This discussed the adjudicator's decisions, dated 16 November 2009, on the disputes relating to the Gogarburn and Carrick Knowe Bridges.
391. I do not recall receiving this paper at the time in 2009 and I doubt opposition councillors would have been provided with it. I was not aware about issues concerning Gogarburn or Carrick Knowe Bridge until much later in the process. It was probably around the time of the Mar Hall Mediation in March 2011 that I became aware of these issues.

## Events in 2010

### January to June 2010

392. I have been referred to an email dated 8 January 2010 (CEC00473789) sent by Nick Smith (CEC Legal Officer) to Alastair Maclean (CEC Head of Legal). Attached to the email was a document called "Tram-Potted History" (CEC00473790). The email noted:
- 392.1. *"... dissemination of the actual history here could cause serious problems and we definitely don't want to set hares running."*
- 392.2. *"...be very careful what info you impart to the politicians as the Directors and tie have kept them on a restricted [information] flow."*

393. This email was probably sent soon after Alastair Maclean joined as the Council's Head of Legal Services (the Chief Legal Officer was no longer called the Council Solicitor) in December 2009.
394. This email was obviously highly confidential between the parties involved in it so I have certainly not seen it prior to the Inquiry. My response to it was one of shock.
395. Having read through the briefing note attached to the email, I thought it was a pretty reasonable summary of what appears to have happened. It is only a pity that we did not know earlier. There appears to be some mention of internal politics. I suspect that related to the divisions between the SLD and SNP.
396. At the time the Infraco contract was being presented by TIE as being fixed price. The Council Officers also gave this impression. I cannot understand how designs were less than 40 per cent complete when the Infraco contract was signed. There was also a warning apparently flagged at the time that it was risky to sign up a fixed price contract when the designs were not complete. The significant possibility of costs overruns was therefore known. If I had been told at the time that the designs were only 40 per cent complete I would have been horrified. You will always have disputes where designs are incomplete and the project will always end up costing more money. You might be able to leave a small percentage incomplete but this was 60 per cent incomplete.
397. I think it was a lot later on we were told about this issue. I was not aware of this at the time (either in 2008 or at this point in early 2010). If we had been told this, we might have had a clearer picture and so been better able to help and support the project.

398. I have been asked whether, with changes in personnel at the Council like Alastair Maclean joining in late 2009 or early 2010, I noticed a change in the way that Council Officers behaved.
399. There were changes in personnel amongst the Council Officers in late 2009 or early 2010. This resulted in a change in attitude to opposition elected members. Some people within the Council would only ever brief the Administration and if you were in Opposition then you would not get anything. I think Sue Bruce was far more astute. She was far more open and she realised that she needed to involve all the elected members and keep them up to date and informed. As I discuss later in this statement, when I became Transport Convenor in 2012 we worked well together. Alastair MacLean, was far better at giving us information and keeping us informed than previous Legal Officers had been. Both Alastair Maclean and Sue Bruce actually understood the situation. I think Sue Bruce particularly was appointed in terms to really sort out the ETP.
400. I have been asked whether I consider that the Senior Officers (Chief Executive and Directors) or TIE were keeping councillors "*on a restricted [information] flow*" and whether I had any concerns in that regard at the time.
401. Prior to their involvement, I felt we were not being given all the information we needed and it was really frustrating. However, as an opposition, it was very hard to influence events. We had asked hard. At one of the briefings, I can remember very clearly that Dave Anderson was trying to give us more information but the Director of Finance put his hand on his arm and basically said he should not say any more. That was when I began to realise that we were not being told everything.
402. I have seen an opinion by Richard Keen QC, dated 14 January 2010, on the interpretation of the Infraco (**CEC00356397**). This had been requested by TIE in late 2009 or early 2010. While this is labelled as a draft, I understand that it was the final version provided and was substantially complete.

The opinion was later provided to the Council Solicitor and legal team on 12 April 2010 (**CEC00356396**).

403. The opinion makes a number of comments on TIE's position (at paragraph 13, page 9) and suggests TIE failed to take account of meaning of "*normal development*" of design leaving the Consortium free to seek further payment from TIE for Notified Departures.
404. This was the opinion of senior counsel engaged by TIE. It was not regarding the Infraco contract and so I do not remember being briefed on this or being given a copy of the report. My memory is clear that we were largely being told we were going to win until, at some point, it became apparent TIE was not winning. I do not remember being briefed by either Council Officers or TIE on the contents of this opinion.
405. In hindsight, I think that legal advice should have been taken before going into the disputes. The Council, as the ultimate stakeholder, should also have probably taken its own advice.
406. In hindsight, I think the reason that TIE and the Consortium had differing interpretations of the Infraco contract was probably because the contract was flawed. In my view it would have depended on the questions the lawyers were being asked by each party.
407. One of the clearest memories I have of the ETP is the repeated references to a 95 per cent fixed price. I suppose, in retrospect, this proved not to be case. As I have already discussed, unless you have got all your designs agreed there will be problems and increased costs. We were given assurances that this contract was robust and that would be 95 per cent fixed price.
408. I have seen emails amongst the Legal Officers and CEC Directors in January and February 2010 (**CEC00479797** and **CEC00480029**). These discuss seeking independent advice for CEC from Dundas and Wilson (a firm

of solicitors). There are a number of important Council Officers. Some of the key Legal Officers featured in these emails. However, I do not remember any information about this being given to councillors at the time.

*February 2010 budget meeting*

409. I have been referred to a chain of emails including an email sent to councillors Jenny Dawe (SLD), Phil Wheeler (SLD), Steve Cardownie (SNP), Iain Whyte (Conservative) and Andrew Burns (Labour) on 8 February 2010 (**CEC00492018**). This email was sent by a member of the public, Alison Bourne who expressed concern that reports prepared for the budget meeting of the Council on 11 February 2010 did not discuss the finances of the ETP. She specifically cited an adjudication that TIE was said to have lost in respect of works at Russell Road and the likely financial consequences of TIE failing to provide cleared sites to the Infraco.
410. The Council's budget was usually set annually at the Full Council meeting in February. Alison Bourne was one of my constituents who I spoke to on a number of occasions. While opposed to the ETP, she was very intelligent and detail focused. When she did have concerns about the ETP, I remember following those up with questions to Council Officers. The answers that I got, at the time, gave me comfort on the project. You had to take Alison Bourne's strong opposition to the project into account as well.
411. In terms of the issue she mentioned about Russell Road, I have no memory of being told about this. The Council was probably not advised of the implications of that decision.
412. Alison Bourne was concerned that there would not be sufficient headroom within the prudential borrowing framework to accommodate additional funding for the ETP. This question appears to have largely been answered by the Council Officer's response that is also found in that email chain (also in **CEC00492018**). As Alan Coyle (CEC Finance Officer) notes there

were a number of measures that could provide additional funding for a "controlled amount of prudential borrowing". This reply was copied to the CEC Finance Director (Donald McGougan) and seems like a reasonable opinion on the part of Council Officers. I would be inclined to accept it.

413. By February 2010, it was becoming clear that the project was not going to be completed within the envelope of funding. Obviously we were beginning to be concerned with the financial position. However, at the same time, Alan Coyle's email in February 2010 demonstrates that the Finance Officers were telling us that appropriate provision would be made if more funding was required.
414. There was concern from the Labour Group that borrowing would have to be obtained for the ETP and that that would have an effect on the budget. Anything that was borrowed would have to be paid back and that would have an effect on the revenue budget of the Council.
415. The Labour Group did use the additional borrowing as a means of bringing pressure to bear on the Administration about the ETP. That is why we made amendments to proposals expressing our concern that the costs associated with the ETP were getting out of control. However, as the opposition, there was only so much we could do. We could make all the fuss we liked but the Administration would not listen to us and we would be defeated in votes on the issue. It was very frustrating.

#### *Operation Pitchfork*

416. I have seen an email sent by Alan Coyle (CEC Finance Officer) to the Directors of City Development and Finance (Dave Anderson and Donald McGougan) on 4 March 2010 (CEC00474750). Alan Coyle attached a briefing note (CEC00474751), discussing what was called 'Operation Pitchfork'. This involved three options for the ETP: termination of the Infra-co contract; a partial conclusion of the project; and continuing to 'grind it

out' (continuing with the works and trying to solve all the disputes later on). As at March 2010, the briefing estimated that the ETP's costs were likely to be between £644m and £673m (at page 3).

417. I do not remember Operation Pitchfork ever being discussed with me as a councillor. I do not remember being advised of the levels of figures referred to in the documents around that time either. These were alarming numbers. They were discussing a figure of around £645m instead of the £545m we had in mind. My first recollection of figures at this level is from January 2011 when Sue Bruce (the new CEC Chief Executive) was appointed.
418. In February 2010, I do not recall being given a clear sense of what level of borrowing would be required. The Administration would have known about it. However, I do not remember these costs being discussed this early on. The costs were not, for instance, discussed in the later update report to the Full Council for its 24 June 2010 meeting.
419. It is sometimes difficult to place events in the chronology of the ETP. I think that it was obvious by this point that we were losing cases but I do not think these levels of costs were being discussed at this point. They were not even mentioned in the later June 2010 report (at paragraph 588 onwards below). I do not think that discussions about cutting the line short really came until the time of or just before the Mar Hall Mediation in March 2011 (at paragraph 701 onwards below).

*Letter from the Consortium*

420. I have seen a letter, dated 8 March 2010, sent by Richard Walker (of BB and the Consortium) (**CEC00548823**). The letter was addressed to Tom Aitchison (CEC Chief Executive), Donald McGougan and Dave Anderson (CEC Directors) and Councillor Gordon Mackenzie (SLD, Transport Convenor). In his letter, Mr Walker notes (at page 2) that TIE had sought to in-

sist that it had signed a fully fixed price lump sum contract when, in his view, the pricing assumptions and the adjudications on the interpretation of those pricing assumptions indicated that this was not the case. The letter went on to mention (at page 5), the existence of many notified changes to the works, additional costs of more than £100m and the likelihood of on-going legal proceedings.

421. I do not remember seeing this letter. Gordon Mackenzie did not tend to keep opposition councillors informed of matters or update us unless he was looking for our votes at Council meetings. It became very frustrating for Labour Group councillors as we were originally very supportive of the ETP.. One of the things that I learnt from this experience is that, as a convenor, you need to keep the opposition informed and up to date. We became very frustrated because we felt at the time we were not getting full information by Senior Officers TIE and the Transport Convenor. Equally, I do not think that we were told about this letter or any of the issues it raised by Council Officers at the time. I do remember briefings about both utilities diversion and design from Council Officers but I do not recall this letter.
422. I am not certain whether I was aware at this time that the Council and the Consortium were speaking directly to each other. Andrew Burns (Labour Group Leader) regularly asked the Council Leader (Jenny Dawe) whether she would consider meeting with the Consortium to try to resolve the dispute. The answers he tended to get from Jenny Dawe were very vague and I do not think she had met with them. She was leaving it up to TIE and to Council Officers to deal with rather than dealing with it politically as Council Leader.
423. I think that there is always a point in any project where, if your political antennae are well tuned, you start to realise that the project has the potential to go wrong. If you are politically astute, then you become more involved in the project in order to give it direction.

424. The parties to the dispute were blaming each other and things were at an impasse. That was the impression I got from briefings with Council Officers and TIE representatives who tended to blame everything on the Consortium. I think I also had the impression, through press coverage, that the Consortium were trying to respond to that.

*April 2010 update to Councillors*

425. On 9 April 2010. Jenny Dawe (Council Leader) sent an email to Labour Councillors Andrew Burns (Group Leader) and Ian Perry (Transport Spokesperson) (**CEC00235026**). This discussed an ETP briefing note she had put together for councillors and she noted: *"It has been a bit of a nightmare pulling together the few facts that tie, legal, financial etc would actually allow to be committed to paper."* . A final, or near final, version of the Council Leader's briefing note (**CEC00234967**) was attached to the email.

426. Andrew Burns would usually have ensured this briefing note was circulated to all Labour Councillors. Therefore, we should have received this and presumably other groups including the SNP did as well. From speaking to members of the SLD once they became the opposition (in 2012), there was a frustration on their part that information which was provided to the SNP in briefings would be leaked to the press. This would undermine the SLD position.

427. By April 2010 the project was getting out of control. There was distrust of the SNP Group. It was believed that anything committed to writing would be given to the press and briefed against the SLD and TIE. Then there was the legal advice as well. There was huge frustration from Andrew Burns and the Labour Group generally that the SLD were not in control of the situation.

428. We were briefed but, looking back, I do not think we were told all the facts. Whether it was misinformation and deliberate I cannot say. Certainly, looking back, we were initially given information by Council Officers, Senior Officers and by TIE which turned out to be incorrect. Later on, it became quite clear that the Council Officers did not believe that TIE could actually deliver the project. That is why they wanted to bring it back into the Council.
429. By this point you had the project starting to get out of control in terms of lost disputes, challenges with utility works and the wholesale disputes between TIE and the Consortium. As you look back on the ETP now, it was quite clear that Officers were aware the finances were getting out of control and presumably also doubted the delivery timescale as well.
430. I think the SLD councillors were out of their depth to be quite honest. Information was being leaked and as a result, people were very nervous that anything that was put in writing would end up in the press. As Jenny Dawe said in her email (at paragraph 440 above), it has "*been a bit of a nightmare*". It was a nightmare but, in my opinion, the Council Leader did not take control of it and nor did Gordon Mackenzie.
431. In terms of the briefing note itself (**CEC00234967**), it speaks about providing as much information as possible without compromising the on-going negotiations between TIE and the Consortium (at page 1). Under the heading "*Costs*" (at page 2), Jenny Dawe also mentions "*many wild projections*" as to costs. I do not know what she knew about the overall financial state of the project at this time.
432. The frustration was that this briefing note did not have enough information. We must have thought that the information we were being given was not actually telling us anything new. Jenny Dawe appears to be saying that some of the information required by Councillors simply could not be given

out. We, as Labour Councillors, were frustrated that we were not getting all of the information that was available whilst other people were.

433. My perception at this stage was that the SLD had realised the project was getting out of control and decided that they needed the support of the opposition parties.

