

Edinburgh Tram Inquiry Office Use Only

Witness Name: Ian PERRY

Dated:

THE EDINBURGH TRAM INQUIRY

Witness Statement of Ian Perry

Statement taken by Raymond Gray

My full name is Ian Perry. I am aged 65, my date of birth being [REDACTED]. My contact details are known to the Inquiry.

My current occupation is Councillor at the City of Edinburgh Council. As a representative of the Council I was a member of Transport Initiatives Edinburgh Limited (TIE) Board. I do not currently hold curriculum vitae.

Statement:

Introduction

1. I am currently a serving Labour Councillor with City of Edinburgh Council. I have been a Councillor for 25 years serving in various wards and my current ward is Southside and Newington. During my time as a Councillor I have undertaken various appointments including the following:

- 2001-2006 – Deputy Council Leader and member of the Council Executive;
- 2006-2007 – A member of the Council Executive;
- 2007-2008 – Member of Finance and Resources Committee and Audit Committee;
- 2008-2009 – Member of the Audit Committee, Regulatory Committee, Licensing sub-Committee and Lothian Valuation Joint Board;

- 2009-2011 – Member of the Transport Infrastructure and Environment Committee, Regulatory Committee, Licensing sub-Committee and Lothian Valuation Joint Board.
2. In relation to the Edinburgh Tram Project, I was opposition spokesperson for Transport and I was also a member of the TIE Board representing the Council. As a Board member I attended all Board meetings.
 3. Our democracy could not function if Councillors were expected to have the necessary qualifications, experience, knowledge or skills to understand, in detail, all the functions of the Council. For instance, I am presently the Chair of the Planning Committee but I do not have any planning qualifications. What is expected is that I am aware of Council and Scottish Government planning policies and that they are properly applied. To assist me in this role the Council employs a number of senior planners who have the necessary qualifications, experience, knowledge and skills to advise on correct procedure before deliberating on individual planning applications.
 4. The same principles applied with my membership of the TIE Board. I would not be expected to be a qualified quantity surveyor or have a degree in contract law, nor would I be expected to have direct experience of building a tram. My understanding was that there were a number of non-executive Board members who did have that experience and a number of specialist advisors engaged to offer advice.
 5. Councillors are also supported by a number of Council officials, which included the Director of Finance. As a Council nominated Director, my role was to ensure that proper procedures were followed and that we were performing our fiduciary duties as Directors and, ultimately, to ensure the project was delivered.

6. There is a wide variety of training courses open to Councillors. One of the most important is the training offered before accepting a directorship on the many companies which are associated with the Council.
7. Of the political groups, the main proponents of the tram project were the Labour Party, the Conservative Party and the Liberal Democratic Party. The SNP were initially opposed to the trams.
8. I do not believe because all the political parties did not support the Tram Project that this necessarily led to any fundamental problems. It would not be expected that the majority of policies of any particular administration would get all party support. If that was the case you would be no need for political parties. However it would be true to say that there is a definite advantage to major projects getting all party support.

Reporting

9. The Chief Executive, Director of Finance, Director of Economic Development and the Head of Legal Services were responsible for advising Councillors of developments relating to the tram project, which included explaining the risks and liabilities to the Council arising from the project. Underneath them are a number of officials who worked within these departments and who would also provide relevant advice when required.
10. At that time Tom Aitchison was the Chief Executive, Donald McGougan was Director of Finance and Alastair Maclean was Head of Legal Services. I cannot recall the names of all the other people who worked in the different departments who provided support.
11. There was a hierarchy for any discussions relating to the Project. It would be discussed at the Council and at the Economic Development Committee and the Finance Committee and there would also be policy meetings held by the individual political parties. I would have expected these discussions to

continue from the initial inception date, throughout the duration of the Project. In my opinion there was always sufficient time to discuss the Project.

12. As a Labour Councillor we were not given a free vote in relation to the Tram Project, it was a whipped decision. The issue would be discussed at a Group meeting where differing views would be aired. There would then be a vote and the majority would prevail. All the Councillors who had voiced concerns would be expected to vote with the majority. I understand this was the same with all the other political parties on then council.
13. As a councillor I would receive updates in relation to the Tram Project while attending Council meetings or through group discussions. This would also occur if there were significant developments relating to the Tram Project such as issues relation to estimates and the cost of completing the Project. If such developments were to be discussed we would ask Council officials to attend to provide detailed information.
14. The only issue in relation to what information could not be disclosed would be if it was deemed to be commercial confidentiality. Council officials would provide advice on what was commercially confidential. No other aspect of the project would be considered to be confidential. Politicians would not be directly involved in actual tender. This would be considered to be a 'technical' matter which would be delegated to officials. Politicians would determine what criteria should be applied and the officials would make the actual judgement about how to apply the criteria to each tender.
15. The need for commercial confidentiality when you are negotiating contracts must be balanced against how much a politician should know about the detail. Politicians would be aware of the tendering process, but would not expect to be involved in assessing the financial suitability of each tender or which one is the most appropriate.

In relation to being a member of TIE Board you would have access to all the figures relating to tenders. They would need to remain confidential as their disclosure may damage the company and you would not be carrying out your fiduciary duties as a board member.

16. I understood the requirement for commercial confidentiality and unless I was on the TIE Board there would be a limit to what information I was privy to.
17. Group Leaders and Convenors of the various Boards and committee's received separate briefings on the Project, and as the Labour Group was concerned every major decision on the tram was referred back to the Group. Councillors would then have a responsibility to understand the each issue before voting. I can safely say as far as the Labour Party was concerned, Group members were well informed. I cannot however speak for other political parties.
18. I would expect that other political parties received a similar briefing to the Labour Party; however I would not be able to confirm this was the case. I know that there is a general principle that individual political groups request officials to provide briefings on a regular basis.
19. The information we would receive prior to reaching any decision would come from a number of sources, obviously the most important being the Council officials, but information would also come from constituents. Councillors would also have access to 'outside' information and expertise. In my experience all the information would be discussed before taking a decision.
20. I believe that the level of information we were provided in respect of the Tram Project contained sufficient detail. If requested, Councillors were provided with guidance in respect of financial or technical matters before arriving at any decision. This was in a form that was clear, intelligible and understood by myself. If I required further information or guidance I had the opportunity to question or meet officials to seek further clarification.

21. As an individual politician I can ask for any advice I want from either or outside or inside the Council. I can also ask for different types of information to be provided in different formats. I cannot remember specific details but I certainly did ask questions and I cannot remember ever being refused the information I requested.
22. I have no reason to suspect that the information provided to members in relation to the Tram Project was anything other than accurate and I did not have any concerns at that time. If I had any questions or required more information I would have requested it. If I did not understand the answer or information provided I would ask for a further explanation.
23. I do not have any knowledge of how information relating to the tram project in reports to the Council was derived from TIE or the extent to which it was produced and checked by Council officers.
24. I know that there was cooperation between TIE and the Council and my understanding is that this was the best way to provide accurate reports, which was particularly relevant in relation to financial management arrangements. TIE would require to be involved in providing information for the Council to compile the reports. Council officials would be required to ask TIE relevant questions as to the financial aspects and progress of the Project. The information flow had to be from TIE to the Council.
25. I would not directly report matters in respect of the Tram Project to my constituents. If a constituent contacted me by email, letter or visited me in my constituency, I would have a personal conversation with them. Most of the constituents in Edinburgh would generally obtain their information from the media, or by looking up Council reports. I cannot remember for certain, but I may have mentioned the Tram Project within my newsletters.
26. If a constituent asked me a specific question relating to the Tram Project I would then request that the officers provide an answer and a response would

be sent to the constituent. If I thought it was something I needed to raise in the group, I would have done so. If the point raised by a constituent was of a serious nature and there were a number of other people raising similar points, I would ensure this was discussed at Group level. There were two or three issues raised that I can recall, however the main one was that the Project could not be delivered with the funding available.

27. The financial concerns that were raised by constituents were not just general points, some were quite detailed. The response to them was provided by Council officials, although that response was not accepted. .

28. I was certainly aware of what was reported within the media in respect of the Tram Project. Within the group we all understood that when you excavate the road you will be unpopular. We were aware of other towns where Trams had been built and understood the impact this would have on the Council. The task was to get through that period of disruption in the shortest possible time. Nobody likes disruption. It is also not good for business and businesses. We did however have a scheme of refunding traders within Leith Walk where they could prove there was downturn in business as a result of the Tram works. This was not available in Princes Street as they could not – as far as I understand - prove that there was any significant downturn on their business. We all knew that during construction we were going to be very unpopular and that there was going to be a lot of adverse press coverage. However, if you look at other tram projects, once the tram is running the popularity increases and that is exactly what has happened in Edinburgh. We all knew that was going to happen and we all said that is a price you have to pay to introduce a tram.