*TIE's response to the Consortium*

434. On 19 April 2010, Richard Jeffrey (TIE Chief Executive), sent an email to the Group Leaders on the Council: Andrew Burns (Labour), Ian Whyte (Conservative), Steve Cardownie (SNP), Jenny Dawe (SLD) and Steve Burgess (Green, though this was a rotating leadership) (TRS00010706). This email set out TIE's position on the main matters in dispute. It noted the following points:

434.1. In terms of the understanding of the Infraco: *"there is disagreement over what is or is not included in the original 'fixed price' contract" and "the contractor is refusing to get on with the works in an attempt to coerce us into agreeing to change the form of contract onto a 'cost plus' contract."*

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

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

435. I think we became aware, through briefings, that TIE were losing on the disputes. I think we asked for details of why TIE was losing these disputes when we had previously been told that they would be winning them all.

436. In terms of the disputes we kept on being told that the decisions were confidential or financially sensitive. I do not remember if Council Officers considered trying to get these decisions in order to brief members. However, as I discuss later in this statement (at paragraph 616 below), it appears that the Consortium was willing to share them. I think the lack of information about the disputes did affect our ability to take decisions as we did not really have all the information.

#### *Project Carlisle*

437. On 21 April 2010, at a meeting in Carlisle, TIE and the Consortium attempted to negotiate a solution to the impasse. I have seen emails sent by TIE's Chief Executive (Richard Jeffrey) in July and August 2010 to the board of TIE, which included some Council Officers and certain Councillors (**CEC00387018**, **CEC00247389**). These emails summarise the development of these negotiations. The negotiations explored the option of building the tram to St Andrew Square for a guaranteed price and with a new completion date. I was not one of the councillors included on these emails. The Labour Transport Spokesperson, Ian Perry, was included. I note also that an SNP Councillor Tom Buchanan was included in these emails. I had not thought that the SNP took up its place on the board of TIE.

438. I have no recollection of being briefed on these discussions in Carlisle or what came out of them. They might have been mentioned in passing.

#### *June 2010 update to Full Council*

439. There was a meeting of the Full Council on 24 June 2010. Ahead of that meeting a report was prepared by the Directors of City Development and Finance (**CEC02083184**). This report provided an update on the state of the ETP. It noted:

439.1. *"The essence of the Agreement was that it provided a lump sum, fixed price for an agreed delivery specification and programme,*

- with appropriate mechanisms to attribute the financial and time impact of any subsequent changes...*" (at paragraph 3.3, page 4);
- 439.2. *"Whilst there have been disputes on design-related matters, as summarised above, it is normal in any large construction project for the scope of the project to change in marginal ways, for a variety of technical and commercial reasons"* (at paragraph 3.10, page 5);
- 439.3. *"The outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties."* (at paragraph 3.12, page 5); and
- 439.4. The full scope of Phase 1a (Airport to Newhaven) could not be delivered within the £545m available and it was "*prudent*" to plan for a contingency of 10 per cent above that due to the uncertainty around the programme and the cost of the project (at paragraph 3.40, page 9).
440. Looking at this report once more, I think it was very unsatisfactory. It gave no indication of the costs or timetabling for the project and did not really tell us very much.
441. By this time, I had started to doubt the assurances that had been given regarding the fixed price, lump sums included in the contract. I started to realize that we had not been properly informed.
442. In hindsight, I feel we were not given full information by Council Officers and TIE, but particularly Senior Officers of the Council.
443. By this time, it was also clear that TIE's position in the disputes was not as strong as we had been led to believe. It was beginning to look finely balanced whereas before we were being told that TIE would be winning. I

suppose at that time we were starting to question that and our belief in TIE suffered as a consequence.

444. At this time, I thought that it was sensible to begin planning for an added contingency of 10 per cent above the approved funding level. My understanding at this stage was still that the line would be able to run from the Airport to Newhaven for that amount. This belief was based on the information we were being given as Councillors at the time.
445. By this time, Councillors definitely should have been advised of the significant risk that the costs of Phase 1a would be higher than previously suggested. The level of risk had an effect on our decisions. I think we were beginning to question the information we were being given. At that time we were not aware that the costs were greater still. You look back at the documents in this Inquiry and the Council Officers were obviously aware that the costs were far higher than Councillors had been told. If you look at the report, it says that they could not be sure of the 95 per cent figure and that there might be problems. It was an unsatisfactory report because it did not give a clear picture of the costs and the timetable.
446. I do not think the additional contingency of 10 per cent was ever described as representing a doubling of the Council's contribution. There had been some concerns and challenges. We were losing some of these disputes and there had been difficulty with the utilities. Therefore, we needed to increase the contingency, but no indication; and if you read the report, you would just think everything was okay, it was not. If you think you are only going to increase contingencies by 10% well, you are thinking it cannot be a real problem. The report says, "There is serious contractual difficulties". What it says though, "The contractual programme remains well behind the required schedule, however, there has been some degree of progress in the construction at off street sections of the work". So, you think, well,

things are beginning to progress etc. and it gives you some examples there.

447. The 10 per cent increase in the contingency had not been included in the February 2010 budget meeting. Normally if there was going to be an increase in costs then Council Officers would brief us advising that those costs be put into the budget. The Council Officers had not, in February 2010, advised us to put any allowance in the budget for this increase in the ETP's contingency.
448. Part of the CEC initial £45m contribution was to be funded out of development. Given the downturn in the economy in 2008, the expectation was that we might have to find the money elsewhere. There were discussions of European funding, other means of finance or whether there would have to be borrowing. At the time, however, we were only talking about a relatively small amount of money as compared to the sum we ended up having to borrow
449. The 10 per cent contingency can be contrasted with the higher figures referred to in the context of Project Pitchfork. The different sets of figures do not seem to fit together at all. It seems that the Council officers/TIE were discussing this previously, knew the costs involved and were talking about figures that were black and white. Yet, they were not actually informing Councillors about these. We were not given any of that prior information.
450. It appears that councillors were, in general, given notice of cost overruns and difficulties only after those overruns and difficulties had occurred. I think we should have been informed earlier.
451. It has been noted that the DRP involved decisions meaning that significant additional sums were due under the contract and, in fact, that TIE accepted that some additional sums were due. There was a general frustration

that information was only given out after we could have no influence. All of those sorts of decision were being taken outwith the democratic process.

452. At this stage, I considered that the main reasons for the extra costs to relate to: the design issues; disputes over utilities; and the delays to the project caused by the delays in the utilities works. The design issues were probably the most serious ones.

#### **July to December 2010**

453. I have seen a note of a meeting between Council Officers and TIE representatives held on 20 August 2010 to consider TIE's Project Carlisle counter-offer (**CEC00032056**). The document noted a range of costs of between £539m and £588m for a route from the Airport to St Andrew Square and a range of between £75m and £100m from St Andrew Square to Newhaven. This gave a total range of £614m - £693m (at page 2). The document stated that these estimates were essentially a re-pricing exercise for the completed design (which was thought to be approximately 90 per cent complete) with the intention of giving TIE certainty (at page 4). The document also noted that in any of the scenarios, the pricing assumptions in Schedule 4 of the Infraco contract would no longer exist (at page 4).
454. I was not at these meetings and was not informed about them. I would have expected the Council Leader or the Transport Convenor to be there. That would have been the normal process and they would have been aware of this I would have thought.
455. I do not remember any further discussions at this time regarding the total costs that were likely to be involved in the project. We were probably operating on the basis of the 10 per cent contingency flagged in the June 2010 report (**CEC02083184**) (at paragraph 454 onwards above). I think the increases came later in 2010.

*The Consortium's October 2010 Letter*

456. I have been referred to a letter (**TIE00301406**), dated 13 October 2010, in which the Consortium wrote directly to all councillors. In that letter, Richard Walker set out the Consortium's views on the dispute. In particular he stated that:
- 456.1. Of the nine formal adjudication decisions issued, the Consortium had had six decisions in its favour and two split decisions (with the adjudicator finding that the principles of the contract were in favour of their argument). There was one decision favourable to TIE.
- 456.2. There was no objection, from the Consortium's position, in having the adjudication decisions disclosed to councillors so that they could evaluate the decisions for themselves.
457. As far as I can remember when we got the letter there were serious questions as to what we were going to do about the situation. The information provided by the Consortium did not accord with what Council Officers and TIE had been telling Councillors. We asked why we were not given this information by the Council Officers and TIE. We wondered why the Consortium were happy for there to be disclosure of the decisions. We started to have real concern in October 2010.
458. I think we were just a bit stunned. Until that point, the Consortium had not interacted directly with elected members. I recall that we thought it must be serious if they were writing directly to all councillors. The Consortium were saying that, with TIE's permission, they would be happy to provide evidence on the issues outlined above. They felt there were a number of issues such as delays that should be explained to us. They obviously believed they were not getting a fair hearing. This letter led people to wonder who was telling the truth. We were stuck in the middle in some ways. I think it was probably a bit of a wake-up call.

459. I do not think the adjudication decisions were made available to members. I think it was just through briefings that we had any sense of the adjudications. I think if we had had more details, it might have affected our decisions. Our understanding at the time of the letter was that TIE would win the adjudications. That was based on what we had previously been told.
460. On 10 October 2010, TIE's Head of Public Affairs (Mike Connolly) sent an email to councillors (TIE00463778). This email was not directly in response to the Consortium's letter, as it came before it. Nonetheless, it gives a sense of where TIE thought it stood in early October 2010.
461. The information being provided by TIE seems to be almost the direct opposite to what the Consortium was saying. This is why we were asking who was telling the truth. In the letter from the Consortium, they were saying they would be happy to disclose information. We were frustrated. We did not feel that we were being treated properly. Then we received an email around about the same time from TIE. That email gave us assurances and noted various positive aspects of the project such as the successful manufacturing of the trams and the utilities works.
462. As I say, we got a letter from the Consortium saying the project was disastrous and that they were happy to make everything public if TIE were. Then, on the other hand, we were getting TIE's Head of Public Affairs telling us that everything was not really as bad as the Consortium were making out. That is how I read it anyway.
463. Our group's strategy was to ask for information from the Council Officers but overall, at that time, I think we just felt frustrated. I do not remember any reaction to the letter by the Administration. To be honest, I think by that time we just felt as if we were hitting our heads against a brick wall. It did not matter how many briefings we got or how many questions we asked, we were getting nowhere.

*October 2010 Update to Council*

464. There was a meeting of the Full Council on 14 October 2010. It may be that the Consortium's letter was partly in response to any reports that were published in the lead up to that meeting and to which the Consortium felt it had to respond. They probably thought the report of Council Officers did not reflect their discussions.
465. A report on the ETP which was prepared for the Full Council meeting on 14 October 2010 by the Directors of City Development and Finance (CEC02083124). The report contained a number of different points:
- 465.1. It was prepared in response to a Council motion of 24 June 2010 requesting an update of the Business Case for the ETP including details of the capital and revenue implications of the options that were being considered and changes from any of the original assumptions involved (at paragraph 1.1, page 1);
- 465.2. Contingency planning work had been carried out by TIE and CEC to identify funding options for up to £600m in costs though "*[d]ue to the current uncertainty of contractual negotiations, it is not possible to provide an update at this time on the ultimate capital costs of the project*" (at paragraph 3.1, page 8);
- 465.3. There was no overall update on the total costs estimate for the ETP despite the Project Carlisle estimates being known to Council Officers (at paragraph 468 above);
- 465.4. It was said that: "*[t]he overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties*" (at paragraph 2.50, page 7); and
- 465.5. Termination of the contract was one of the options under consideration and extensive, on-going legal advice was being sought to assist with this (at paragraph 2.52, page 7).

466. I have reviewed the minutes for that meeting of the Full Council as well (CEC02083123).
467. By this time, I did not really believe that the Senior Officers, TIE or the Transport Convenor were providing us with accurate or sufficiently detailed information. For every meeting that went on about the ETP, I felt a sense of despair. The financing, timetable and the outstanding dispute with the Consortium were just spiralling downwards.
468. In terms of the extent of the line that was to be built, it was clear that Line 1b would not be built. The June 2010 meeting of the Full Council is not that far removed from this. However, all of a sudden between August and October, there is a massive change in the language of the reports and the picture that we are being given by Council Officers. It appears now, looking back at the evidence, that Council Officers had known that information long before that change. I do not know whether senior elected members were aware of it as well. By October 2010, it was very clear that 1b had gone and we knew that. There was also clearly a need for was a contingency of 10 per cent which would take the project up to £600m. Additionally, it was clearly questionable whether Line 1a would extend to Newhaven for that amount. This is when the possibility of shortening the line started to become clear.
469. We no longer believed that the DPRs remained finely balanced. We were beginning at that time to believe the disputes were being won by the Contractor and not by TIE. the briefings began to give us an indication of this outcome..
470. I was not aware of the Council getting any written legal advice at that time. I was aware that we did have lawyers who turned up to the Labour Group and gave us verbal briefings. I suppose by this time I was beginning to not believe anybody, to be quite honest.

471. My recollection following briefings TIE and the Council worked together and were almost totally aligned against the Consortium. but it became clear the Council Officers were coming to believe that TIE could not do the job. I would say that probably happened around this time. The Council Officers did not seem to believe in TIE could finish the project. Council Officers, and particularly Alastair MacLean who was relatively recently appointed (at the start of 2010), were beginning to feel that way.
472. It has been noted that councillors were, on this occasion, unhappy with the level of detail that had been provided and requested a more detailed update of the Business Case. I think, again, that this report says very little or provides very limited details. That is part of the frustration. It is not actually telling you what action was needed to be taken. At this time it was very clear there was doubt about achieving the whole of Line 1a as it mentions things like *“revenue running from the Airport to St Andrew Square”* (CEC02083124 at paragraph 2.24, page 4 ). The report is still talking about the 10 per cent contingency for a total funding of £600m. However, it now also mentions incremental delivery.
473. The report’s recommendations (at paragraph 6.1, page 9) note that a report on next steps is to be prepared for the December Council or possibly an earlier special meeting on the next step. They have said they have refreshed the Business Case and they noted a *“disappointing lack of progress”*.