Initial Proposals (2000-2006)

The New Transport Initiative and the creation of TIE

29. The City of Edinburgh Council were responsible for the decision to create TIE in 2002.
30. The main reason for the creation of TIE was to deliver the Tram Project, however it was also involved with other transport initiatives as part of a holistic approach to travel in Edinburgh. There was a need to have an integrated transport system and TIE was created as part of that process.
31. As Edinburgh was growing there was a requirement to look at the transport infrastructure. One of the issues we were very clear on when we looked at how other cities grew, was that you need to ensure the way in which people move about the city is sustainable. Our understanding at the time was that if this is not addressed it would be difficult to manage Edinburgh's growth in a sustainable manner.
32. My view was that it was absolutely necessary to create TIE for Edinburgh to grow economically we required an integrated transport system.
33. I note the document titled New Transport Initiative: Framework for Delivery dated 2 May 2002 (**USB00000232**). In Edinburgh we have experience in delivering a number of large projects, for example the Edinburgh International Conference Centre (EICC). It was agreed that the best way to deliver the EICC was to set up a separate company.. Given the success of the EICC there was no reason to believe that TIE would not be able to build the tram. I had no concerns about using this model to progress the Tram Project.
34. I do not believe that the creation of TIE as an off-balance sheet company was an issue. It was more about delivery. It was not about hiding anything, it was the best way to deliver the Project.

35. CEC would exercise control over TIE through the initial setting up of the company its aims and objectives and its Article of Association . Councillors and officials would also exercise direct control as directors of TIE. There were three Councillors on the Board one from the Liberal Democrat, Labour and Conservative parties, the SNP declined a place on the Board. The Director of Finance was on the Board as was the Director of Economic Development.
36. We exercise control through the setting up the aims and objectives and remit of the company. The Councillors on the Board would also report back into the Council about performance and progress.
37. TIE's main obligation was to deliver the Tram Project. TIE was also involved in other projects like Edinburgh Airport Rail Link (EARL), although this did not progress. I also believed that TIE tendered for another contracts. The only project they went ahead was the Edinburgh Tram Project.

Initial Estimates for the tram network

38. I cannot remember which individuals or organisations were involved in preparing cost estimates for the Edinburgh Tram network. Similarly I cannot recall which CEC officials had involvement with the preparation of estimates.
39. If I had any views or was concerned about the various STAG Appraisals and draft Business Cases produced during this period I would have raised them at the time. If I had any concerns about going forward I would have expressed them at the time. If the majority politicians had expressed serious concerns about the project, it would not have progressed.
40. We trusted the officials in preparing the Business Case. I do not recall any concerns at the time.

41. None of the varying estimates for the proposed tram network produced during this period caused me any concern. They were estimates and by the nature of estimates they were going to change. Estimates at the beginning of any project will change, that is the nature of estimating.
42. I note an email sent to all Councillors by a member of the public, Alison Bourne, dated 10 December 2003 (**CEC02082850**) in relation to the imminent meeting at which Councillors were to approve the lodging of the Tram Bills. Within the email Mrs Bourne stated, "*Costs – We note from the main report to Council (Trams) that, on 11 December, you are to be asked to approve the costs, as detailed in STAG 2 (page 71 for line 1; and page 88 for line 2) and Financial Statement. Are you aware that these documents show a different total cost (£566.7m) than the total being shown in the report to Council (£473.4m)?*"
43. I note a further email dated 1 August 2007, in which Mrs Bourne references that on 11 December 2003, she was part of a deputation to the City of Edinburgh Council on the subject of the route of Tram Line 1 (TL1). This also related to the costs which elected members were being asked to approve that day. Mrs Bourne highlights that the deputation, apparently, raised concerns that "*the cost of the project ... was being seriously understated and that realistic sources of funding required to be identified*" (**CEC01926998**).
44. In response to the first email from Alison Bourne Andrew Burns ensured that the matter was raised and discussed with officials. An answer was provided that officials were satisfied that what Mrs Bourne was claiming was incorrect. With regards to the second email and the letter Mrs Bourne submitted, it would appear that this came in quite late. I think that the letter was received a day before the meeting. The situation was that we were going into a meeting and she wanted us to provide more information, which was obviously problematic. I would assume, although I cannot recall, we satisfied ourselves the report was accurate. If this had not been the case we would not have been presented to the council. I frs as I can recall the Council was satisfied

that the estimates were correct and our points had been answered. As far as I understand all the questions that were raised were answered by officials before we took the decision. Therefore , the officials convinced us or gave us evidence that the points Mrs Bourne was raising were not valid in relation to this report.

The October 2004 Arup Review

45. I was aware of the content of a review of the Business Case for line 1 that was provided by Ove Arup and Partners Ltd, on behalf of the Scottish Parliament in October 2004 (**CEC01799560**). It did not cause me any concerns, including that TIE may have under-estimated the capital cost estimates for the project. Council officials would have responded to that report and the Scottish Government would not have allocated the funding if they were concerned.
46. I cannot remember if I saw TIE's response to Arup's report dated 12 November 2004 (**CEC01705043**) at the time of its release and I am unable to comment whether it caused me any concern. It is noted within the document that TIE did not appear to apply an additional contingency for risk or Optimism Bias. I cannot recall if this caused me any concern at the time.

The 2005 Road Charging Referendum

47. In February 2005, following a referendum, the public voted against the introduction of road user charging, which impacted on the overall plans for a Tram Network. In order to have an integrated transport system you required a tram network. The plan, as far as I can remember was to have network throughout Edinburgh which also extended to neighbouring authorities such as Musselburgh, Dalkeith and Livingston. The finance for the extended network would be met from income from a congestion charge. . When the referendum was lost we returned to the original proposal of tram lines 1a and 1b.

48. I cannot speak for other Councillors but I certainly was not concerned about the affordability of the Project without the road charging income.

The May 2005 Draft Interim Outline Business Case

49. I am aware that the Draft Interim Outline Business Case produced by TIE in May 2005 (**CEC01875336**) provided that either line 1 or line 2 were affordable within the Executive funding of £375m with a shortfall in funding for capital expenditure for both lines 1 and 2 of £206m (page 14). The programme anticipated construction of phase 1a commencing in December 2007 to meet an operational date for the tram by the end of 2009. The 30 month construction programme from July 2007 to meet the operational date for the tram by the end of 2009 was a "*challenging timescale*" (page 17).
50. I note it is mentioned within the document that this £206m shortfall appears to contradict TIE's earlier assurances in their response to Arup's report that "*the figures previously reported by TIE remain the best estimate of the likely future costs and there is no additional £220m shortfall*" (**CEC01705043**). I was not aware of this and cannot comment if it caused me any concern at the time.
51. The TIE and CEC officials had stated that it was a challenging timescale which we accepted with the understanding that if it could not be achieved then we would need to make adjustments to the timetable. I do not believe this was putting undue pressure on officials as it was understood that adjustments could be made if the timetable slipped.
52. As Councillors it was not uncommon for officials to make reference to a timescale being "*challenging*". If it did become 'challenging' I would expect the officials to report back and provide reasons why there should be an extension to the timescales and the various options that could be considered. The politicians would reflect on the options and decide the best course of action.

2006 Reports to Council and Draft Final Business Case

53. I refer to a report to Council on 26 January 2006 (**CEC02083547**), which report made certain recommendations for funding and phasing the tram network. The total estimate for lines 1 and 2 is noted as £634m. I further note the total available funding was £535m, comprising £490m from the Scottish Executive and £45m from the Council. The figures quoted in the report to the Council appear to be based on the Edinburgh tram progress report of September 2005 (**TRS00000209**). It was acknowledged that the Council's contribution would comprise only such amounts as could reasonably be expected to be funded from future tram related development and receipts. The contributions would not come from general funds or from Council Tax.
54. The requirement to restrict, or "*phase*" the scope of the tram network did not cause me any concern. Certainly not in relation to the reliability of the initial cost estimates, the affordability of the tram project and TIE's ability to deliver it.
55. The report recommended that a first phase for the Tram Project be built from the Airport to Leith Waterfront as, in terms of income, this would be the most profitable. There were estimates undertaken in relation to routes for Haymarket, St Andrew Square, the bottom of Leith Walk and the Waterfront and these ascertained that the Leith option was the most profitable.
56. The route from St Andrew Square, down Leith Walk to Ocean Terminal and the Waterfront is the most densely populated part of Edinburgh; therefore the return would be higher. I have no idea if the Scottish Government undertook any of this research.
57. The most profitable route was to the Waterfront. The least profitable route was to Granton. The main reason for Granton line to act a catalyst to regenerate the area. Once the area was regenerated my understanding was that it would be very profitable.