[Suggest that anything further arising out of the minutes be addressed here]None

*November 2010 – discussions within CEC*

474. I have seen a number of documents which were circulated amongst the Legal Officers at the Council in November 2010. These include:

- 474.1. An email, dated 4 November 2010, in which Alastair Maclean (CEC Head of Legal) stated that CEC would *instruct* “our own independent analysis of TIE’s position by CEC’s QC”. It also noted that McGrigors had been appointed to lead the Council’s legal review in place of DLA (CEC00012984);
- 474.2. Emails dated between 22 and 30 November 2010, in which Alastair Maclean expressed certain concerns about TIE and the legal advice received by TIE (CEC00013411, CEC00014282 and CEC00012450);
- 474.3. An email, dated 30 November 2010, in which Nick Smith (Legal Officer) expressed his personal view on the performance of TIE and DLA (CEC00013550); and
- 474.4. An email (CEC00013441), dated 24 November 2010, to Alastair Maclean from Richard Jeffrey (TIE Chief Executive) which addressed a number of issues in the legal background and stated: “if the [C]ouncil have lost confidence in [TIE], then exercise your prerogative to remove [TIE] from the equation.”
475. I had not seen these emails prior to the Inquiry. It appears clear from them that the Council Officers were losing confidence in TIE to deliver the project on timetable and on budget. These particular Legal Officers appear quite clearly to have lost confidence in TIE.
476. At the time, if I remember correctly, we had a sense of that in some of the briefings as well. There was quite a stark change in terms of attitude. I think it had to do with TIE losing disputes as well as the staff and board members of TIE who kept leaving. However, it may be that there was just a change in the Council Officers. Either way, it was clear that they had lost confidence in TIE and they were considering whether they needed to bring the ETP in-house.

477. I remember TIE asked for legal advice, but I do not think that was seen by the Council Officers as reliable. I mean it depends what question you ask a lawyer. I am assuming that Alastair MacLean felt uncomfortable about the way that TIE was asking those questions and seeking that advice. As such, he did not have confidence in the legal advice obtained by TIE. I do not remember the Council instructing their own QC, but I am assuming that may have led to the total loss of confidence in TIE.
478. There did come a time when Council Officers started to lose confidence and it was probably between October and December 2010. Council Officers gave an impression of losing confidence at briefings and they were beginning to say that they too just did not believe what TIE was saying to them.
479. I think probably Councillors lost confidence in TIE before Council Officers did. Councillors lost confidence in TIE between August and October of 2010. That was because of the Consortium's letter and all of the disputes. It is interesting and it is hard to answer because when you look back at some of the documentation it clarifies my view that we were not being told the whole truth. Council Officers were not giving us all the information at the time. By October 2010, I had probably lost confidence in Senior Officers and in TIE. I am not sure if, because of that, Council Officers then said that they had lost confidence in TIE or whether there were other reasons.
480. I have been referred a note produced for the Council Monitoring Officer (CMO) by Alistair Maclean (Head of Legal Services) on 17 November 2010 (CEC00013342). It records that, on 16 November 2010, Richard Jeffrey (TIE Chief Executive) advised Alastair Maclean of certain serious concerns he had in relation to events at the time the Infracore contract was entered into.

481. The CMO was Jim Inch who was also the Director of Corporate Services. A CMO is an officer within the Council required to uphold certain public standards and the integrity of the Council.
482. I was not aware of this document or these concerns until they were made available to me as part of the Inquiry. The fact that the memorandum is marked "*highly confidential*" probably means it was not circulated to councillors.
483. These are Richard Jeffries' comment in November 2010, several years after the Infraco had been signed. They seem to come a little late. I think that, by this point, he had been in post for at least a year. If he had a problem with these matters then I would have expected him to look at them earlier on.
484. I think the CMO should have made Senior Officers and Councillors aware of these concerns. I was not made aware of them but I do not know if other councillors or Senior Officers were.
485. I have been seen a report prepared for the Council's IPG which was meeting on 17 November 2010 (CEC00010632). It provided a number of different cost estimates for the different scenarios (at item 5, page 4). To complete the whole of Line 1a (Airport to Newhaven), the draft estimate varied between TIE's estimate of £662.6m and the Consortium's estimate of £821.1m. At that point in time, it appeared that a line to St Andrew Square could be delivered for between £545m and £600m.
486. I had not seen this document prior to the Inquiry. These were financial updates as at November 2010 giving outcomes in terms of figures. I think at this stage, Councillors were beginning to become aware there was a massive increase involved. Whether we knew that at this point, or whether we knew all of these details, I cannot remember.

487. By the end of that year, it was beginning to be clear that Councillor Dawe had probably been briefed and probably knew how bad the situation was. I inferred that from her emergency motion asking for mediation. I think she realised that the situation would not be resolved without mediation.
488. My recollection is that costs involved only became really clear around the time of the mediation. I think when that happened we were all quite shocked.

*November 2010 – CEC's dealings with other parties*

489. While there was a lot of internal discussion of the ETP in November 2010, the Council was also dealing with a number of other parties involved in the ETP. I have reviewed a number of documents. These included:
- 489.1. On 5 November 2010, Richard Walker wrote to councillors on behalf of the Consortium (**CEC00013012**) regarding the resignation of David Mackay as the Chair of TIE. His view was that it was not helpful in progressing the ETP or in resolving the overall impasse between TIE and the Consortium. Richard Walker urged CEC to distance itself from comments made by David Mackay about the Consortium;
- 489.2. A letter dated 15 November 2010 from Tom Aitchison, the CEC Chief Executive, to Richard Walker (**CEC00054284**). This letter reiterating that the Infraco was a matter largely between the Consortium and TIE. Tom Aitchison did, however, suggest that Senior Officers could meet, on a 'without prejudice' basis, with the Consortium.
- 489.3. An emergency motion, which was tabled by Jenny Dawe (Council Leader) and was passed by the Full Council at its meeting on 18 November 2010 (the minutes of that meeting are (**CEC02083139**)). The motion mentioned (at item 23, at pages 21-

22) that, on 16 November 2010, the CEC Chief Executive and Jenny Dawe had met with John Swinney MSP, the Scottish Government Cabinet Secretary for Finance. It was also believed that John Swinney had met, at around this time, with the Consortium.

490. I was concerned about the manner of the appointment of David Mackay initially and the way the project was conducted when he was the Chair of TIE. If I remember correctly, I think we moved against David Mackay at one point during a Council meeting. I cannot remember whether this was done formally but I was concerned about the process of him being appointed the Chair of TIE.
491. I had come across him previously when I was Lord Provost (2003 – 2007) and he was the head of the Scottish Rugby Union (SRU) I knew him from attending matches. I remember some of his unhelpful comments that ended up in the press. There was almost an anti-German sentiment to his statements.
492. It was a question of attitude. I remember at times, during briefings, he would just say that TIE was going to win the disputes and was going to 'get' the contractor. It was the kind of confrontational language which does not get you very far. I think you need to sit down with people and talk to them. I think he was probably not the best appointment and it was because of his attitude. I do not know whether David Mackay's resignation was entirely of his own accord or if it was suggested that he resign.
493. I was not aware of the meetings involving John Swinney. Of these documents, I was only really involved with the emergency motion at the meeting on 18 November 2010. I think Jenny Dawe (Council Leader) began to realise at this point she had to do something. I assume she was told by John Swinney as well that she needed to do something about the state of the project. I presume that is why she tabled an emergency motion for

mediation. I assume that the Council at that time believed that we could not resolve matters without mediation.

494. In relation to Tom Aitchison's letter of 15 November (**CEC00054284**), I think Council Officers decided that they would remove TIE from the project and deal with matters in-house. The letter discusses the availability of several Senior Officers but makes no mention of TIE. Overall the impression is that the Chief Executive, Council Leader and John Swinney had all reached the conclusion that TIE should be removed from the project and that they should try to reach a resolution through mediation.
495. The report to Council in October 2010 (**CEC02083124**) was the first real indication to councillors that:
- 495.1. We were probably not going to get line 1a all the way down to Newhaven within the funding budget that we had;
  - 495.2. TIE and the Consortium were at loggerheads in terms of the disputes; and
  - 495.3. There was a breakdown in the relationship also between TIE and the Council Officers.

It may well be that others were already aware of all of this before it was brought to the attention of councillors in October 2010.

496. There was, at this point, a move to try resolve matters through mediation. If I remember correctly, there were also some discussions, probably at this point, about cutting ties altogether with the Consortium and getting rid of the existing contract. It was clear that from what the Council Officers were saying, including input from Alastair Maclean, that this was not a solution to the problem. We would spend years in court and the project would be delayed whilst the dispute was litigated. We needed to get to some sort of resolution to at least get part of the line up and running. We were trying to

cut our losses and finish the contract. We wanted to get something out of the mess that we were in.

497. I have been asked whether there were greater moves, on a political level, to involve the opposition in the ETP.
498. The Administration began to realise that more involvement was needed from the opposition. However, that realisation did not come until slightly later on. To be honest, it was not until Sue Bruce became involved (in early 2011) that we ended up with full disclosure. Learning from this experience, as I discuss later in this statement (at paragraph 804 below) I realised that the project was only going to meet its revised budget and revised timetable by having all party support involvement.
499. I cannot speak for the SNP Group on the Council, but generally there was not a good relationship within the SLD/SNP Administration. The decision of the Scottish Parliament to support the ETP with £500m (in 2007) had gone against what the SNP wanted. The documents produced by the Inquiry discuss the TPB and there seems to be some suggestion that John Swinney MSP had essentially told civil servants to withdraw from the ETP (at paragraphs 730 - 733 below). As far as I am concerned, the SNP Government wanted nothing to do with the ETP (other than paying the £500m). It was very clear that the SNP, both locally and nationally, did not support the ETP. They only became constructively involved at this point because they realised it was damaging everybody. That meant the SNP Group, for instance, voted with the SLD to get things through despite their stance and their amendments against the ETP.
500. I think the Council should have met with the Consortium at an earlier stage. The Labour Group Leader had asked the Council Leader on a number of previous occasions why she was not meeting the Consortium to resolve the dispute. It was a question of when she was going to intervene or take a higher profile. She was the Council Leader and she was a politi-

cal leader. The project was becoming a mess and she was not acting. As the opposition, all you can do is continue to ask questions.

501. I have been asked whether there had been any moves by the Chief Executive (Tom Aitchison) to independently try to resolve the situation prior to this point.
502. I do not know if there were any moves by the Chief Executive (Tom Aitchison) to try and resolve the situation sooner.

*December 2010*

503. I have been viewed the notes of an initial meeting between Consortium representatives and some Senior Officers on 3 December 2010 (**CEC02084346**). Alastair Maclean (Head of Legal) and Donald McGougan (Finance Director) attended on behalf of CEC and the Consortium was represented by Richard Walker of BB and Antonio Campos of CAF.
504. I did not have access to these notes at the time though I was vaguely aware that Council Officers were meeting with the Consortium. It seemed as if TIE had been taken out of the picture and the Council Officers were beginning to try to resolve things.
505. There was a change in the approach of Council Officers in keeping councillors updated about the ETP from October 2010. At this point they realised that they had to start keeping us informed.
506. If you look at all the evidence there were indications that the costs were spiralling out of control, it was going to be a lot more expensive and the contingency was not going to be able to do it. For all of this, it is worth bearing in mind that, while I was a Councillor, I was not one of those who sat on the relevant boards. Nor was I a member of the TIEC or TPS. My exposure to matters was more limited until I became Labour Transport Spokesperson in about April 2011.

507. There was a further meeting of the Full Council on 16 December 2010. The Chief Executive prepared a report for that meeting (CEC01891570). The report provides a summary of the refreshed Business Case and includes a redacted copy of that document (at page 7 onwards). The report and Business Case noted that:

507.1. Discussions about the mediation between the Council and the Consortium would commence in early 2011. By their nature, these discussions had to be conducted confidentially. Detailed reports on the mediation process could not be given until it was completed or decisions requiring the Council's consideration came out of the process (at paragraphs 3.4 – 3.5, page 3); and

507.2. If the Council opted for a line from the Airport to St Andrew Square then that was capable of being delivered within the £545m funding commitment (at page 10).

508. I have seen two further documents related to the December meeting:

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

508.2. The minutes of the Full Council meeting on 16 December 2010 (CEC02083128). These record a successful amendment, proposed by the Labour group, which required that the refreshed Business Case be reviewed by consultants specialising in public transport who had had no previous involvement with the ETP (item 13, at pages 20 – 23).

509. I think it is important to look at the minutes of this meeting and the voting on it (item 13, pages 20 – 23):

- 509.1. The SLD initially moved a motion just taking the position noted in the report.
- 509.2. There was then a long, quite detailed Labour amendment (seconded by the Conservatives). This expressed regret that there was no detailed information on the delivery of the project beyond St Andrew Square. It expressed regret at the failure of the SLD/SNP Administration to carry out earlier decisions of the Council. It asked for an external review of the refreshed Business Case.
- 509.3. The second amendment came from the SNP and just repeated their opposition to the project as a whole.
510. As can be seen in the minutes of the meeting (at page 23), Councillor Mackenzie actually withdrew the SLD motion as he knew that they could not win the vote on it. This left voting between the Labour amendment and the SNP amendment. The Labour amendment was ultimately supported by the SLD, Conservatives and our group. This meant that the SLD ended up voting for a motion condemning their own failures.
511. Since the SLD Administration had voted for our amendment which condemned the report and sought an independent review, my views were not to believe them on either the timetable or the funding levels suggested. I do not think that a line could have been built from Edinburgh Airport to St Andrews Square for £545m at that time.
512. Our amendment also makes it clear that we did not feel we had all of the information that we should have had, particularly as to the alternatives available to us.
513. The decision to seek a review by independent transport consultants came out of a loss of confidence in the Senior Officers and in TIE. There was a mistrust of the information that had been provided. I am not actually sure

what happened to the proposed review. I think it is likely that, with the move towards mediation under Sue Bruce (the new CEC Chief Executive as of January 2011), this was put to one side. It would not be sensible to spend time and resources on reviewing the Business Case if we were actually moving towards something through the mediation process.

514. We had briefings about the approach that TIE/CEC proposed to adopt to the mediation. However, I cannot remember the details of anything we might have been told about the approach.
515. The amendment also contained mention of the future governance arrangements of the ETP. As I discuss later in this statement (at paragraph 655 onwards below), the governance of the project was a frequent issue. The point in the amendment concerned Lothian Buses and integrated governance for transport. We wanted to have similar management in terms of having ticketing, transport integration and so on.
516. I have been asked whether there was discussion of whether councillors should be more involved in the governance and scrutiny of the project at this point.
517. There was discussion about the future governance of the project. Ultimately, as I discuss later in this statement (at paragraph 671 onwards below), there were significant changes in the governance of the project and Councillor involvement in the project. However, those changes largely relate to the period following mediation in 2011.

## **2011 to completion of the ETP**

### **January to June 2011**

#### *Replacement of CEC Chief Executive*

518. The Chief Executive of the Council, Tom Aitchison, retired at the end of December 2010. He had been the Chief Executive of the Council throughout all of the matters I have discussed to this point.
519. Tom Aitchison was replaced by Sue Bruce in January 2011 and she served as Chief Executive through to the completion of the ETP including when the Administration of the Council changed following the 2012 local government elections.
520. Both the Council Leader and opposition councillors were involved in Sue Bruce's appointment. One of the key reasons for her appointment was that she viewed sorting out the trams as a priority. The councillors who selected her would have been aware of her background (as Chief Executive of Aberdeen Council) and of her resolving particular financial issues that there had been there. It was generally agreed that whoever was chosen as the new chief executive had to have someone who was willing to come in and sort out the trams. She was therefore well aware of the challenges. She had experience of resolving financial problems. She understood the importance of involving all elected members. It was definitely a different attitude.

#### *January 2011*

521. I have reviewed the 'Highlight Report' for the CEC Chief Executive's IPG meeting on 21 January 2011 (CEC01715625). The report highlights a number of different points in the lead-up to the mediation (at page 8). In particular it was noted that:

- 521.1. Two QCs who had been instructed separately by TIE and CEC (Nicholas Dennys and Richard Keen respectively) had both advised that the leading option would be *"to seek to enforce the contract until grounds of termination could be established as a result of a failure to perform the works"* as this *"would also place [TIE] in the strongest position with regard to any mediation/negotiated settlement"*
- 521.2. It was *"unclear to what extent there [had] been a rigorous approach by [TIE] to enforcement of the contract pending the outcome of [the Project] Carlisle negotiations and the focus on the termination option"*.
- 521.3. At the time of the report, TIE *"appear to be in a weak position legally and tactically, as a result of the successive losses in adjudications and service of remediable termination notices which do not set out valid and specific grounds for termination"*.
- 521.4. It was thought that the Consortium was extremely well prepared.
- 521.5. In considering a mediated or negotiated outcome rather than legal disputes: *"there was a desire commercially and politically to move towards mediation notwithstanding [TIE's] (apparently) relatively weak tactical and legal position. That is likely to have a financial implication with the Infraco as the party in the stronger position faring rather better out of it than might otherwise have been the case. Against that there are financial and other costs involved in allowing matters to continue."*
522. Bob McCafferty, a Council Officer, was mentioned in the report and I remember there being Council Officers seconded to and based within TIE. I think that this was done to effectively take TIE out of the project.
523. I am sure that we, as Councillors, were told that if we were to try to terminate the contract then we would spend years in court. It would be better to

try mediation on the ETP so the project would not stop completely. That way, we would at least have something to show for the funding that we had already spent. I cannot remember the exact figures. However, a large amount of money had already been spent by that time. Overall, it was better to try mediation, get the project sorted with the existing contractor, have the trams up and running and move on after that.

524. It is quite clear from this document that TIE's advisors had not carried out a comprehensive assessment of the full factual matrix. I am sure it would have been something that came up. This would have been after Sue Bruce had started. It would have been Alastair MacLean giving the presentation to try and persuade us mediation was the right way to go forward.

*Mar Hall Mediation – March 2011*

525. Mediation talks took place at Mar Hall in Glasgow in March 2011. I was not really involved in the preparations for the mediation. Andrew Burns (Labour Group Leader) and the Ian Perry (Labour Transport Spokesperson) would have been closer to the issue. There would have been some discussion with our group representative and I remember there was some information. We were told what would be set out in the mediation and what the Council Officers would be talking about in those talks. I think we were told clearly what the outcome that we were seeking was and what the options were.
526. There was interaction between the Council Officers who were leading the mediation effort and the Group Leaders and the Spokespeople/Convenor rather than every councillor. I think we had briefings, probably not in quite enough detail, but I think it was better than what we had previously had.
527. My views on that outcome of the mediation was that there was no real alternative. We would only get half a line for all that money. However, if we terminated the contract, we would have spent millions upon millions of

pounds for nothing. My view was they had probably got the best deal they could and at least the work would start again. The ETP would start moving and we would start actually getting something done.

528. I think by that time I had totally lost trust as I have already discussed. I think it just clarified exactly the mess Officers/Senior Councillors and TIE had got us into. There were alternatives offered in the mediation. It was originally a line to St Andrew Square then it shifted to the two options of York Place or Haymarket. The cost was far higher than most of us expected but I think we were coming to a conclusion we were not going to get the whole line for the £600m we had been told. I cannot comment on whether it was a good deal or bad deal. At that time, I think you had to trust that there were new Council Officers in place who seemed to be more open. Some other people who had experience were then brought in as well. We thought that it was the best deal we were going to get.
529. The outcome of the mediation did not immediately change my view of the Consortium. That probably came later on and that was all to do with individual relationships. My experience is that if individuals can get on with each other and can work with each other and trust each other, things go more smoothly. There was obviously a breakdown in relationships between the Consortium, TIE and the Council Officers. I got the feeling the Consortium believed that they had been damaged by this as well so they wanted a resolution to it.
530. I was not there at the mediation, but I believed that Sue Bruce had been brought in to deliver the best deal she could for the Council and to get the ETP up and running. That was all about trust as well.

*Post Mediation – March to June 2011*

531. The Full Council met, in a special meeting, on 16 May 2011 following the Mar Hall Mediation. I have reviewed the minutes of that meeting

(CEC01891389). A report to the Council by the Director of City Development (CEC01891505), which was noted in those minutes, recorded that work had started in certain priority areas under a minute of variation, pending the final Settlement Agreement. It stated that detailed costing work was still being carried out in order to prepare a final budget (at paragraphs 3.6 and 4.1, pages 2 & 5).

532. I think his meeting was probably called by the Administration. The Lord Provost has a power as mentioned in the minutes (at item 1, page 2) to call special meetings. The Administration probably called the meeting because they would want everyone to be updated. They would not want to leave it until the next Full Council meeting because they were trying to achieve a resolution to the disputes.
533. I have been asked whether councillors were updated on the outcome of the mediation including, in particular, on the prices discussed for on-street and off-street works.
534. I cannot remember if Councillors were updated on the prices discussed for on-street and off-street works at the mediation. I do not think this was discussed with opposition members. Following the Mar Hall Mediation, there were discussions regarding: the options available and the agreed costs for those options. However, I cannot remember if I was advised of how the costs were made up.
535. The special meeting resulted in a decision adopted by the Council without a vote. This suggests it was agreed by all parties and the wording of the decision was the result of contributions by all parties.
536. The minutes also discuss the outcome of the mediation about the Princes Street road surface. This may be the time when the road surface had been put down and they had to dig it up again, I cannot remember whether it was then or later on.

537. I think the opposition must have made a fuss about proper notice of some of the information. That is why the decision says *“To instruct the Chief Executive to ensure the next Council report on the Tram project, scheduled for 30 June 2011, was in the public domain a full seven days prior to the Council meeting”*.
538. Another part of the decision, which may have also been included at the Labour group’s request, was to provide detailed figures and analysis of the cost of cancellation. This was requested so that councillors could compare the financial effects of cancellation with the cost of continuing to St Andrew Square. In order to do this, we required assurances about the accuracy and sourcing of this material. Given further information was requested, I can only assume that we had not been given all of the details at that meeting.

*June 2011 – Council Update*

539. There was a further Full Council meeting held on 30 June 2011. Dave Anderson (Director of City Development) provided a further report for councillors on the options available for the ETP (**CEC02044271**). The report noted a number of points and recommendations. In particular it stated that:
- 539.1. Disputes about the Infraco started at an early stage as the parties tested their interpretations of the contract. Legal difficulties were also exacerbated by delays to the utilities works, slow completion of design work and difficult ground conditions (at paragraph 3.25, page 5).
- 539.2. There were a number of options available to the Council for resolving the difficulties faced by the ETP (at paragraphs 3.31 – 3.47, pages 7 - 10).

- 539.3. Council Officers' recommendation was that the Council commit to completion of the line up to St Andrew Square/York Place (at paragraph 8.1, page 20).
- 539.4. Estimates of the costs of that option ranged between £725m and £773m depending on the risk allowance that was adopted (at paragraph 3.42, page 8).
540. I have also reviewed the minutes of that meeting of the Full Council (CEC02083232).
541. At the time, I was not sure that a line to St Andrew Square/York Place, as recommended by Council Officers, was the best option. We were getting half the line originally proposed for at least an extra £250m. The line originally proposed was Newhaven to the Airport. One of the aims of the ETP proposal was the regeneration of Leith and Granton with that being linking to the high density of those areas, the low ownership of cars in the area and the provision of a low carbon solution. However, we seemed to be paying another £250m extra for half a line to St Andrew Square/York Place. I did not think it was the best option.
542. At the time, the best option seemed to be to go to Haymarket. We had long discussions about it within our group and we were briefed on it. My real impression was that the Council Officers were determined that the line was going to go to St Andrew Square. For example, there was analysis of passenger figures and it was said that the system would break even in terms of revenue if it went to St Andrew Square/York Place. By contrast, we were told that if the line only went to Haymarket it would need to be subsidised by hundreds of thousands of pounds a year.
543. I remember asking Ian Craig, who was in charge of Lothian Buses at that time, about what information he had been asked for by the Council Officers regarding the two options. He said that they had been asked for information about St Andrew Square/York Place but not about Haymarket. I

was not satisfied with the robustness of the figures for St Andrew Square/York Place. However, the Council Officers had asked Lothian Buses to provide information. In contrast, the Haymarket option had not been fully explored. I think we were being misled in terms of the patronage and revenue figures. The more we asked questions the more we felt that the St Andrew Square/York Place option was the officers preferred option and that the Haymarket option had not been properly investigated.

544. In terms of finance, I cannot remember absolute sums, but we would have to borrow the additional sums. It would be thirty years of borrowing, meaning thirty years of paying back money from the revenue budget.
545. There was also the issue of disruption because you then had the whole of Princes St, the whole of the West End which had suffered. That had to be taken into consideration. Later on, when I became Convenor, I used to meet all the businesses who, by that time, were suffering. To have all that disruption again for all that money did not seem worth it.
546. Ultimately, the city would be getting half a line, the line would not go where we wanted it to go, there would be £250m extra to borrow and I was not satisfied about the accuracy of the figures to St Andrew Square/York Place on which we were being asked to make a decision.
547. I was not convinced about the on-going subsidy that was said to be needed for the Haymarket option. I also had concerns about the true cost of borrowing and other aspects. Although by this time there was a new Chief Executive, we were still sceptical of some of the things that Council Officers told us. It was difficult to make an informed choice between options when you do not trust what you are being told
548. I was concerned about what we were going to be getting from the project. It was damaging for the reputation of the Council and the city. The estimate for the price of the lines would have been agreed at the mediation at

Mar Hall. However, as I have said, I really had massive concerns regarding those estimates. It was very clear that the Council Officers wanted the line to go to St Andrew Square/York Place. Everything was done in terms of figures to put that as the preferred option. It felt skewed towards a certain option.

549. Experience from similar projects indicates that once you have got a tram up and running, people like the experience, tend to use it and then they want more. This supported the option of building to Haymarket in the first instance. The line up to Haymarket was all off road which meant you could get it up and running with less difficulty. The idea was that, once the tram was up and running, we could subsequently look at them taking it from Haymarket all the way down to Newhaven. That was the reasoning behind my views at the time.
550. This was also the Labour group's position. We had long discussions about it and we came to that position by going through all those reasons. The key factors were: the borrowing of money; the disruption; the need to get the tram operational as quickly as possible; and the desire to get out of the contract as quickly as possible. We did not want to cancel the contract because we would end up with nothing. By agreeing a line to Haymarket we would at least have something up and running.
551. In terms of the other political parties, I think that the SNP maintained their line that the project was nothing to do with them, that they did not want to make a decision about the ETP.. I believe the SLD would have been in favour of building the line to St Andrew Square/York Place as they tended to accept recommendations from the Council Officers. Both The Greens and Tories supported the Tram Project. They were generally in favour of the ETP. Like the Labour Group they thought spending was out of control and were concerned by the borrowing involved.

552. There is some discussion in the report of confidential appendices which were provided to members (CEC02044271 at paragraph 3.39, page 8). I cannot recall what these were. Presumably they were confidential because the Council Officers did not want to show their hand to the Consortium. Even though there was agreement with the Consortium, they still wanted to get the best deal possible for the Council.
553. The discussions between Council Officers and councillors were certainly more open by this time. Sue Bruce was far more open and far more honest. She was also better at seeking all-party support for proposals. However, I think at that time there was still a lot of mistrust of the information we had been given.
554. The Council would be required to borrow money in order to fund the completion of the line to York Place. I think that we were told there was an opportunity to borrow at this point as some previous borrowing for projects had come to an end. At the time, we borrowed at the best rate that we could. The borrowing is repayable over thirty years. This means millions of pounds will need to be allocated for this every year for thirty years. I do not think anyone identified any specific projects that were not going to be carried out because of this additional borrowing.
555. I remember asking detailed questions about the costs if we were just to abandon the project. While I cannot remember the detailed figures, there was the prospect of court proceedings. We did not know how long that would have taken. Whilst the litigation was ongoing, things would be frozen or half-built. That was one of the reasons the Council wanted to proceed with the project: cancellation could have cost more than actually building the line.
556. In terms of governance of the project after the Mar Hall mediation, I had thought that TIE had been dissolved by this point. However, I note that the report's recommendations discuss authorising TIE to carry out priority

works and authorising the CEC Chief Executive to enter into the Settlement Agreement (at paragraph 8.1, page 21). TIE were still involved to some extent but it was really the Council who had taken over the project by this point.

557. I think that the first step was to get a decision on the options. Once that had been done we required to reach a negotiated settlement based on the agreed option. How it would be managed was a part of the discussion. I think Colin Smith (an independent engineering consultant) who had previously worked with Sue Bruce had been at Mar Hall to assist. As opposition councillors we did not have a full view of what was happening. However, I think a number of things were being done. The first was sorting out the contractual situation and trying to determine what the project would cost. There were also discussions about how to get all parties politically involved in the project. This was necessary to ensure control of the revised budget and timetable.
558. At the June 2011 meeting we ended up asking for further reporting on the ETP and so the decision as to which option to adopt did not end up being considered until the August 2011 meeting.
559. The minutes of the June 2011 Full Council meeting (**CEC02083232**) also show that I was appointed to the TIEC (at Appendix 2, pages 30 – 31 of **CEC02083232**). This was because I had recently become the Labour Transport Spokesperson.