58. It was an important factor for the Council that their contribution would comprise only such amounts as could reasonably be expected to be funded from future tram-related development and receipts. In particular it would not be from general funds or from Council Tax. Related development and receipts can be in relation to a number of matters. For example the Council could have land that may increase in value due to the proximity of the Tram.
59. I cannot remember the exact figures but my understanding is that the value of properties increased by about 20% if a tram line is passes through a particular area. .
60. I refer to a joint report to the Council dated 21 December 2006 **(CEC02083466)**, which intimated that the Directors of City Development and Finance sought members' approval of the draft Final Business Case (FBC) for the Edinburgh Tram Network. I thought that the FBC was acceptable. If it was not acceptable we would not have agreed with the report. In large projects there are always risks. The key to delivering a successful project is to identify all the relevant risks. If the report had state there were no risks it would have challenged. As far as I was concerned at that time they had dealt with the risks in an acceptable fashion.
61. As Councillors we had full sight of the Business Case. The Report would be presented as a summary with all relevant figures attached as appendices. If we did not understand the figures we would have the option of asking for a briefing from officials.
62. I would say that the most significant risks within the Report were the advance utility works, changes to the project scope or specification and obtaining consents and approvals.

63. The TIE Board itself, the Chief Executive and the Director of Finance would have responsibility for maintaining control over the capital costs of the project. Ultimately the Chief Executive had overall responsibility.
64. I cannot recall the details of what the procurement strategy for the tram project was.

Events in 2007 to May 2008

65. The local government election on 3 May 2007 changed the administration of the City of Edinburgh Council from Labour to a Liberal Democrat/SNP coalition. Prior to the election there were three main political parties, Labour, Conservative and Liberal Democrats and I would not say that the Tram Project was politically contentious as there was agreement from the three parties that it was a necessary to ensure Edinburgh's continued development. One of the Labour Councillors, Steve Cardownie, defected to the SNP and adopted an anti-trams policy. If I recall correctly, there were not many occasions Mr Cardownie raised the Tram Project, although I think it may have been raised at budget time.
66. The change of administration at local government meant that the Tram Project no longer had cross party support. It became the project of the Labour, Liberal and Conservative Parties.
67. I cannot comment if any tensions arose from the fact that the SNP members at local level were part of an administration that supported the tram project, while the SNP national administration did not. At that time the SNP were part of a coalition with the Liberal Democrats, who obviously supported the Project, while the SNP did not. It would therefore be for Liberal Democrat Councillors to comment if there were any tensions within the administration.
68. I was still very supportive of the Tram Project and I had no concerns at that time about it not being delivered although the increase in the number of SNP

councillors was problematic. The rationale for the need for a tram and not changed. Without the tram managing Edinburgh's economic growth would become difficult.

69. A SNP Government was formed following the May 2007 election. A debate took place in the Scottish Parliament on the future of the Edinburgh trams and EARL projects and the subsequent vote was in favour of the Tram Project. Thereafter the Scottish Parliament called on the SNP administration to proceed with the Edinburgh trams project within the £500m budget limit set by the previous administration in June 2007. Accordingly, the grant for the trams project from Transport Scotland (TS) was capped at £500m. This is noted within a letter from Malcolm Reed, TS, to Tom Aitchison dated 2 August 2007 **(CEC01666269)**.
70. The change in administration at a national level made the tram project a much more political. When you lose cross-party support, whether it is at Council or national level, it becomes much more contentious. That puts more pressure on everybody concerned. If you are an opposition politician and you want to undermine a project, it is much easier to do so if there is no cross-party support. The numbers of leaks to the press, the number of stories which were questionable, increased dramatically.
71. When you have something that is popular by its nature it is much easier to deliver. The fact that the initial phases of the tram entailed excavating roadways then it was going to be unpopular given the inevitable traffic disruption. If a party using this initial unpopularity to undermine the project then it makes the whole project much more difficult to deliver. My view is that it did not affect the delivery but it became much more difficult to promote a positive view of the tram,
72. I note a Briefing Paper for the Chief Executive produced by Jim Inch dated 20 July 2007 **(CEC01566497)** in relation to the governance arrangements of TIE. The paper noted that the current governance arrangements for TIE were

“complex”, that it was “vital that more rigorous financial and governance controls are put in place by the Council” and that “TS have previously urged the Council to implement a more robust monitoring of TIE’s activities in delivering the project”. I am unable to recall if the issues detailed within this report were discussed with myself and other members. I can only make the assumption that we were satisfied with the report or it would not have progressed.

73. I note that around July 2007 Gordon Mackenzie as Finance Convenor, sought information on a number of matters, including what contingency plan needed to be in place in case of a cost overrun (**CEC01556572**). There was already a contingency put in place by the Council at that time in the event of a cost overrun and any decision to alter this contingency would be based on any identified additional risk. I think that the contingency was £34m, which then reduced to £25m.
74. I also note a document titled: Highlight Report to the Chief Executive’s Internal Planning Group (IPG) dated 30 August 2007 (**CEC01566861**), which noted that *“the capping of the grant from TS changed the risk profile for the Council and sought guidance on the procurement of resources necessary to provide a risk assessment and analysis of the Infraco contract for the Council within the available timescales”.* Any steps taken by CEC to protect its interests following the changed risk profile would have been required to be documented within a Council report. This would include measures to address, quantify and mitigate any increased risk. In addition there would be measures to ensure Councillors understood the risks and liabilities arising from the tram project.
75. I attended a Council meeting on 23 August 2007 (**CEC01891408**) at which a decision was made to revise the governance arrangements. In a project this size, and as it was developing, I do not think it came as a surprise to me that there would be a requirement to revise arrangements.

76. The decision to establish a subcommittee of the Transport, Infrastructure and Environment Committee would have been taken by the administration.
77. I cannot recall if the roles of the Executive Chairman of TIE and the Chief Executive of Transport Edinburgh Limited (TEL) changed.
78. I cannot remember any changes to the governance structure that were introduced in the second half of 2007 and the first half of 2008. In addition I cannot recall if any changes met the requirement noted by Jim Inch in his Briefing Note for "*more rigorous financial and governance controls*" **(CEC01566497)**.
79. I note that on 25 October 2007 TIE sought the Council's approval for the Final Business Case, version 1, (FBCv1) in respect of phase 1a, Edinburgh Airport to Leith Waterfront **(CEC02083538)**. I further note that the report advised the estimated capital cost of phase 1a was £498m, this included a risk allowance of £49m. In addition there was a 90% chance that the final cost of phase 1a would come in below the risk adjusted level. It was also provided that fixed price and contract details would be reported to the Council in December 2007 before contract close. I further refer to the full FBCv1 **(CEC01649235)**. This report advised that a separate report was being prepared for the Council to set out the result of the tender evaluation and provide recommendations as to the preferred bidder for each contract.
80. I am led to believe that at the meeting of the Council on 25 October 2007, members appear to have been given a presentation by Andrew Holmes, Willie Gallagher and Neil Renilson **[CEC02083536]**. I have no recollection of this presentation due to the passage of time.
81. I had no concerns with the FBC being accepted. The Council agreed to it and, although I do not recall the exact vote I am sure that that the SNP voted against.

82. There were no issues with providing approval for the Final Business Case at a stage when considerable expense had already been incurred on the project.
83. I cannot recall how the estimated capital cost for phase 1a of £498m had been arrived at.
84. The Council would agree the tendering process and the officials would then invite and assess the tenders. The successful company would be reported back to the Council. That was the normal procedure although I cannot recall if this was applied in this instance
85. I cannot comment on why TIE chose Bilfinger Berger/Siemens (BBS) as the preferred bidder as I would not have not had sight of any of the tender documents.
86. I refer to a Briefing Note (**CEC01397539**) sent by email (**CEC01397538**) by Alan Coyle to Andrew Holmes and Donald McGougan dated 3 December 2007, which set out a number of concerns in relation to the tram project including the report to Council seeking approval of the Final Business Case.
87. It would not be unusual for myself or other politicians to see that type of Briefing Note as it was the Council officials who were overseeing the delivery of the project. All the discussions would be documented and it would not be expected that a Councillor would be given access to all these documents. If we had asked, we could have had access although it would not be normal to have sight of all the emails going back and forward between officials. If there was a serious concern from any officials they should alert the politicians. If an individual officers concerns were resolved internally there would be no need for any councillor to be concerned. If it could not resolved and an official still had an issue, I would expect that to be reported either to a politician or to be brought forward as a report to a committee. As this did happened I would make the assumption the issues were resolved.