## **July to December 2011**

### *August and September 2011 Council Meetings*

560. August and September 2011 were important in making final decisions on the extent of the line and the concluding of the Settlement Agreement. There were two Full Council meetings which were crucial to making these decisions:

- 560.1. A scheduled Full Council meeting was held on 25 August 2011;  
and
- 560.2. A special Full Council meeting was called for 2 September 2011.
561. In advance of the Full Council meeting on 25 August 2011, Dave Anderson provided a further report (**TRS00011725**). This responded to our requests for further information expanding on the June 2011 report (at paragraphs 555 & 574 above). This further update on the project noted:
- 561.1. There was a requirement for funding of up to £776m for a line from St Andrew Square/York Place. This involved a base budget allowance of £742m plus a provision for risk and contingency of £34m (at paragraphs 3.11, page 3). Faithful and Gould had worked with Council Officers in validating the base budget for the proposed works (at paragraph 3.5, page 2).
- 561.2. Additional funding of £231m was required. This would need to be provided by prudential borrowing at an estimated annual expense to the Council's revenue of £15.3m over 30 years (at paragraph 4.2, page 15.). If applying a discount rate, the total value of the additional borrowing would, as of 2011, be £291m (at paragraph 3.30, page 7).
562. The minutes of that August 2011 meeting also help to understand what was occurring at this time (**CEC02083194**).
563. The August 2011 report by Dave Anderson was quite a detailed report compared to ones we had received previously. It also discussed other issues coming out of the ETP such as the excess rolling stock caused by the shorter line. We have ended up with excess trams. There was a great deal of discussion regarding the funding options and financing.
564. I have been seen a report, dated 19 August 2011, prepared by consultants from Faithful and Gould (**CEC01727000**). This examined the post-

settlement budget for the ETP. A confidential summary of this report was provided to councillors with the August 2011 report from the Director of City Development. The report expressed the view that the prices being suggested by the Consortium for completing the works were very high and not good value for money (at paragraph 2.5, page 5). I cannot remember clearly whether I would have seen the full report. My recollection is that I only saw the summary of the report. I do not know why the Council chose to do these works.

565. The minutes of the 25 August 2011 Full Council meeting contain a record of what happened at that meeting (at item 3, pages 4 – 14). There was a motion by the SLD to approve the line to St Andrew Square/York Place. There were a number of amendments including a Labour amendment that the line only go to Haymarket. I have discussed (at paragraphs 558 - 563 above), the reasons for that amendment.
566. There was therefore a choice to be made between the SLD and Labour positions. I cannot remember what the Greens did and we were unsure what the Conservatives were going to do. As far as I remember, a majority of the SNP councillors abstained from voting. That was a bit of a surprise and meant the Labour amendment, to build to Haymarket, went through. A majority of the Council voted for the tram to go to Haymarket.
567. Following that meeting, we received a report from the CEC Chief Executive Sue Bruce, leading to the special Full Council meeting being called on 2 September 2011. I have been referred to a copy of that report (**CEC01891495**) which advised that TS had stated that it did not believe a line to Haymarket would comply with the terms of the £500m Scottish Government grant. TS was intending to withhold the £72m remaining to be paid under the grant. This would necessitate further borrowing by the Council. That borrowing would require to be serviced revenue. It would equate to an additional £4.8m per year for 30 years (at paragraphs 5 - 6,

pages 1 - 2). The Chief Executive recommended to the Council that the line be taken to St Andrew Square/York Place (at paragraph 14, page 3).

568. The basis for this is set out in the TS letter appended to Sue Bruce's report (**CEC01891495** at page 11) and quoted in that letter (at paragraph 5): "*this represents a fundamental change to the basis on which the Scottish Government originally agreed to contribute up to £500 million...Ministers are not prepared to make any further payments to the project and will not extend the existing grant arrangements beyond 31 August*". The special meeting occurred on 2 September 2011. At that meeting the Council voted to reverse the August decision and to build the line to St Andrew Square/York Place (the minutes of that meeting are **CEC02083154**).
569. Basically we had no option but to go to St Andrew Square/York Place. My view is that we were given no option but to agree the line to York Place by the Scottish Government. It was very clear that that was the only option. From 2007 the Scottish Government had had no involvement in the ETP other than providing financing. Then they stated that they would not give the project any more money unless the line was built to St Andrew Square/York Place. I felt that the Councillors were being pressurised by the Scottish Government. I could use the expression 'bullied' because I felt this at time he Council was given no other option, except abandoning the whole project.
570. I did not have any contact with the Scottish Ministers although I assume they would have been meeting with Sue Bruce (Chief Executive) and the Council Leader (Jenny Dawe). It was my amendment that had been the trigger for the decision to go to Haymarket. That amendment had gone through the democratic process of the Council.
571. The Labour group ended up voting, as a group, to reverse the decision and to complete the line to St Andrew Square/York Place. We had discussed it at length again. We still believed the Haymarket option was best.

However, we had no choice because, as I say, we felt we were 'bullied'. We were being told we had no choice about this. The line had to go to St Andrew Square/York Place and the Council had to borrow another £250m to finance it. Repayment of that borrowing take thirty years. I felt that was the Scottish Government's decision rather than ours.

572. Officers gave the impression, TS's decision came from John Swinney MSP, the Cabinet Secretary for Finance. I think there was pressure, probably from businesses in Princes Street and St Andrew Square. I genuinely do not remember whether we were told their reasons for wanting the line to go to St Andrew Square.
573. The meeting on 2 September 2011 also involved the Council deciding to use prudential borrowing to fund the additional costs of the ETP. However, it was also resolved that we should explore alternative funding proposals.
574. Prudential borrowing is a special framework that allows local authorities to get preferred rates on borrowing. It is subject to certain limits. As the Council is seen as a robust organisation that always pays its debts, it always gets pretty good borrowing options. Other options were considered and briefings were held. We looked at what other options there were. However, I think it was the Director of Finance who advised us that prudential borrowing was the best option as it would not have an effect on any other capital programme or projects. There was a lot of talk about bonds and other options but that was the Director of Finance's recommendation.

#### *September 2011 – Settlement Agreement*

575. Following on from the Council's decision at the special meeting on 2 September 2011, an agreement settling disputes with the Consortium was signed on 16 September 2011 (Settlement Agreement). This agreement ultimately led to a reduced tramline, extending from York Place to the Airport, costing approximately £776m in total capital costs.

576. The only realistic alternative to the Settlement Agreement were:
- 576.1. To abandon the project. If we had done that we would have spent a lot of money with nothing to show for it; or
  - 576.2. To go as far as Haymarket in which case the Scottish Government would withdraw future funding.
577. I think that we really had no choice but to agree a settlement unless we abandoned the ETP. A briefing was held on the Settlement Agreement. At the end of the day, I do not think we had any choice. We were aware of the long term consequences of having to repay the borrowing over 30 years.
578. Constituent 's views varied. Many said to walk away. However, more said to just get on with finishing it. There are certain people who were always going to be 'anti-tram' regardless. Then there were obviously people, including myself, who believed in it in principle. It was intended to create a modern city, getting people around in a clean way, increasing public transport numbers and increasing investment in public transport. However, the ETP had become damaging for not just the CEC but also for Edinburgh. My attitude was that we had to try to resolve matters. I think a lot of people did not believe we would complete the project on the revised timetable and budget. There were a lot of views on what to do.
579. In terms of businesses affected by the disruption, businesses in Leith had been particularly affected. They had all this disruption and then ended up with nothing. The main attitude in Leith was that, after all the disruption, something had to come out of it (even if it did not go down Leith Walk). Shandwick Place and York Place had some disruptions but it was mostly the West End and Leith Walk that suffered.
580. My recollection is that groups like the airport and rail operators did not express views about best way forward. I think they kept their heads down about it. People who had previously been supportive tended to remain si-

lent once the ETP turned into a disaster. They probably saw benefits from it but they were not vocal about those.

*Post-settlement - Late 2011*

581. I have seen a briefing note prepared by TS staff dated 10 October 2011 (TRS00012622). This note mentions:

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

581.2. CEC's appointment of new external project managers, Turner & Townsend (T&T), to assist with the project and its governance. It also stated that TIE was in the process of being wound down.

582. This is an indication that TIE was being taken entirely out of the picture. I recall there were a lot of costs associated with TIE. These included expensive premises it had rented in Haymarket as well as its redundancy costs for staff. Basically the project was being taken in-house by the Council with TS providing assistance.

583. I could not tell you exactly what role TS and T&T played in the aftermath of the Settlement Agreement. From 2012 onwards, whilst the Council was taking the lead, TS were more hands on. They were visible and they were overseeing the remainder of the ETP. Having been taken out of the picture during a crucial period TS then came back after the Settlement Agreement

584. T&T were consultants who were experienced and my understanding is that people trusted them. They seemed to deliver what they said they would deliver. I think T&T had had some involvement in the ETP previously as well.

585. I have seen the minutes of a Full Council meeting held on 24 November 2011 (CEC01891428). At that meeting, I questioned Jenny Dawe on the

prospect of an inquiry into the ETP (at Question 4, page 26). Jenny Dawe had written to the Scottish Government about an inquiry and I was asking whether she had had a response. She confirmed receiving a letter from the First Minister (Alex Salmond MSP) which said that the Scottish Government would be "*delighted*" to have an inquiry into the ETP's problems. A copy of the letter, dated 18 October 2011, was included with the Council minutes (at page 27).

586. I thought an inquiry was necessary in order to make sure lessons were learnt. I had views on why the project had failed. I wanted to ensure the public had an independent view and that we all learned lessons from it.
587. It has been noted that Sue Bruce (Chief Executive of CEC), stated around this time that she did not believe it would be helpful to have an immediate inquiry and that there should be a focus on the ETP's completion. The Labour group agreed with that view. We wanted to wait until the project was finished and then have an inquiry. We did not want the Council Officers who were trying to deliver the project to be having to deal with an inquiry as well.
588. I asked a subsequent question at that meeting about retention of data for the inquiry and freedom of information requests (at Question 5, pages 18 - 19). There was, at the time, press speculation about the inquiry and whether all of the information would be available for the inquiry. This was in the context of freedom of information requests that had been made to TS and resulted in heavily redacted documents being produced. I was just trying to make sure that all of the information would be available.
589. In the same minutes of the Full Council meeting there was a motion, following the failures of TIE, to pursue an outstanding report on the governance of arms-length companies owned by the Council (**CEC01891428** at item 19, pages 19 and 20). This was agreed upon by the Council. I do not know if a report was actually prepared. Over the years there have been a

number of reviews regarding the use of arms-length companies. There have been some very successful arms-length companies that have been in place for many years like EICC. The question is how we learn from that and how we learn from cases that were not successful. There is now a process that we looked at all the outside companies. A report on arms length companies was prepared by the Chief Executive and agreed by the council.

590. There were a number of major changes after the Settlement Agreement was agreed. Some of the major changes included a review of the governance arrangements. The Council's scrutiny of the project was more robust.
591. Colin Smith brought in as an experienced engineer and project manager to assist. He had a clear view of how we were going to deliver a revised budget and revised timetable. In terms of communication, he was able to document everything through charts. These laid out the processes and timetable very clearly. Sue Bruce was also very involved with the project. This meant that problems were sorted out before they escalated.
592. There was also a great improvement in the relationship with the Consortium. Colin Smith, in particular, appreciated that it was best to resolve issues by speaking to the contractor when they arose. This was more productive than allowing issues to build up to a point of conflict. He briefed us regularly, gave us information and kept us up to date. If there were outstanding issues they would be sorted out at regular meetings. People were actually sitting around the table building relationships. This resulted in trust being built up. I think the trust built up between Sue Bruce, Colin Smith, Alastair MacLean and the relevant people in the Consortium. Those relationships were not there before. For me, the key was to deal with design issues to avoid them festering. If they were beginning to become a problem they would be reported to us and solutions or strategies explained to us.

593. I think political leadership was also important. There was a change in the hands-on political leadership. I became Transport Convenor in May 2012. One of my key priorities was to deal with the ETP. I spent time and effort assisting in getting the revised budget and revised timetable through to completion. People believed that we would not complete the project within the revised timetable or revised budget because of their previous experiences. Our main focus was to ensure that these targets were met.
594. I also learnt from the mistakes of the previous Transport Convenor who did not involve all spokespeople in the ETP. Up until quite recently we have had all-party agreement in terms on the way forward on the tram network. That is because, whenever I had information about the project, we would brief the opposition, listen to what they had to say and involve them in the decision making process.
595. I would say the project ran reasonably smoothly from this point. The reasons for this were, in summary:
- 595.1. The Chief Executive and Senior Officers were more hands-on with the consultants. They were determined to keep to the revised budget and the revised timetable.
  - 595.2. Councillor scrutiny was far more thorough and there was robust monitoring of the cost and timetable.
  - 595.3. Design and those sorts of issues were resolved. Where changes were required, these were agreed by both the contractor and Council and agreement was also reached on who was to bear the cost of the change.
  - 595.4. Trust was built up between Council and the Consortium through a better set of working relationships.
  - 595.5. Politically, there were all-party working relationships over rest of the project.

595.6. There were also senior levels of the Scottish Government who were put to work overseeing the project.

596. I have been asked whether having more independent, external consultants (such as T&T) as opposed to TIE, made a difference to the advice councillors were receiving.

597. I think having more independent, external consultants, such as T&T probably did help. However, I am not sure it was absolutely critical. T&T had a good reputation and the relationship between them, Sue Bruce, Colin Smith and others was good.

## 2012

### *Change in Administration*

598. Following local council elections in 2012, the SLD/SNP Council Administration was replaced with a Labour and SNP coalition.

599. There was a coalition agreement between the SNP and Labour. The agreement did involve delivering the ETP on time and on budget. This was unlike the previous Administration where the agreement had included a clause allowing the SNP to oppose the tram. There was nothing like that within our coalition agreement. I think the SNP realised their reputation could be damaged if they failed to deliver the revised project.

600. In terms of the relationship with the SNP, I think they realised I would take the lead on the ETP as the Transport Convenor. The SNP Vice-Convenor, like all other Councillors, was kept up to date.