88. I do not think members of the Council were aware of the concerns set out in the Briefing Note. It would only become an issue for politicians if the concerns were not dealt with and resolved by officials.
89. If Council members had been made aware of these concerns we would ask the officials to make attempts to resolve matters. If the issues could not be resolved a Committee Report would be requested from the officials which would outline the concerns and, most likely, options to resolve the matter. It would then be for the council to decide on a relevant response.
90. I note an email dated from Duncan Fraser dated 14 December 2007 **(CEC01397774)**, which referred to a presentation by TIE the previous day and asked certain questions about the Quantified Risk Allowance. This included querying the provision made for the likely change in scope given the incomplete/outstanding design, approvals and consents. Within the email I note that Duncan states, *"The scope of the works is not clear to CEC and specifically the quality and quantity and status of designs on which BBS have based their price. Also none of the designs are approved (none technically and only 4 out of 61 prior approval packages) hence the scope is likely to change, hence provision should be made for this"*.
91. I note the response from Geoff Gilbert, TIE, *"I have previously explained the interrelationship between emerging detail design, Employer's Requirements and Infracore Proposals works and how price certainty is obtained out of this process and are in the process of delivering such certainty. Therefore, please advise what scope changes you anticipate arising out of the prior approvals and technical approvals. The overall scope of the scheme is surely now fixed, is it not?"*
92. I cannot remember what my understanding of these matters was at that time. I did not regard the scope of the scheme to be fixed, although there was a large proportion that was fixed. As I recall the figure of 90% was suggested. Although detailed design, approvals and consents were incomplete, the issue

then becomes the assessment of the risk this proposes to the project and are there sufficient a contingency to cover the risk. The tram was never going to be a fixed cost project. There was always going to be the need for a contingency. There are always therefore going to be additional costs and I always understood that was part of the project. The question for me was whether the contingencies figure would be sufficient to meet the cost and I was assured by the discussion that it would be.

93. I am aware that between 17 and 20 December 2007 negotiations took place at Wiesbaden, Germany between representatives of BBS and TIE. On 20 December 2007 an agreement, or heads of terms, was reached, which was later referred to as the Wiesbaden Agreement. My understanding of these negotiations was that they were attempting to resolve on-going disputes. I cannot recall who made me aware of these matters, I was not on the TIE board at that time therefore I would not have specific knowledge of the meetings and discussions that occurred. The administration would be responsible for these negotiations.
94. At that time I would not be aware if TIE had knowledge that the contract was not fixed price and that this might result in the Council breaching the terms of the funding agreement with Transport Scotland.
95. I note a joint report to Council presented by Donald McGougan and Andrew Holmes on 20 December 2007 (**CEC02083448**), which sought members' approval of the Final Business Case, version 2 (**CEC01395434**). It further sought staged approval of the award by TIE of the contracts, subject to the price and terms being consistent with the FBC and the Chief Executive being satisfied that all remaining due diligence was resolved to his satisfaction. It was further noted that the estimate for phase 1a of £498m, inclusive of a risk allowance of £49m, as reported in October 2007, remained valid. I had no concerns at that time in relation to the Final Business Case, version 2; it was agreed by the Council so it was clearly acceptable.

96. I cannot recall what my understanding was at that time in relation to the extent to which design, approvals, consents and utility diversion works were complete. In addition, I cannot recall my views at that time on any difficulties that could arise from incomplete design and utility works or how any such difficulties would be addressed.
97. My understanding at that time was that there was a 90% fixed part of the infrastructure contract, as provided by Council officials. The key for me was were there a sufficient contingency in place to meet additional costs that were bound to arise in a Project of this nature. I was always of the view that there would be additional costs, but that did not influence my vote on whether or not the Tram Project should proceed.
98. With a contract as large as the trams there were always going to be risks and we had to ensure there were sufficient contingencies to address those risks. Some of the incomplete designs, approvals, consents and utility diversion works were of a technical nature which officials would assess. I would not have a great understanding these matters I would not consider this to be responsibility as a politician. I would expect officials to advise on technical issues and whether there was sufficient contingency to meet any unforeseen risks. I would not have supported the FBC if their advice had been there were not been assured that there sufficient funding to meet all the contingencies.
99. I have no knowledge of the allowance that had been made for these risks, nor how, and by whom, the risk allowance had been quantified and whether any allowance had been made for Optimism Bias.
100. When I voted on the Final Business Case, I was satisfied that the aims of the procurement strategy had been met and that the price and terms of the infrastructure contract at that stage were consistent with it.
101. I note that the Report to Council mentioned that some allowance had been made for risk associated with the detailed design work not having been

completed at the time of Financial Close. It further provided that the “*fundamental approach*” had been to transfer risk associated with design not having been completed to the private sector and this had largely been achieved.

102. I was not concerned that allowance had only, apparently, been made for delay resulting from design and not, for example, for delay resulting from unforeseen ground conditions or issues with utilities. We were reassured by officials that this would happen and that the unforeseen ground conditions and the issue with utilities had contingencies in place to address them. There are always going to be unforeseen circumstances when you excavate roads.
103. I far as I recall I had no understanding – nor would I expect to have as I am not an engineer - which risks associated with design were to be transferred to the private sector and which had to be retained by the Council. I cannot remember any advice provided to the Council in respect of this matter.
104. The Report noted that the risk contingency did not cover major changes to scope and that changes to the programme could involve significant costs that were not currently allowed for in the risk contingency. I note further that it did not consider what events might cause changes to the programme and what was being done to mitigate the risk. The document appears to be pointing to an overspend, but I do not remember that detail. If it is highlighting an overspend than I’m sure that the Council would not have agreed to it before we were reassured that the overspend could be contained. Donald McGougan and Andrew Holmes joint report to the Council which sought approval did not mention any overspend. There is nothing in the report detailing an overspend; they have stated that the figures would be £498m and £49m.
105. I refer to point 8.15 within the report, which highlights that negotiations are still on-going. The key point is that the report provides that the changes “*could*” involve significant costs. From the use of the word “*could*” I would assume that if any changes were going to occur they would either be covered by

contingencies or they would need to be reported back to the council. Council officials could not sanction any expenditure over the £545m as they would mean they were acting outside the remit of the original council report. For this reason there was no requirement to seek any further clarity.

106. I was comfortable approving the Final Business Case in the circumstances detailed.
107. I cannot recall if there was ever discussion about postponing the award of the infrastructure contract until the design and utility diversion works were complete.
108. I note that the Report mentioned that some risks were retained by the public sector. This included: agreements with third parties including delays to utility diversions, finalisation of technical and prior approvals and absence of Professional Indemnity Insurance for TIE as it was wholly owned by the Council. I was not concerned at the time that the Council retained these risks.
109. Due diligence in relation to third party agreements, consents, discussions and negotiations required to be concluded in order to establish if the contract could be delivered within the £545m. On satisfactory conclusion of these matters, the Chief Executive would inform TIE that it was appropriate to award the infrastructure contract.
110. The Council had delegated the Chief Executive to sign the contract. On condition that the Chief Executive finalised the negotiations and was satisfactorily and the project could be delivered for agreed price.
111. I cannot recall the reasons for a number of increases in the price of the infrastructure contract between January and May 2008.
112. I am aware that a progress report from TIE to Transport Scotland dated 14 January 2008 (**CEC01247016**) noted that discussions with BBS had resulted in the signing of an *"Agreement for Contract price for phase 1a"* on

21 December 2007, “essentially fixing the Infraco contract price based on a number of conditions”. The key points of the agreement included, “Effective transfer of design development risk excluding scope changes to BBS.” And “Certain exclusion from the fixed price of items outside the scope of the tram project, all of which are well understood and either separately funded or adequately provided for in the overall tram project estimate. I was not previously aware of this report. It is an internal document that I would not expect to have sight of.

113. The same principle previously detailed would require to be applied to my understanding of the “*design development risk*” and the extent to which the scope of the project had been fixed. I would require someone of a technical background to explain the content and detail. Similarly I would require technical advice to obtain an understanding of the “*items outside the scope of the tram project*” which were excluded from the fixed price. I have no knowledge of how these items were “*separately funded*” or had been provided for in the overall tram project estimate.
114. I am aware of further documented concerns about the Infraco contract raised by CEC deputy officials in the lead up to contract closure ((**CEC01567522**), (**CEC01567520**), (**CEC01560815**), (**CEC01508412**), (**CEC01400919**), (**CEC01400987**), (**CEC01399016**), (**CEC01399075**), (**CEC01401032**), (**CEC01401628**) and (**CEC01401629**)). The concerns included that there had been a material change from the Final Business Case put to the Council in December 2007 and that the price had subsequently risen by £10m. The project timetable was now three months later than predicted and the risk of approvals and consents had not been taken by the private sector. There was a residual risk associated with design which may, although the Council did not have any figures to assess it, be significant. At that time I was not aware of these concerns. I would comment that the last concern noted states, “*the risk may be significant*”. If it became significant that the project could not be delivered as per the Council report then officials would duty bound to report

this back to the Council, If there had been a significant risk there would have been financial consequences that required to be reported to the Council.

115. As councillors we received a fraction of the information made available to senior officials. Officials are employed to resolve and deal with these issues and if they cannot for whatever reason it needs to be report back to the Council
116. I am aware of a document titled 'Design Due Diligence Summary Report' produced by BBS on 18 February 2008, which I believed was based on design information provided to them up to 14 December 2007 **(DLA00006338)**. I note that this document highlighted various concerns about design, including that "*more than 40% of the detailed design information*" had not been issued to BBS. I did not see the report at the time; however I was aware there was a dispute about the level and competency of the designs. BSS were claiming that they were not sufficient and we were claiming they were. It did not strike me as anything unusual that a private company, that had secured a big contract, would try and maximise their return. I was not therefore surprised there were these types of discussion were taking place. We had a contingency and so it may have been in their interest to pursue this type of negotiation. It is my understanding that other similar contracts for involving tram construction have encountered such issues..
117. I have no knowledge of the extent to which the detailed design was complete or the extent to which BBS's price was based on completed detailed design. Similarly, I had no knowledge at that time how BBS could price for those works in respect of which detailed design was incomplete. My understanding was that the issue of incomplete design would be reflected in the risk allowance.
118. I refer to a letter dated 12 March 2008 **(CEC01347797)** in which DLA advised CEC on the Draft Contract Suite. I am led to believe that Graeme Bissett, TIE, appears to have had an input into the drafting of that letter, as evidenced in

emails from Mr Bissett to Mr Fitchie dated 11 March 2008 (**CEC01551064**) and (**CEC01551066**). I also refer to a further email dated 11 March 2008 from Mr Bissett to Mr Fitchie (**CEC01541242**) enclosing a draft of the proposed letter from DLA to CEC (**CEC01541243**); also Mr Bissett's e-mail of 13 March 2008 (**CEC01474537**) attaching a draft of a further letter from DLA to CEC (**CEC01474539**). I cannot recall if I was aware that TIE individuals were involved or had an input in the drafting of letters from DLA to CEC. I cannot comment on whether this would have been appropriate or not, I have no opinion either way.

119. I refer to an email dated 24 August 2007 from Colin Mackenzie, Deputy Officer at CEC, to Gill Lindsay (**CEC01567522**) recommending that the Council seek independent legal advice on the risks arising to the Council in respect of the infrastructure contract. I recall we received independent legal advice at this time, but I cannot recall what it was in connection with. As a TIE board member, I recall lawyers attending one of our group meetings but I cannot remember what this was in relation to. It would be a matter for Council officials to comment on any requests they made for legal advice.

120. I am aware that a full meeting of the Council took place on 13 March 2008 and that the agenda (**CEC02083387**) and minutes (**CEC02083388**) note that members do not appear to have been given any update on the tram project. An update was not contained within the agenda therefore it would not be discussed. The tram was not a regular item on the Council agenda and therefore a report would not automatically be required. There would have to be an issue the report was addressing for that to occur and at that point there was no issue to be addressed, so there was no report. Technically, the Chief Executive is in control of the Council agenda therefore if he felt it necessary he could have included a tram report at any Council meeting. The agenda would normally be agreed by the Administration and the Chief Executive. At that time the administration was the Liberal Democrats/SNP coalition and if the opposition required a report to be presented we would

request a motion that a Report be presented to the next meeting. Although that would only happen if the motion gained the support of the Administration.

121. I am aware that an email sent to Alan Coyle dated 14 March 2008 (**CEC01386275**) had a note attached that had been approved by Gill Lindsay (**CEC01386276**). The Note, to be signed by Donald McGougan, Andrew Holmes and Gill Lindsay, confirmed that it was appropriate for Tom Aitchison to authorise TIE to immediately issue a Notice of Intention to award the Infraco contract to BBS. The final contract price was £508m and the risk contingency had been reduced from £49m to £33m. I cannot recall the note. We were in opposition and the likelihood would be that opposition members would not be included in any circulation of such a note.
122. If the Council delegated that TIE had authority to issue a Notice of Intention to award the Infraco contract to BBS that would be acceptable. There is a process in place and where matters are delegated to officials it is recorded. It would either be part of that scheme, or the full Council had agreed that the matter could progress in this manner.
123. I refer to an email sent by David Leslie, Development Management Manager, Planning, CEC, to Willie Gallagher dated 31 March 2008 (**CEC01493317**). I also note the attached letter (**CEC01493318**), which expressed certain concerns in relation to prior approvals for design. I further refer to a letter sent by Duncan Fraser to Willie Gallagher dated 3 April 2008, which set out similar concerns by the Transport Department relating to Technical Approvals and Quality Control Issues (**CEC01493639**). I was aware of these letters. The letters refer to officials discussing issues and concerns and it would be their responsibility to resolve those matters. If they could not find a solution, it would have to be referred back to the appropriate politicians.
124. I have no knowledge if other members of the Council were aware of the concerns referred to in the letters. As stated, members would only become aware of the concerns if they were not resolved.

125. I have no comment to make in relation to the “*difficulties*” noted in Mr Leslie’s letter. In addition I have no comment to make in respect of the statement within the letter, “*where BBS have been forced to make assumptions in their bid which do not correlate with our own expectations*”. These items are written for officials not politicians. At that time I was Chair of Planning and I would not be expected to have an understanding of any difficulties that related to a technical matter with the tram project. My recollection of the highlighted matters was that they were resolved internally.
126. My understanding was that the pricing provisions in the Infraco contract dealt with any “*difficulties*” through the contingency.
127. I refer to an email correspondence between the deputy solicitor to the Council, Colin Mackenzie, and the solicitor to the Council, Gill Lindsay, dated 11 April 2008 (CEC01401109). I note that Mr MacKenzie advised Gill Lindsay of a difficulty that had arisen with the “*Russell Road Bridge: Prior Approval*” and raised the question of whether the sum, £3m allowed in the Quantified Risk Allowance for SDS delay, was sufficient. I further note Mr Mackenzie’s comment, “*this is getting very close to calling upon the Monitoring Officer to become involved*”.
128. I also note that concern was expressed by Alan Coyle of TIE in an earlier email in the same thread that this was contrary to the risk transfer to the private sector. It went on to state that insufficient information had been provided by TIE for CEC to accept the risk on these matters, leading him to ask “*how many more of these things are going to come out of the woodwork?*”
129. I was not previously aware of any of the concerns raised, although I would say that once more this is officials resolving matters themselves; the Monitoring Officer, for example, is a Council official. This would suggest to me that there had been an issue or a problem with a significant cost, which had caused concerns but which, ultimately, had been resolved.

130. I am unable to comment on whether other members of the Council were aware of the concerns referred to in the email correspondence and I have no opinion on whether other Council members should have been made aware of these concerns.
131. My observation of Mr Mackenzie's comment that *"this is getting very close to calling upon the Monitoring Officer to become involved"* would be that he is concerned regarding the actions of TIE. Mr MacKenzie is highlighting that TIE are coming close to acting outwith their authority and as a result he has the right to notify the Monitoring Officer. He has reported this to officials and it is then their responsibility to resolve the matter. The alternative would have been that he would have made the Monitoring Officer aware. I do not recall anything ever being reported of that nature so my assumption would be that it was resolved.
132. If these concerns had been made to Councillors we would have explored ways the matters could have been resolved..
133. I refer to an email by Colin MacKenzie dated 14 April 2008 **(CEC01256710)**. I note within the email Mr Mackenzie set out certain concerns highlighting his view that it would be *"prudent and proper"* to report again to members before Financial Close of the Infraco contract was authorised, given the various changes which had emerged since December 2007. This included *"the new final estimate of £508m; a four month delay to the revenue operating date; and continuing concern over the risks to the Council arising from the SDS programme"*.
134. I cannot remember having sight of the email and I was not aware of it existence. An interpretation of what Mr MacKenzie is saying would be that it is his view that matters should be referred to the Council. This is evidenced by his comment, *"Prudent and proper to report to the members of the financial case"*. I cannot recall if this happened. If it was referred to the Council I would be of the opinion that his mention of *"prudent and proper"* would not be a

matter for agreement. I believe the response would be *"That is just one official's understanding or interpretation of what is happening"*. Other officials may have a different interpretation.