601. The crucial point was the SNP, both at Scottish Government and at Council level had previously said they were totally against the ETP. However, by September 2011, they knew they had to vote and they voted for the line to go to York Place. By doing that, they had voted for the ETP. From that point onwards, their attitude changed. They could no longer tell voters that

they were against the tram. I saw the difference in action. There was a by-election for the city centre ward prior to this point where everything the SNP put out was "anti-tram". They did not maintain that position in the election in 2012. I think they had realised that they had to help with delivering the ETP because the problems with it had damaged the reputation of the city.

*Transport Convenor*

602. When the Administration changed in 2012, Andrew Burns became the Council Leader and I became the Transport Convenor. Andrew Burns had had a background in transport and it was agreed that I would take the lead on the ETP, with his support and help.
603. I kept all Councillors advised of what was going on. We were very clear, as a group, that we needed to learn from the previous Administration. We were not treated very well in opposition. I had always said that, if I got back into the Administration, I would not treat them the way they treated us. In my view, if a member is elected, they should be treated in a fair and even way.
604. Looking back, it is hard to say precisely how much time I spent on the ETP as Transport Convenor. Every day involved some engagement with the project. I went to the early morning ETP meetings which took place almost every week. Those were meetings between Council Officers and TS which provided an overview of what was happening with the project. I wanted them to know that I was involved and that I would spend time on the project. I eventually stopped going to those early meetings because I felt comfortable things were going well. I also met the senior representatives for the Consortium at one of the meetings. It was Sue Bruce and the Senior Officers who built up a relationship. However, they wanted to make sure the politicians were also brought into that relationship. I had informal chats over coffee with senior representatives of the Consortium in order to build

up a relationship of trust with them. It is hard to tell, but overall I think probably every day of my time as Transport Convenor involved some engagement with the project.

605. The project was managed through the TIEC and the All-Party Oversight Group (APOG) mainly. I am not absolutely sure when APOG set up. Andrew Burns (Council Leader) was the Chair of APOG. I also ensured that every group was kept up to date with the current timetable, current budget and any issues which arose. That was mainly done by briefings. However, people would also come to me to be updated.
606. I do not think any other Councillors worked that closely with the project. I think the Vice-Convenor (Councillor Jim Orr, SNP) was quite happy for me to take the lead on the ETP. It was a bit of a poisoned chalice I think basically people were just happy for me to do it. Within the Labour group, if you have got experience and you have delivered on other issues then you build up trust. My group trusted me to get on with it. I believe that I built up a relationship with the other spokespeople. I tried to be approachable and I they knew that I would keep them informed.
607. I have seen to the minutes for a meeting described as a "*Client Inspection and Control Meeting*" held on 28 May 2012 (TRS00010236). This noted that Colin Smith was to meet with me. This would have been in the context of my having recently been appointed as Transport Convenor in the new Council Administration.
608. As Transport Convenor, I had regular meeting directly with Senior Officers and with Colin Smith. At the beginning, when I took over as Transport Convenor, I got a bit overwhelmed because of all the briefings, all the documentation and how it was laid out. Initially it was not in very user friendly terms. The key was to get the revised budget and revised timetable in place and delivered. Working with Colin Smith the information I needed in a form I wanted was available.

609. I think the project benefited from this level of direct involvement . I think my experience of previous large capital projects was also beneficial. I knew the kind of questions to ask. Perhaps more importantly, I knew if the answers I was getting were not to be trusted. I think the hands-on involvement was really helpful. I knew about all the forthcoming challenges or issues with the Consortium. Council Officers also knew that, as a councillor with nearly 30 years' experience, I would not have the wool pulled over my eyes. If they tried to, I would find out and they would not like that. I think Colin Smith respected me and we had a pretty robust, good relationship. Sue Bruce and I got on really well and we trusted each other.
610. Colin Smith and I used to discuss key issues of the project. These included: any changes to the revised budget or timetables; how contractor relationships were going; and whether there was anything that the Council were concerned about.
611. At the time, there were a lot of concerns regarding the ETP, particularly from businesses. This meant that there had to be work done to keep people in the City informed. Previously there had been very poor communications and I was clear that we needed to make sure we kept the communications well running in terms of councillors, businesses, Press etc.
612. Colin Smith and I attended many meetings with businesses in the West End, York Place and other parts of the city. We discussed their concerns and how we were going to keep them informed. We put in place a process so that, when people asked us questions in writing, those questions were answered quickly, accurately and openly. We also had to keep on top of reports in the press who continued to be interested in the project.

*State of the ETP in 2012 onwards*

613. In terms of changes in management, I think there was much more trust from 2012 onwards. Things were done more transparently. Problems were

sorted out before they became more serious. There was regular dialogue at meetings.

614. I think there were a few change in the leadership of the Consortium but that came more towards the end. In general there was a continuity of relationships and the relationship that built up between Sue Bruce, Colin Smith, senior representatives of the Consortium and TS contributed to trust.

615. I have reviewed two documents:

615.1. The first is the minutes of the Client Inspection and Control Meeting dated 11 June 2012 (TRS00010224). Those minutes noted that attendees had been asked that any contentious issues were not raised at the meeting and that Colin Smith would discuss the issues with them later that day. This was due to a visit by me to meet the attendees of the control meeting.

615.2. The minutes of the Tram Briefing meeting of 11 June 2012 (CEC01890212) recorded that Colin Smith would meet with me to walk me through the methodology for protecting the programme and the York Place works.

616. Both of these meetings would have been very shortly after I became Transport Convenor. In respect of the Client Inspection and Control Meeting, I cannot remember if I had asked or been asked to go to the meeting. The intention was to allow me to meet the key players. I assume that the reason contentious issues were not to be raised was that it was an introductory meeting for me. I was just getting a feel for what the meeting was like, what issues they were discussing and to ensure a smooth introduction to key people. I cannot remember if it was me who requested that or Colin Smith that did.

617. In terms of the York Place matters, I cannot remember exactly when the decision was made to go to York Place instead of St Andrew Square. I think the decision had to do with the turnback required. You need a certain length or distance of line in order to change direction. I think it was said that would be easier on York Place and it also linked down to Broughton and to Leith Walk. For instance, I know people who walk up Leith Walk to get the tram. It was easier but it also linked the tram more into more communities as well.
618. Going to York Place resulted in issues with other businesses. For instance, a Hotel in York Place had spent a lot of money on refurbishment and they were really very nervous about disruption. There were concerns about noise and things like that as well for their clients. Neither Colin Smith nor I wanted to make the same mistakes as had occurred at Shandwick Place and in the West End. We wanted to get in there, get the work done, engage with businesses and make sure they were kept fully informed. That meant letting people know exactly when works were going to happen.
619. I have seen an exchange of emails, dated 22 to 25 June 2012, between myself and Alastair Maclean (CEC Head of Legal Services and the then CMO) (CEC01939799). The emails concerned payments relating to TIE's redundancy scheme, any payments made outside that scheme and whether these had been approved by the Council or by TIE. I asked whether there were any staff who had a redundancy package outside the policy agreed by TIE.
620. In June 2012, there were a lot of stories about severance costs in the press. I was just asking some questions about severance. The issues around severance were contentious. People were being paid large sums of money. If I remember correctly I was just trying to clarify who had made the decisions in respect of these matters, why the decisions had been made and what the sums involved were.

621. I think it is always controversial when you have got either bonuses or severance payments being made. People are entitled to redundancy and their pension. There was a perception, which is probably true, that TIE was a well paid workplace. There had been lots of changes in the management of TIE resulting in lots of pay offs. It does not matter whether it is a small sum or not. What concerns people is whether it is necessary to spend that money. I think overall I was happy with what Alastair Maclean told me on this occasion.
622. I have seen the minutes of the Tram Briefing Meeting dated 26 June 2012 (TRS00014931). While I did not attend this meeting, the minutes noted that myself and Councillor Orr asked the project team to look at a communications awareness approach (at pages 2 -3) to ensure that I was aware of project information before it became public. There was also mention of organising a Tram Councillors Panel to provide a chance to put questions to the project team.
623. Councillor Orr was the SNP Transport Vice-Convenor though he later became an independent after leaving the SNP Group.
624. At times, information was reported in the press without us knowing about it. I cannot remember the details of particular occasions. As a politician, you always want to know about something before it is reported in the press. It is a case of always being on the front foot. Essentially, I wanted to ensure that myself and the transport spokespeople for other groups were given information before it was given to the public and the press.
625. I have been asked whether the communications approach improved between the period where TIE was responsible for the ETP and the period following the Mar Hall Mediation.
626. The project team to deal with communications was made up of Gareth Jones and Katie Spence who both were Council staff. We built up a very

good communications team who did a good job keeping the public informed. We made sure that they had the information necessary to allow them to communicate effectively with the public. They also dealt with other public relations issues. Katie Spence, Gareth Jones and I were very clear about what kind of communications approach we wanted. The ETP had been damaging to the reputation of the Council and to the city. We needed to deliver the ETP on the revised timetable and revised budget in a way that was not celebratory but showed we had just got on with it.

627. In terms of the Tram Councillors Panel, I assume this is a reference to what became the APOG though I am not entirely sure of that. The general idea was to ensure that all of the transport spokespeople for different groups knew what was going on.
628. A Tram Briefing Meeting took place on dated 28 June 2012. The minutes of that meeting noted that Alan Howie and I were to be invited to the meeting of the group in July and were also to routinely receive the relevant meeting papers (**CEC01890233**).
629. Alan Howie was my Departmental Advisor for Transport when I was Transport Convenor. Departmental Advisors were Council Officers who worked with Convenors and acted as links with Council Officers inside the departments. He would organise meetings and briefings and would sometimes come to meetings to take notes for me. He was a liaison with the Council Officers in that he could bring up issues with me and he would also give the Council Officers a 'feel' as to what issues I was interested in hearing about. His role was an organisational one. I had previously worked with Alan Howie in the North Edinburgh Area Renewal scheme and so I had a good working relationship with him. He had started out as a planner, rather than a transport specialist, but he did have experience of working on capital projects for the Council.

630. At this stage the Transport Department of the Council was certainly involved in the ETP but it was really a bigger deal than that at this stage, concerning the Council as a whole. As such Sue Bruce and Colin Smith were the key people within the Council with responsibility for the ETP. I asked to be kept fully informed about the project and felt that I was getting that information. I got regular updates, particularly from Colin Smith, but also through the APOG and other regular reporting to me.
631. A Tram Briefing Meeting took place on 31 July 2012. The minutes for that meeting (**CEC01890307**) show that I explained that I needed a regular briefing on the issues and steps taken with the ETP. It was decided that I would attend the Tram Briefing meetings every Tuesday morning, receive an update tailored to me and make a monthly route visit (at item 3.1, page 2).
632. The minutes also recorded a discussion about sensitive information being provided to councillors through the APOG. I suggested that the APOG have both an 'A Agenda' and 'B Agenda'. I suggested this because some of the information was sensitive. Having a 'B Agenda' allows Council Officers to be more open in the information that they provide to Councillors. It also allows Councillors to speak more freely and to be more robust in their scrutiny. There is, however, a balance to be struck.
633. A Tram Briefing Meeting took place on 7 August 2012 (**CEC01890307**). At that meeting I requested an up-to-date briefing for all elected members of the Council (at item 4.1, page 4). From my experience as an Opposition spokesperson. I wanted to ensure spokespersons were kept up to date on all information on the ETP. We needed to have all Councillors supporting the way forward and all party input. Those meetings in particular, provided reassurance and made me feel comfortable that all the right people were around the table and all the right processes were being dealt with.

**CEC01890307  
should be  
CEC02014207**

634. This meeting took place not long after I became convenor. I was trying to get a sense of what was happening. I wanted to ensure that these Tram Briefings were discussing the right issues. I wanted to get be satisfied that governance, oversight and scrutiny systems were in place. Interestingly, it appears that TS (represented by Ainslie McLaughlin) advised their minister that I was attending the meetings. Keith Brown MSP, the then Scottish Transport Minister, then turned up at one of the meetings to say that he wanted an update as well.
635. I think that the ETP would have benefitted from this type of councillor involvement at an earlier stage. However, that was not ultimately my judgment to make. I think my involvement was more hands on than the involvement of other Councillors. It involved robust scrutiny and stronger political leadership. I made ensure that Council Officers and TS knew that I wanted to be kept up to date and informed of any challenges before they became huge problems. The Council's reputation was harmed by the ETP and I wanted to ensure the Council delivered on the revised budget and revised timetable; I suppose my reputation in the Council was on the line as well if that did not happen.
636. I cannot really contrast my experience at this time with the bodies (TEL, TIE and the TPB) that had previously been responsible for the project's governance because I had not sat on any of those bodies. In general, however, I think it was helpful, was more hands on and involved more robust scrutiny and stronger political leadership. It was a case of ensuring Council Officers and TS knew that I wanted to be kept up to date and informed of any challenges before they became huge problems. I did stop later stop going to the Tram Briefing Meetings because that was because I felt at ease with the project by that time. As I said, I wanted to know what they were discussing, what was the agenda, who was at the table and I did feel at ease that it was then going well.

637. As Transport Convenor, I did not have that much contact with the Consortium. It was not my job to do that. My job was to scrutinise the project and ensure that the Council Officers were doing their job. However, as I have already discussed, , there were informal contacts and two or three meetings where we effectively sat around a table and had a discussion about how the project and relationship was going. I felt comfortable that the Consortium were more at ease with the Council, Colin Smith and Sue Bruce. I think they knew that I was pretty hands on with the ETP and that if they wanted to contact me then they could do that.

### **Project management and governance**

638. To this point in my statement, I have largely been discussing the history of the ETP as events occurred. In the next sections, I provide some overall comments on particular aspects of the project such as governance, design and costs or the involvement of particular organisations such as TIE and Audit Scotland. I have then provided some final comments which I hope will be of help to the Inquiry.

### **General Approach to governance**

639. I have been asked, in general terms, what I understood to be the respective roles and responsibilities of CEC, TIE, TEL, the TPB and TS in relation to the ETP.

640. CEC was the one setting out the strategy and policy for transport. Where final decisions had to be made then the Council was the leading decision-maker. TIE and TEL were intended to deliver the ETP. The Council makes policy to be delivered by them. The TPB was meant to be a body providing scrutiny and oversight of the project. TS were also supposed to provide oversight of the project. Originally they had a representative on the TPB. However, they were then withdrawn from it. In that period from 2008 to 2011, they were not really involved in the project. When it came to the

post-Mar Hall period, there certainly was engagement at a more a senior level.