135. I would doubt that other members of the Council were aware of the highlighted concerns, although that would be a matter for them to respond to.
136. I refer to an email sent to officers in CEC legal dated 15 April 2008 **(CEC01245223)**. I also note an attachment to this email, a copy of Schedule 4 (Pricing Provisions) of the Infraco contract **(CEC01245224)** and a cost analysis spread sheet **(CEC01245225)**. I refer further to a reply by CEC legal dated 16 April 2008 **(CEC01247679)**, which asked whether it would be appropriate to get a revised statement from TIE confirming that the risk allowance was still sufficient. I do not recall the matters related to in the emails. I was not on the TIE board at that time therefore would not have access to the documents referred to.
137. I cannot recall if officials ever reported to the Council on the pricing provisions, Pricing Assumptions and Notified Departure provisions contained in Schedule 4. In addition, I cannot recall discussing whether the Quantified Risk Allowance was still sufficient.
138. I was not advised of the mechanism that could be accessed in respect of contingency funding. My understanding was that if there was a requirement to access the contingency there would be a schedule in relation to how this was progressed. I could not comment if it was schedule 4
139. I am aware that an email from Colin Mackenzie to Gill Lindsay dated 30 April 2008 **(CEC01241689)** notes *"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!!"* I am also aware of a Report to Council by Tom Aitchison on 1 May 2008 **(CEC00906940)**, which sought refreshment of the delegated powers

previously given to the Chief Executive to authorise TIE to enter the contracts with the Infraco and Tramco bidders. Within the report it was noted:

- 1) The cost of the project had increased from £498m to £508m (comprising a base cost of £476m and a revised QRA of £32m), which increase was noted to be largely due to the firming up of provisional prices to fixed sums, currency fluctuations and the *“crystallisation of the risk transfer to the private sector as described in the FBC”* (para 3.5);
- 2) 95% of the combined Tramco and Infraco costs were fixed with the remainder being provisional sums which Tie had confirmed as adequate;
- 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 Ltd advise that the outcome is the best deal that is currently available to themselves and the Council. Both TIE Ltd and the Council have worked and will continue to work diligently to examine and reduce this risk in practical terms”*

140. I assume we were made aware of the recent price increase prior to the meeting on 1 May 2008 although I cannot recall this specifically. The agenda is circulated prior to the Council meeting so there is an opportunity to discuss the content of all Reports.

141. The Administration would be made aware of the price increase before the opposition. All members would have sight of the report a week before the Council meeting and would have been made aware of the recent price increase prior to the meeting on 1 May 2008. I cannot recall any discussion around whether members should be advised of the price increase.

142. My understanding of the comments regarding the *“new risk area”* that had emerged as a result of the overlapping period of design and construction, the *“outcome”* that had been arrived at in respect of that and the steps that would be taken by TIE and CEC to reduce the new risk area, was that this was regarding the firming up of prices for fixed sums. It was very detailed and I

cannot recall any of the issues. On occasion, if we required explanation of details from officials, they would be invited to come and speak to our Group meeting , but I cannot remember whether they did so on this occasion.

143. I refer to the comment within the report that stated that work had been done since November 2007 to minimise the Council's exposure to financial risk "*with significant elements of risk being transferred to the private sector*". I cannot recall what changes had been made to the contracts to reduce the Council's exposure to risk.
144. I note that the report to the Council in 2007 indicated that risk was fully managed. My opinion was that there would be risks throughout the project given its complex nature. It did not cause me great concern as long as the officials assured us that they could be contained within the contingencies.
145. I believe that at that time I had been fully briefed in relation to the new pricing Schedule 4 that stated 95% of the combined Tramco and Infraco costs were fixed but I cannot recall the detail.
146. The members had been assured at this time that the costs were 95% fixed and there was no misunderstanding in respect of this. If there was any misunderstanding it would have been the responsibility of the Chief Executive and the Director of Finance to inform the Council.
147. I refer to an email dated 8 May 2008 from Stan Cunningham, Committee Services Manager, to the Council Solicitor (**CEC01248988**), which advised that the current plan for tabling a report noting the further price increase from £508m to £517.2m, seeking approval for the Chief Executive to instruct TIE to enter into the relevant contracts, meant that "*it may be the first time that many of the members are aware of this matter. This is not satisfactory...*". It is clear that in this situation the decision within the £545m envelope has been delegated to the Chief Executive. The Chief Executive has obviously satisfied

himself that the price increase could be contained within the contingency and the project would not go over the £545m.

148. I refer to a report submitted by Tom Aitchison to the Policy and Strategy Committee on 13 May 2008 (**USB00000357**), which was shortly before contract signature. The report advised that the estimated capital cost for phase 1a was now £512m and that, in return for the increase in price, TIE had secured a range of improvements to the contract terms and risk profile. These were referred to in paragraphs 2.7, 2.9 and 2.11. I further note that the report needed to be considered as a matter of urgency, to allow an immediate Financial Close of the contracts for the Edinburgh tram network.
149. I was not aware that at this time as there was a changeover in administration of the Policy and Strategy Committee. I was not aware Jenny Dawe had been appointed as convener of the Committee and Steve Cardownie as vice-convener and I cannot recall who previously convened the meetings.
150. I cannot recall being present at the meeting referred to, nor can I remember what the range of improvements to the contract terms and risk profile were.
151. It had been agreed to delegate the authority to enter the contracts to the Chief Executive and for that reason there was no requirement for this matter to be considered by the full Council.
152. I believe a certified extract of the Minute from the meeting notes that the committee authorised the Chief Executive to instruct TIE to enter into the contracts (**CEC01222172**). This was the final "*sign off*", or approval, from the Council (**CEC00080738**). The correct procedure had been adhered to as, although the Chief Executive could have signed the contract, he referred it back to the committee as there had been a change in the amount and he clearly felt that this was an appropriate action to take.

153. I cannot recall what changes had been made to the contract between December 2007 and contract signing in May 2008.
154. We received regular briefings from CEC legal officers, TIE or DLA, however I cannot recall if we had any specific briefings regarding pricing Schedule 4. If we felt that there was something in a report we could not understand and that required further explanation, we would request that a legal officer provided a briefing.
155. I cannot remember which party bore the risks arising from incomplete and outstanding design, approvals, consents and outstanding utility diversion works.
156. The extent to which the risks had been retained by CEC comes back once more to the contingency. It is council officials responsibility to managing the details of the project and the risks. If – at any point – it became apparent the contingency could not meet all the risks or potential risks, they needed to report back to the Council.
157. I do not know what the actual breakdown of the infrastructure contract was, however we had been assured that it was 95% fixed price.
158. I assumed that the aims of the procurement strategy had been met otherwise the officials would not have recommended approval to the Council. It is the responsibility of the officials to oversee the procurement and the contract negotiations. If there were any problems I would have expected them to report that back to the politicians.
159. I would not be expected to have an understanding of the entitlement on the part of the contractor to seek further monies on the basis that there has been a variation under the contract, for example a *“Notified Departure”* under section 3.2.1 of Part 4 of the Schedule to the contract. This would be something that the officials would deal with and which they would then report

back to the politicians. The same principles applied for the Pricing Assumptions set out in Schedule 4.

160. If there were any consequences likely to arise from the fact that the Base Date Design Information was fixed with reference to the design drawings issued as at 25 November 2007 this would again be dealt with by officials. I would not be expected to have any knowledge of these matters which are of a technical nature.

Events between May 2008 – December 2008

161. I cannot remember being sent an email dated 2 May 2008 (**CEC01230480**), which provided an upcoming Schedule of Works for Leith Walk (**CEC01230481**).
162. I refer to a report to the Council from TIE dated 18 December 2008 (**CEC01043168**), which noted that since summer 2008 work had been carried out to develop the Business Case for line 1b. The report continued to note that an indicative figure of £87m had been provided by BBS for phase 1b but that this was open only until March 2009. I further note that it appears that this had gone on notwithstanding the comments in the report to Council of 1 May 2008 (**CEC00906940**), which provided that the firm costs had increased by £27m, whereas the risk allowance had reduced by £17m and the Council noting that the movement in cost may impact severely on the ability to deliver tramline 1b (**TIE00153367**). Despite costs issue, the Council appear still to have been considering a network of lines 1a, 1b at 29 April 2009 (**CEC00860021**). I do recall a discussion around this issue although I cannot remember the exact detail. It may have been about the possibility of the Consortium being able to deliver Granton spur cheaper on the basis of economies of scale they could achieve once they were delivering 1b.
163. There is an 'assembly' cost for any project in relation to the equipment and workforce. If Granton could be delivered after 1a then there would be no

assembly cost – thus making it cheaper to deliver. My understanding was this was discontinued as a strategy because of cost increases.