641. From an outsider's point of view, the performance of TIE and TEL did not seem spectacular. However, I cannot make a proper judgement about them because I was not any of their boards or committees.
642. As far as the TPB is concerned, I cannot really comment about that because I did not sit on it. The project became a disaster. I would therefore question the effectiveness of the scrutiny and oversight which they were supposed to provide.
643. In terms of TS, as I have said, one of my concerns and one of the key challenges for the ETP was that TS were not clearly involved with the project at a certain point.
644. As I have already discussed (at paragraph 350 above), councillors came to lose trust in the Senior Officers. My concern was that it appeared that we were not being told the whole truth. I think that became quite apparent by the end of 2010. We were not being given the full information. We tried to raise these concerns through amendments to motions and other steps in meetings of the Council.
645. In terms of governance arrangements for the ETP, on a basic level, there did not appear to be a clear set of responsibilities. It seemed sometimes to be TIE that was responsible, sometimes TEL and sometimes it was the Council Officers. There did not seem to be effective governance. Looking at the reports to Council now, it seemed that every so often Council Officers would say that they needed to change the governance to make it more effective. However, the changes that they made did not seem to help the situation.
646. In terms of the councillors who sat on the company boards, I think it is always difficult when you look back and you try to reflect on it. Previous

company boards which involved councillors had been successful. I do not know why it did not work on this project.

647. I have been asked whether I consider that the roles and responsibilities of each of the bodies involved in the delivery and governance of the project were sufficiently clear and whether there were too many bodies involved in delivering the project.
648. The roles and responsibilities of each of the bodies involved in the ETP were not really clear because they kept changing. Looking back at the reports, the governance was not sufficiently clear. You can create as many charts and governance arrangements as you like, but it is then up to the individuals to be able to deliver.
649. If organisations are set up with clarity over what their roles are, and they co-operate with each other, then they can be successful. I do not think the problem was having too many bodies. I think the problem was that there were individuals who were not delivering what they should have been delivering.
650. In terms of whether it was more down to the individuals or organisations involved, I would say that there was a bit of both involved. Perhaps more individuals than organisations because my experience of sitting on the boards of organisations suggests they can be successful.
651. I have been asked which body or organisation I consider was ultimately responsible for ensuring that the ETP was delivered on time and within budget.
652. In essence, I consider that it was TIE and TEL who were ultimately responsible for ensuring that the ETP was delivered on time and within budget. They were the 'project managers' in a lot of ways. However, the Council should also have had an oversight of the situation. We set the policies and strategy and TIE and TEL should have delivered it.

653. I have been seen two documents discussing the state of the governance of the ETP up to 2011:

653.1. A July 2007 briefing note (**CEC01566497**) prepared by Jim Inch (Director of Corporate Services) for the then CEC Chief Executive (Tom Aitchison). It stated that it was *"vital that more rigorous financial and governance controls are put in place by the Council..."* (at paragraph 4.1, page 8).

653.2. A report prepared for the Full Council meeting on 25 August 2011 by Dave Anderson (Director of City Development) (**TRS00011725**). This dealt with the financial and governance implications of the ETP noting: *"the existing governance arrangements for the Tram project are complex [and] have not been effective."* (at paragraph 3.47, page 10). It recommended that the Council revise them to: *"ensure effectiveness, accountability, probity and integrity going forward."* (at paragraph 3.49, page 10).

654. I do not know why more rigorous governance arrangements had not been put in place at an earlier stage. That is a question for the Administration in charge at the time. Ultimately, it was the responsibility of the Council, to ensure that effective governance measures were in place. That includes Councillors and Council Officers. The Scottish Government also had a responsibility to the project. They had given £500m to the ETP so you would think they would have some input into the governance arrangements

#### *New Governance Arrangements*

655. I have been asked about the contrast between the governance arrangements pre and post-Mar Hall (March 2011).

656. The governance arrangements post Mar Hall were more streamlined. That was because it was all brought in house and, with the exception of TS, you only had one organisation with oversight for the project.
657. Dave Anderson's report to the Full Council meeting of 25 August 2011 (TRS00011725) set out the new governance arrangements (at paragraphs 3.45 – 3.65 and Appendix 3, pages 10 - 13 & 22). These resulted in an agreed governance structure which is documented in a later set of slides (TRS00011725).
658. Other relevant considerations are that: the APOG was set up after Mar Hall; the Audit committee and Lothian Buses became involved in the project; the new Chief Executive was more open; and I kept all councillors informed on progress with the project. It was very clear that the Council had got the overall responsibility. Of course, you could create as many of these charts as you like, it is whether you actually deliver them that is important.
659. The APOG included me first as an opposition Transport Spokesperson and then later, following the 2012 elections, as Transport Convenor. The APOG was developed because the ETP needed all party support and involvement. This was crucial for the project to succeed going forward and in order to deliver it within the revised budget and revised timetable.
660. I think the APOG was helpful in terms of finally delivering the project. Before that point, all of the parties felt as if they could vote any way they liked. There was also a risk of parties undermining the project and going to the Press for political advantage. I think there was, by this point, a feeling that this had damaged the whole of the Council. Obviously it damaged the SLD more than everybody else as they ended up with three councillors instead of seventeen after the election in 2012. I think everyone felt they had been damaged by it. There was a feeling that we all wanted to deliver on the revised budget and revised timetable. In addition, there was more trust in Sue Bruce as Chief Executive.

661. I think this was more effective than having Councillors sit as members of the company boards. As I have already discussed, if you are on a board you are have a responsibility to that board. Sitting on the APOG, you were representing your group rather than a company interest.
662. The APOG was not a formal committee of the Council, it was an oversight group. The difference was that it was not ultimately responsible. It gave some direction and kept people informed but it was not the same as sitting on a board where you would be delivering the project.
663. Decision making within the Council would have been done through a mixture of the Full Council and the TIEC. I cannot remember exactly what happened to the TPS. Overall, the APOG was the most important forum for keeping people updated.

## **TIE**

664. The main means by which CEC exercised oversight and control over TIE was by the presence of councillors on the board. There were also councillors on the various committees and sub-committees. There were also Council Officers on the various bodies including on the TPB. There were also Council Officers who were seconded into the project as well as to TIE.
665. In terms of the Council's formal control over TIE as a shareholder, I think this would have been set out when TIE was created. It would have been contained within the operating agreements. TIE's responsibilities would have been defined.
666. TIE attracted a lot of publicity and think that was a concern to both Councillors and Council Officers. I have already discussed my concerns with David Mackay (at paragraphs 338, 343, and 506 - 507 above). I go on to discuss my concerns about Willie Gallagher (at paragraphs 695 - 695 below). I think a number of people had concerns about them. I did not tend to

have much interaction with TIE's personnel beyond this. For instance, I was not familiar with the TIE project manager for the ETP.

667. TIE reported to the Council by assisting the Council Officers to provide briefings to Councillors. Representatives of TIE appeared before us sometimes. Normally we attended briefings by Council Officers. Now and again someone at a senior level of TIE (the Chair or Chief Executive) would come and do briefings as well.
668. In terms of the information we received, I did have concerns but I suppose it was not TIE's responsibility to report to the Council formally. That would be done through the Council Officers. TIE's responsibility was to deliver the project and also other transport projects at times. . The Council Officers were the ones that then reported to the Council. It was their responsibility rather than TIE's responsibility.
669. If you looked at the background of the individuals involved in TIE, they appeared to be of a reasonable standard and seemed to have the experience necessary to project manage a complex infrastructure project like the ETP.
670. In terms of why TIE was set up instead of instructing external advisors, my recollection is that it was because arms-length companies of the Council (such as ECCI or EDI) had previously been successful in delivering major capital projects.

*TIE's previous projects*

671. I have seen a report produced by TIE in relation to their work on the Ingliston Park and Ride, which was titled: "*Ingliston Park And Ride One – Lessons Learned Report*" (CEC01465362). The report, dated 14 September 2007, noted (at page 3) a number of negative aspects including poor definition of TIE and CEC roles, a lack of checks on work and light touch management of contractors.

672. I have no memory of seeing the report and did not recall TIE being involved in this project. It is possible those in the Administration might have seen it at the time but I do not think I did.
673. I have reviewed a Sunday Herald article, dated 12 July 2009 (**CEC00784171**). This covers TIE's role in project managing the Stirling-Alloa-Kincardine (SAK) Railway. The article reported that, following concerns from TS, costs overruns of more than double the budget and a three year delay in project completion, the decision was taken to remove TIE from the project in 2007.
674. I do not think I had any direct knowledge of this at all. It was the only press coverage that brought it out. It is so far back that it is hard to remember exactly what, if anything, happened in response to this.

*TIE's bonuses and remuneration*

675. A series of documents deal with the bonuses and remuneration at TIE, these include:
- 675.1. A report prepared for the Full Council Meeting on 26 June 2003 (**CEC02083550**) discussing TIE's business plan and the introduction of a performance related bonus scheme (at paragraph 3.22, page 4).
- 675.2. A series of emails amongst Council Officers in 2009 concerning revisions in the scheme in late 2009 (see, for instance, **CEC00672873**, **CEC00672874** and **TIE00034046**).
676. I do not remember any of these documents though I am presuming the bonuses were intended to ensure that TIE obtained the best quality of staff and to provide incentives to deliver. That is normally why there is a bonus scheme.

677. I thought that it was TIE responsibility to administer its bonus scheme. The normal process is to use an audit committee and a remuneration committee which I am assuming that TIE had. There would be targets for the year and the remuneration committee would decide whether the person had delivered on those. I do not remember any feedback about the bonuses from councillors who were sitting as board members. There may have been some more discussion of the issue amongst councillors in 2009. I do not remember the details of this. We were in opposition and so had limited influence at the time.
678. My view has always been fairly set against bonuses. If there are to be bonuses then they should be small. There was also legislation in around 2012 to ensure that the salaries of anyone working in an arms-length company and earning over £100,000 were reported (as well as any bonuses).

*TIE Internal Governance*

679. It seems that the post of Chief Executive of TIE became vacant around June 2006. Between around June 2006 and November 2008, Willie Gallagher acted as both Chairman and Chief Executive of TIE. My view was that this was unacceptable in governance terms. My training in governance and experience on many boards leads me to the view that you should have a separate Chief Executive and Chair. The relationship between a Chair and a Chief Executive is crucial, in my view, for the working of any board. The Chief Executive delivers the Board's policies but the Chair should, on behalf of the board, be scrutinising and challenging the Chief Executive. If the roles are carried out by the same person you cannot do that. I would never recommend an individual be both Chief Executive and Chair of an organisation. I do remember it being discussed and I think our view as a Labour group was that this was not a good idea. However we had probably been told that it was only a short term or holding ar-

rangement while they found a replacement. It was seen as an interim measure but ended up lasting two years.

## **City of Edinburgh Council**

### *General*

680. In terms of the Council Officers, I think that between 2007 and 2011 there was poor oversight and control of the ETP. They were always in conflict with the Infraco and TIE. When Sue Bruce was appointed as the Chief Executive at the start of 2011 this changed. There was improved oversight and control over the project as well as better briefings and information for all councillors. In terms of mechanisms for oversight by Council Officers, there were obviously the governance arrangements that were agreed as part of the Council reports. There would also be briefing of councillors and Council Officers reported which meetings they had attended and what roles they carried out when they briefed. There were also Council Officers who were seconded into TIE.
681. In terms of oversight by councillors, there were people who sat on the board of TIE who could speak for themselves. Mostly councillors would be exercising their role through briefings. There would be scrutiny from the requirement to report to the Council or to the committees. After 2011, APOG was also one of the mechanisms for scrutinising the project.
682. In terms of committees and subcommittees, they were important to governance of the project. At the end of the day, it is the Council and the committees who make the decisions when you set policies. It is therefore pretty important that they receive all relevant information in order that they can be involved in decision making.
683. I have been asked whether I had any concerns about the oversight and control over the ETP by councillors and by Council Officers.

684. I think it was difficult for councillors to exercise oversight over and control over the ETP. Those who sat on the board of TIE were in a difficult position as they did not feel that they could report back information when much of the information was confidential.
685. In terms of the responsible people within the Council between 2007 and 2012, the Lord Provost was really a civic or procedural role in chairing meetings rather than a political one. The two crucial people from among elected members were the Council Leader and the Transport Convenor. The Transport and Environment Committee Convener was also a SLD Councillor. I do not think he had very much input. I think that the people that held these roles over this period were really out of their depth. There was one interview done by Gordon Mackenzie (SLD Transport Convenor for a time) in which he was asked his view about the project and said *"Well, I am no expert, I am only a social worker"*. The point was that he did not have to be an expert but to say that he was only a social workers may have showed how out of his depth he was.
686. I did feel that, during that 2007 – 2012 period, the opposition spokespeople on transport matters were not kept informed or briefed by the Transport Convenor who would turn up at the last minute looking for opposition support.
687. Between 2007 and 2011, particularly towards the end of 2011, we had concerns and voiced them at briefings. I think I felt despair sometimes following a briefing. I felt we were not getting enough information. There were emails from Andrew Burns (Labour Group Leader) on behalf of the group expressing our concerns and motions that were raised in Council as a result. However, there was nothing more that we could do when these concerns were not being met by the Administration.
688. In terms of concerns about Council Officers, I have already discussed some of these. I think they probably did not exercise effective oversight.

TIE were taking more policy decisions than they should have done. The governance was probably skewed or not very clear on that the responsibility of TIE and what the responsibility of Council Officers was.

### *Councillors*

689. Up to probably the end of 2011, I would say that not all councillors were able to effectively exercise oversight and control over the project. Opposition councillors were only given information when the Administration required our support for a vote. Towards the end of 2011, I felt that Senior Officers were not telling us everything. I think there was poor political leadership. I do not think the Administration took control of the matter at all.
690. I was not one of those who sat on the boards of TIE and TEL bodies so I do not want to make judgements about people who occupied those roles. I would assume that some training was provided. I recently re-joined the board of an organisation and one of the first things you discuss when you sit on a board is the skillsets involved, what training is needed and whether there should be a skills audit. I cannot say whether that happened or not but that my experience is that it should have happened. If I was an individual member, I would be saying that I needed some training whether it be on whether finances, project budgets, engineering or through visiting other tram projects. It does not have to be formal training. However, developing the relevant skillsets is crucial.
691. Conflicts of interest can arise from councillors who are members of both the Council and organisations with responsibility for delivering a project. The relationship is a difficult one.
692. As a councillor, you take advice from the Council Officers but, at the end of the day, it is up to you to individually decide whether it is a conflict of interest or not. It is a question of what the public's perception would be and

what they would think. That is what you need to think about and that is up to each individual.

### **Tram Project Board**

[Q101 and 102 required further answers from LH after considering the relevant docs - could you provide a response to this under the questions set out below]

693. I have been asked what my understanding was of when and why the TPB was created.
694. I have been asked what powers and responsibilities were given or delegated to the TPB.
695. I have been asked who I understood the TPB to be reporting to.
696. I have been asked how the role or relationships of the TPB changed over time.
697. I have been asked whether the councillors serving on the TPB were acting as the 'eyes and ears' of councillors as a whole or as a conduit between them.
698. I have been asked whether I had any concerns about the TPB or its individual members.
699. I have been referred to a joint report prepared by the Directors of Finance and City Development (Donald McGougan and Andrew Holmes respectively) for the Full Council meeting on 20 December 2007 (**CEC02083448**). This paper sought councillor's agreement of the Business Case for the ETP and for the establishment of new governance arrangements (at paragraphs 4.1 – 4.5, page 2). Those were shown in Appendix 1 of the report (at page 10). As a result of these, the TPB would be formally constituted as a committee of TEL (at paragraph 4.2, page 2).

700. I have been asked what changes to the powers and responsibilities of the TPB, I understood were being made.

Answers: The issue of the setting up of TPB goes back almost 10 years and difficult to remember details. The SLD/SNP Administration would have taken a lead on the establishment of TPB. The report set out the governance arrangements. I have no knowledge of the changing nature of the TPB as I was not a member of it or part of the Administration.

## TEL

[Q103 – could you provide a response to this under the questions set out below]

701. I have been asked what my understanding was of when and why TEL was created.

702. I have been asked what powers and responsibilities were given or delegated to TEL.

703. I have been asked who I understood TEL was supposed to be reporting to.

704. I have been asked how the role or reporting arrangements for TEL changed over time.

705. I have been asked whether I had any concerns about TEL, its employees or its individual board members.

706. I have been referred to a report and papers prepared for the meeting of the TPB on 7 December 2007 (**CEC01400187**). A governance paper by Graeme Bissett (TIE) and draft operating agreements between the Council and the companies (TIE and TEL) were provided with this report (at page 44 onwards). These agreements were to be agreed by the Full Council at its December 2007 meeting. I have been asked about my understanding of the relationships between the Council and TIE and TEL and the role of these operating agreements.

Answers: I have previously answered the question on why TEL were established. The report agreed set out the governance, power and responsibility of TIE/TEL and reporting arrangements. I have previously answered my concerns regarding TEL.

*Lothian Buses*

707. It has been noted that Lothian Buses appear to have expressed certain concerns in relation to which body would be responsible for ensuring integration of the tram and bus services.

Lothian Buses always have concerns regarding change in governance because of the Transport Act and the obligations that places on them. In 2017, we still have Lothian Buses expressing concerns about Transport for Edinburgh which is the organisation covering integration of transport

708. During the time I was Transport Convenor there was a question about who should provide the expertise and management in terms of the trams operations. I was very clear that Lothian Buses had that expertise and that they could provide the support and help required. There is still a Service Level Agreement with the tram service in order to integrate and to have the same fare structure. Transport for Edinburgh was part of that.
709. Once the decision was made to proceed with the ETP, Lothian Buses co-operated with the project. It does come down to individuals. Previously Neil Renilson had been the head of Lothian Buses and had also sat on, as I understand it, TEL and was involved with some of the work on the ETP. Later Ian Craig became the Chief Executive (and Managing Director) of Lothian Buses and then became the Chief Executive both for Transport for Edinburgh and Lothian Buses. He was personally very much in favour of transport integration. Once the decision was made, to go ahead with the project, there was a good working relationship and real co-operation. That had not always been the case.

## **Transport Scotland**

710. It has been noted that, following the debate and vote in the Scottish Parliament in June 2007 (at paragraph 515 above), TS' role in the governance of the ETP changed.
711. Following the election in June 2007, John Swinney MSP withdrew TS officials from the ETP and appeared to continue to fund the ETP with no scrutiny on behalf of TS. That was, as I understand it, the instruction from Scottish Ministers to withdraw their officials from the TPB.
712. John Swinney MSP appears to have made very clear to his officials that, the SNP were not happy with the decision that the Scottish Parliament had made. Other people have suggested the SNP 'threw their toys out the pram'. I think the concern for me was that they were giving more and more money, but were not actually scrutinising how that money was being spent. I think, in hindsight that was a huge mistake, I think one of the major reasons for the state of the ETP was the lack of TS' expertise. However, I was not aware of this change in oversight until the emails were later revealed through a freedom of information request.
713. I did not have much awareness of TS' role between 2007 and 2011. I think, from the Mar Hall Mediation onward, TS realised that they had to get involved in the project once again. They did so, particularly following the initial decision to go to Haymarket in August 2011 (at paragraphs 581 - 582 above).
714. When I became Transport Convenor in May 2012, TS were on all the project groups. I was aware of them being involved in the groups I attended. I also knew of their presence on other groups through Council Officers. At this point, TS had a far deeper oversight of the project and were involved at all levels.

715. As Convenor, I had a reasonable relationship with the Transport Minister, Keith Brown MSP. We met on a number of occasions and there were also informal contacts. Generally, the relationship was reasonable.
716. I think the removal of TS from the project in 2007 had a massive effect on the ETP. They had experience and knowledge of capital projects and how to deliver them. They were funding the project with £500m. Given the amount of money involved, I would have expected them to have a key role in governance of the project.
717. After 2011, I think that TS were kept aware of any problems with the ETP. I cannot really answer for the project in the period before that.

#### **Audit Scotland**

718. I have been seen two Audit Scotland (AS) prepared reports on the ETP at different points in its history:
- 718.1. A report entitled "*Edinburgh Transport Projects Review*" from 2007 (CEC00785541); and
  - 718.2. A report entitled "*Edinburgh Trams – Interim Report*" produced in February 2011 (ADS00046).
719. I read both of these reports and thought that they were very important. In summary, they suggest:
- 719.1. As at 2007, AS gave a clean bill of health to the project. It was on time and on budget, and AS concluded there was robust governance in place; and
  - 719.2. In 2011, AS concluded that the governance arrangements and the state of its budget and timetable were poor.

The difference between the two reports is pretty stark.

720. The two reports cover quite a long time scale and the problems between 2007 and 2011. I suppose I look on the reports as a kind of contrast. In March 2007, only around £44m had been spent on the ETP and the two relevant bills had received formal approval and were on the statute book.
721. By 30 June 2011, when Labour was in opposition, expenditure stood at £460m indicating that around £100m a year had been expended during the intervening four years with no trams yet on the streets of Edinburgh. Presumably the Inquiry will identify why that happened.
722. AS are independent. You would have thought that, in 2007, if there was anything out of place then they would have brought it out. They are not shy in coming forward when they think there is a problem. AS has a very independent, robust reputation and I think that there was a bit of a reliance on them.
723. I thought that the 2007 AS report was extremely important. At many meetings the reports would be quoted by Labour group members, the SLD and the SNP. In 2007, people tended to emphasise the good points. Coming to 2011, the same organisation was saying very bad things about it.

### OGC Reviews

724. I have seen three Office of Government Commerce (OGC) Gateway Reviews looking at the readiness of the ETP:
- 724.1. The first review was conducted in May 2006 (CEC01793454) and assessed the status of the project as 'Red' meant that: *"[t]o achieve success the project should take action immediately"* (at page 4).
- 724.2. The second review was carried out in September 2006 (CEC01629382) and resulted in an 'Amber' rating meaning: *"The*

*project should go forward with actions on recommendations to be carried out before the next review of the project” (at page 4).*

724.3. The third OGC Review was carried out in October 2007 (CEC01562064) and resulted in a ‘Green’ rating meaning that: *“The project is on target to succeed provided that the recommendations are acted upon” (at page 3).*

725. I do not remember seeing a copy of the initial OGC review. That was probably because I was Lord Provost at the time. I am certainly not trying to abdicate responsibility. My role, at the time, was very much a civic one and one dedicated to chairing meetings. I would attend Labour group meetings, but my job was to be the civic leader of the Council.

726. I do not remember either of the other OGC reviews either. However, the third review gave the project a ‘green’ status. On that basis, I would probably have been reasonably comfortable that the right actions had been taken since the earlier reviews had taken place.

## **Public Relations and Communications**

### *In General*

727. A lot of information about the ETP was provided to the public by the press. There were, however, a variety of ways in which CEC tried to disseminate information in the earlier stages of the project. Examples include the Leith mock-up tram, large posters and a communication strategy for the project.

728. My memory is that, in the earlier stages of the ETP, businesses were very frustrated and there was a lot of negative publicity in the press. Things were perhaps a bit shambolic and I think that the earlier period of communications with the public could have been better.

729. Queries or representations from members of the public were responded to by emails, phone calls and mail. It depended if they were contacting councillors or Council Officers.
730. Post-2012 there were lots of enquires and we set up a very robust process to deal with enquiries. All enquiries were directed to one or two people who responded quickly with the information requested. Obviously there were also a lot of people spoke to me directly.
731. Businesses were speaking to Councillors on a regular basis. When I became Transport Convenor, I used to attend regular West End and East End meetings to keep people up to date. Those were face-to-face meetings and could be pretty robust.
732. When I became Transport Convenor (in 2012) and was responsible for the delivery of ETP, I had two communications staff to ensure that up to date information was available to the public. We had a communications plan and regular weekly meetings to ensure the public were kept up to date. I regularly kept opposition spokespeople up to date with any PR issues which might occur. If I knew something was going to be coming up I would get CEC Communications to let the opposition members know.
733. In terms of whether the public were kept fully informed throughout the project, I can only really speak for my period as Convenor. During that period I tried to make sure that all the information made public was clear and transparent, so far as it could be where there were commercial considerations.

#### *Business Groups*

734. Colin Smith and I used to go regularly to meet with groups of businesses from the West End and York Place. We would update them on the state of works and we would try to keep them informed. We offered them regular briefings and gave them information on who to contact if they had any

questions. It was also about keeping them informed of when the road works were going to happen and asking them for their views on whether we should stop at certain times.

735. I have been referred to an email from Leanne Mabberley (CEC Communications) to several councillors, including Labour councillors, sent on 16 May 2008 (CEC01231803). This email discusses disruptions to the Leith Walk businesses and the steps that CEC was taking to address them.
736. We learned from the earlier stage of the project in terms of ensuring that people had all the information in advance. This meant advising them of works weeks before they started and updating them beforehand if there were any changes. Communications with business could have been handled better early on.
737. Sometimes it was very heated at meetings with people shouting at you. I had a lot of sympathy given what had happened before. I was trying to ask for their patience in getting on with the project and asking what we could do to help in the meantime. Irrespective of how good the communications were, we could not have totally mitigated the effects on businesses particularly in Leith Walk, the West End and York Place.
738. There were grants to help those businesses that had been affected by the works. I think we tried to get some more funding and tried to be more sympathetic. We also reduced rates for some businesses. One of the key issues was that many of the organisations that were applying for assistance were not paying business rates because they were small businesses. We also did some work with the Valuation Board as well who were very cautious about making any changes.
739. We tried to make some changes and adjustment to the project to assist the businesses. There were simple little things like ensuring there were crossings for pedestrians. We looked at how we could improve signage

and worked with the West End traders looking to encourage people to come into that area. A simple example was when the rugby was on, people were being diverted away from the West End and we tried to see if we could work with people and with the Police to go to the pubs in that area. For some of the West End pubs, the rugby events would be one of their most busy footfall periods in their calendar year. We listened to what they had to say and tried to put up signage to encourage people to go there. There were things like widening the Harris fencing and things like that because previously it had been very narrow and stopped people getting around. Hopefully we listened more to what they said and tried to be more open. Even if it was not good news, we tried to tell them rather than hiding it.

740. I do not know how well this succeeded, you would have to ask those involved. Things were still pretty heated to be quite honest. However, I think they at least thought we were willing to come along to listen to them, to make some changes and to act on their behalf. Some of those businesses are still surviving which is good. As I say, I had a lot of sympathy because they had suffered and it was difficult. Maybe they felt at least, from 2012 onwards, we had sympathy with them.

## **Cost Overrun and Consequences**

### **Costs**

741. I think it was around late 2010 that I first became aware that the capital costs of the ETP were likely to exceed £545m. It began to come through in some of the reports that were being discussed.
742. The main reasons for the increases in cost, as I understood them, were to do with disputes regarding the design issues, utility diversions problems

causing costs and delays and also problems with the Infraco contractor. Those were the reasons we were given.

### **Financing the overrun**

743. As previously discussed (at paragraphs 570 and 589 - 590 above), the extra contribution required by the Council had to be covered through prudential borrowing. It will impact on the Council's finances for over thirty years. It will have an impact on services because the Council will have to set aside money every year to cover the costs of prudential borrowing.

744. However, it will not affect capital projects. While we could have borrowed that money to pay for other capital projects, none of the Finance Officers were pointing to a school or some other project that would not be done because of the ETP.

### **Final Comments**

#### **Reasons for failure:**

#### **In my opinion:**

**1 Contract was flawed**

**2 Design details were not finished before signing contracts**

**3 Poor political leadership**

**4 Scottish Government walked away from the Tram Project, no Transport Scotland support and money paid with no scrutiny.**

**5 Council Administration split on support for Tram Project. SLD supported project, SNP did not.**

**6 Senior officers were not open and accountable to all Councillors.**

**7 Break down of relationship between Council and arms length companies.**

**8 Continual Changes of Chair/ Chief Executive at TIE/TEL.**

**9 Lack of effective Management control of the Tram Project**

**10 Breakdown of working relationship between Council/TIE and the contractors.**

**Avoiding these failings:**

**In my opinion:**

**Learn from the mistakes as listed above and put in place actions which would ensure capital projects in the future would be on time and budget.**

**Other comments to the Inquiry**

745. I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 180 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. I have fully co-operated with the Inquiry and have always responded timelessly to their requests. I left the Council, after 33 years, in May this year and therefore did not have access to the information sent previously by the Inquiry.

Witness signature....  .....

Date of signing..... 20/7/17 .....