164. I was aware of the difficulty in delivering 1b in view of the increased costs of 1a, as was commented on within the Minute of 1 May 2008. We wanted all the lines completed and the cheapest way to do so was to complete them all at the one time. This came down to a question of the cost of assembly and how that fitted in with all the other matters.
165. I cannot recall the content or the reference to the slow start up or what on-going effect this had that is mentioned in the Report to the Council from TIE dated 18 December 2008 (**CEC01043168**).
166. I refer to a meeting held at the City Chambers on Friday 28 November 2008 (**CEC01069591**) and note that at this meeting Jenny Dawe requested TIE suspend the implementation of phase 2 until after the embargo period. I have no knowledge what impact this had on the Project nor I do not remember them being reported back to the Council.
167. I would require sight of the committee decision before commenting on any decisions made by the Policy and Strategy Sub-Committee on 12 May 2009.
168. I refer to an email sent by Iain Whyte to Jenny Dawe, Phil Wheeler, Alan Jackson, Tom Aitchison and Donald McGougan dated 10 December 2008 (**TIE00887286**), which noted concerns about a comment made by David Mackay of TIE to the effect that TIE never started with a fixed budget, because "*the design changes as you go along*". I have not previously seen this email therefore I have no knowledge of the content.
169. Again, my understanding at that time was that it was fixed price for most of the contract.

170. I refer to the Tram Project Board papers of 17 December 2009 that I have received for the first time (**CEC00988024**) and which contained the minutes of the meeting which occurred in November. I was not at this meeting in November and I therefore cannot comment on the subject of the Princes Street blockade nor why the members of the TPB took a full involvement in this matter. Furthermore, I am unable to comment on any other matters that occurred at the meeting as I was not in attendance.
171. My understanding of the table in Section 5, page 46, of the document is that it was a review of the risk register. The risks are reviewed at every meeting and this table identifies them all before they are then assessed.
172. I was aware that there was a dispute between TIE and BSC in relation to the infrastructure contract but I could not say when this was. The nature of the dispute varied between the cost of what was required and the technical specification, both were related. Clearly if there are highly technical specifications there is a high cost, low technical specification means low cost and as far as I can recall the issues were around these two matters.
173. My view was that in a contract of this size you cannot possibly bottom everything out. As a result, discussion will arise about specification, costs and timing and that is the nature of all contracts. It did not come as a surprise to me given the nature, complexity and size of this contract that negotiation was required on various aspects. The disputes arose because of the different interpretations of the contract so it is difficult to say categorically who was primarily responsible for the dispute arising.
174. TIE's strategy, which was approved by the Council, attempted to resolve the dispute through negotiation. If that could not be achieved there was a Dispute Resolution Procedure specified in the contract..
175. We were fully briefed on all the disputes and their outcomes once they were known; I think there may have initially been five. The discussion within the

Board was that we had a very strong case, although as it later transpired that was not correct in every instance. We later became aware that it was not as straightforward a contract as had been described at the meetings and once the results of the disputes became apparent, my thoughts on our position changed. I cannot speak for all of the Board, but I realised that our position was not as strong as had previously been suggested.

Events in 2009 and the Princes Street Agreement

176. The papers for the meeting of the Tram Project Board dated 22 January 2009 **(CEC00988028)** contain the minutes of the previous meeting held on 17 December, which I attended. Item 2.3 of the December Minutes notes that Kenneth Hogg considered there were “*issues*” with the governance structure. Mr Hogg was concerned that at times the Board could not discharge their functions fully. I cannot recall entirely what occurred at this meeting, although I do recall Kenneth Hogg producing a document that was circulated to Board members. I cannot, however, remember the content.
177. I cannot remember if there was any discussion about whether there would be insufficient risk allowance for MUDFA.
178. I would refute the suggestion that each month the Project Director’s (PD) and Transport Scotland’s (TS) reports were the same. A possible explanation for such a suggestion is that the report referred to is the minute of the meeting and not the full report. A further reason may be that there were no changes in the circumstances and therefore no reason to produce a different report. If it was ascertained that the reports were the same two months running when there had been some change, obviously that would not be acceptable.
179. I note that the design section of the PD report refers to good progress but also notes that reasons for design slippage are being reviewed. I have no further comment on this other than that if the review of the design slippages remained the same for two months with no feedback, we would question this.

22 January 2009
should be
22 January 2008

If there had been no progress from one month to the next we would expect an explanation. I would, however, highlight that every discussion that occurred with the Board would not be recorded in the minutes.

180. I cannot recall when I expected the approvals process or Value Engineering (VE) to be reported on and I cannot remember if anything was said at the meeting in relation to this.
181. I cannot remember why the late completion of utility works in one particular location was created as a new risk.
182. I refer to an action note following the Special Tram Internal Planning Group (IPG) dated 28 January 2009 (**CEC00867661**) and note that the IPG was attended by Council officials. The action note stated that absolute clarity was still required on the price and highlighted that there was concern that BSC costs did not represent value for money. I cannot remember if senior Council officials who attended this meeting made me or other members aware of the issues..
183. I was sent the papers for the Joint Tram Project Board/TIE Board dated 11 February 2009 (**CEC00988034**), which contained the minutes from the previous meeting that I attended on 22 January 2009. I cannot recall from the minutes of January if there was a note that the party to regulate governance was CEC and whether this was accepted by members of the TPB.
184. The reference within the papers to a conflict of interests relates to the relationship between Councillors sitting on the Boards. In particular, Councillors who have a judiciary duty to represent the interests of the company and Councillors who are sitting in the Council discussing the project. They have a primary duty to represent the interests of that organisation. This was not an issue, it was an explanation to other members of the Board of that relationship between Councillors sitting on the Board and Councillors as elected representatives of the Council.

185. I was not on the Audit Committee and was not involved in the audit on internal governance. I note from the document that feedback was provided, but I would require sight of the audit report and its content before providing comment.
186. I cannot comment on the statement made by Kenneth Hogg within paragraph 2 of the document, as I would require to see the associated paperwork, which would have been provided at the time of the Board meeting.
187. In relation to the MUDFA programme, reference was made within the document that the utilities were 65% complete. I cannot recall the detail of this statement without sight of the papers that were provided at the meeting. If this information was not provided to us at the time we could request it from the Chief Executive if required.
188. I refer to a dispute that arose between TIE and BBS prior to the planned commencement of works on Princes Street in February 2009. I note that on Friday 22 February David MacKay notified the Chief Executive, Councillors Dawe and Wheeler, of a response that was due to be dispatched to the Infraco (**CEC00867359**). I further note that the response stated that *"their email responding 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."* I cannot recall this correspondence, which would appear to have been sent by Dave MacKay's PA on his behalf.
189. My recollection is that the dispute regarding the works at Princes Street, and particularly why BSC had refused to start work, was about cost and design, which were the two basic problems. However, in relation to the Project overall there were three issues: cost, design and the MUDFA works not being complete. I cannot comment on who was responsible for the dispute, although I do believe that in this instance a portion of blame can be attributed to

22 February
should be
20 February

Bilfinger Berger. I think they were pushing too hard when clearly the dispute was becoming entrenched at that stage.

190. I note an email trail between Anthony Rush and Mandy Haeburn-Little dated 9 November 2010 (**TIE00306566**) in relation to a newspaper article where David McKay referred to Bilfinger Berger as "*delinquent*", which he clearly should not have done. Both sides were getting into entrenched positions and the comment just made matters it worse. There is a need to be very careful in what you are saying when dealing with the media and there was a lot of media interest at that time. This statement just provided Bilfinger Berger with an opportunity to escalate matters.
191. There was a technical aspect to TIE's strategy for resolving the dispute and I agreed with this approach. I cannot remember if TIE's strategy or the eventual Princes Street Supplementary Agreement was approved by the Council.
192. There were Councillors on the Board representing the different parties and I would expect they would report back to other members of their Groups via their group meetings. Clearly this was a very high profile dispute and I reported back regularly to the Labour Group and senior Labour politicians. David Mackay, through the Chief Executive, would have access to Jenny Dawe and Steve Cardownie, who was the Depute Leader. Therefore, informally, Councillors would have been well aware of the dispute, I know they certainly were within my group. There were no formal reports being put to the Council as this was an internal dispute in relation to the contract. If the relationship between TIE and Bilfinger Berger it had all broken down completely then this would have reported back to the Council. At this time it would be true to say TIE and Bilfinger, were trying to deliver the contract despite the difficulties.
193. The Dispute Resolution Procedure (DRP) was the mechanism in the contract to resolve disputes. As Councillors we were well informed about all the disputes procedures that were used.

194. I do not think the conduct of BB throughout the dispute was unusual: they wished to reduce their costs and maximise their profits. My criticism of Bilfinger Berger was that they were very aggressive in pursuing disputes and attempting to maximise their advantage.
195. The dispute in relation to the works at Princes Street was the first dispute between TIE and BSC in relation to the actual Infrastructure contract. There had been differences in relation to other works prior to this, but these were about interpretation on the contract.
196. I refer to a letter from Tom Aitchison to David MacKay dated 5 March 2009 (**CEC00870592**), which set out a number of measures required to keep the Council updated about disputes. I was aware of this letter and that its purpose was to ensure that the Council was fully updated. I had no concerns at this time that TIE were not keeping the Council fully informed of the disputes with BSC.
197. I refer to an email from Andrew Fitchie, DLA, to Gill Lindsay, Solicitor to the Council dated 6 March 2009 (**CEC01031402**). Attached to this email were the Position Papers in relation to the Princes Street dispute. I further note an email from Colin Mackenzie to Tom Aitchison and others dated 11 March 2009 (**CEC00869667**), which advised that Council officers did not know whether the Infraco contract was sound, that it was possible the contract was not robust enough and that affordability became an issue. The email stated further that the Council were lacking the requisite information, certainty and confidence at that time. I am aware that Chris Horsley, DLA, responded to CEC with a paper entitled, "*DLA Piper Response to CEC Questions*" (**DLA00001357**). I cannot remember if I, or other members, received a briefing from CEC officers at that time on the differing interpretations of the contract. In addition, I cannot recall if I or other members were informed at that time of the consequences for the Council if TIE's interpretation of the

main provisions in the contract including, in particular, the Infraco Pricing Schedule, was incorrect.

198. As I was on the Board of TIE I was notified about the use of the contract Dispute Resolution Procedures and the outcome of those procedures. I cannot comment whether other individual politicians were briefed or asked to be briefed
199. I refer to an email sent by Councillor Phil Wheeler to Jenny Dawe dated 27 February 2009 (**CEC00868427**), informing her of his meeting with Richard Walker of BSC. I further refer to an email from Mike Connelly, TIE, to David Mackay dated 13 March 2009 (**TIE00446933**), advising David of the meeting Mike had with Margaret Smith MSP and Alison McInnes MSP. I have no knowledge of either email. Mike Connelly was the PR representative for TIE and would not have met with the MSPs without the permission of David MacKay. I was not present during any of these meetings and cannot comment any further.
200. I refer to a letter from Tom Aitchison to Richard Walker, BSC, dated 24 March 2010 (**TIE00304351**). This letter is not a concern; all elected members have the right to contact and to meet with whoever they wish. I don't believe it would jeopardise TIE's position.
201. I note an email chain dated 10 December 2010 (**TIE00887286**), within which it is provided that the contract was not "*fixed price*". This did not concern me as, despite the reference to it being a fixed rate contract, there was still 5% which was not fixed; although at that time I believed it was 10%. Even within a fixed contract something could occur which was outside the scope of the contract that is why it is important to have a contingency. I think it was understood that there were going to be extra costs associated with the project.
202. I refer to a Report to Council dated 12 March 2009 (**CEC01891494**), which appears to be the first report to the Council referring to the contractual

difficulties between TIE and BSC. The Report noted that while works were due to start in Princes Street in February 2009, it had been apparent in the preceding days that they might not start as intended. The statement made by the Council at the time made reference to the contractors wishing to impose unacceptable, although unidentified, conditions in order to start the works. I note within the report that Tom Aitchison merely states that "*members will appreciate that I am restricted in what I can say while commercially confidential negotiations are taking place*". Mr Aitchison states that TIE is maintaining an approach to what was agreed "*after tough negotiation before the contract was signed*". All Councillors accepted that there were matters which were commercially confidential and which, therefore, could not be discussed in public. That would not be an unusual occurrence and it would not be the first time politicians had heard that phrase.

203. There were politicians on the TIE Board who would be privy to the commercially confidential matters and additionally Tom Aitchison would be reporting back to the Leaders of the groups about the nature of the dispute. Normal practice would be for the Chief Executive to keep the Leaders of the opposition briefed; however I cannot remember if this happened. As there was cross party agreement, apart from the SNP, I would suspect all the Leaders would be briefed . I do not think concerns in relation to commercial confidentiality adversely affected Councillors' understanding of the project or their ability to take informed decisions.
204. I cannot recall what conditions the contractors wished to impose in relation to undertaking works.
205. The report also stated that a contract had been entered into for the delivery of the tram project and that prior to Financial Close TIE had agreed an additional sum with BBS which had "*cemented the risk allocation position*" agreed by the parties. My understanding of the statement that the contract was "*fixed price*" was that the additional money we agreed on top of the contract, £10m, allowed the contract to be signed and the project to move forward. This

reduced the risk allocation from £40m to £30m, but on the basis that the contract was signed. In addition, the officials were confident the project could be delivered in the same envelope with these changes to the amounts. At that time I believed part of the contract remained fixed. I understood there was part of the contract which was fixed, I think it was 90% at the time, and I also understood issues would arise because of the nature of the contract and that the contingency would need to deal with these.

206. When reports go to the Council they also go to the legal team of the Council as a matter of course. If the Council were receiving legal advice it would have been from the Council legal team, although I know we also received advice from outside. I cannot specifically say that this report would have been looked at by them, but the Chief Executive would have made sure all the legal issues went through the legal team and I am certainly aware legal were heavily involved in reports on the contract that the Council received.
207. I note an email from Colin MacKenzie to Marshall Poulton, Monitoring Officer, and others dated 7 April 2009 (**CEC00900419**) titled, "*Edinburgh Trams; Strategic Options and DRP*". Colin Mackenzie made certain observations on the dispute between TIE and BBS and raised certain concerns. I further note that by email dated 9 April 2009 (**CEC00900404**) (**CEC00900405**), Colin Mackenzie and Nick Smith circulated a report on the dispute between BBS and TIE. The report noted that there were presently 350 Notified Departures in process. The disputes could be grouped into a number of different categories, which included who had responsibility for design management and evolution. BBS were taking the view that all changes to design were TIE's responsibility. The report noted, "*The main problem here stems from the fact that design was not complete at Financial Close*".
208. At that time I was aware of the fact that there was an issue over the design and responsibility for the design. I expected the officials in the Council, along with TIE officials, to resolve the problem prior to the contract being signed. If the problem was not resolved it needed to be reported back to the Council.

209. I do not know if members of the Council were aware of these matters. As I have said, members would only have been made aware if the negotiations broke down; it is not the responsibility of each individual Councillor to understand the intricacies of this type of contract.
210. I am unable to say what action members would have taken if negotiations had broken down .
211. I refer to the minutes of the 11 March TPB, which are contained within the papers for the meeting of the Tram Project Board on 15 April 2009 (**CEC00888781**). It is noted that David Mackay was to attend a meeting with John Swinney and Stewart Stevenson on 17 March, which I am aware was to brief ministers on the progress of the Tram Project.
212. Without reference to the original report it is impossible for me to comment on what use was made of PricewaterhouseCoopers (PwC) in relation to advice on commercial issues during the DRP. I would also not be able to comment on the changes in relation to the Princes Street process without having sight of the report. I do recall the Board discussing the change order but cannot remember any detail.
213. I understood that lessons had been learned by both sides involved in the Princes Street process and that there now appeared to be a realisation of the need to come to an agreement without going into the Dispute Procedure.
214. The minutes for the meeting of the TPB on 24 March are also contained within papers for the meeting of the Tram Project Board on 15 April 2009 (**CEC00888781**). At item 1.4, Steven Bell stressed that the Supplemental Agreement for Princes Street would not increase liability to TIE, compared to that previously, and there would be no material difference in the way costs would be agreed. I believed this to be a correct analysis, if it remained within the funding envelope of £545m, because contingencies could be used. It was always my understanding that there was a contingency to deal with

unforeseen matters. The key point was that once that figure had been reached, the Council would have to authorise any further spend.

215. I note at 1.8 of the Report that the Princes Street Supplementary Agreement (PSSA) would allow work to be completed in the first week of November, as originally anticipated. It goes on to mention "*However, there would be no guarantee that this will be the case if there is a compensation event (same basis as the original contract)*". I understood the PSSA at the time, although I cannot recall the detail. The benefits of the PSSA were that the tram tracks in Princes Street were laid.
216. I note that at 1.11 of the Report, Stuart McGarrity outlines the available headroom in the funding envelope and that at 1.12 he states that this headroom only exists as long as there no further disruption or delays. At that time this did not concern me, I still had confidence the Project could be delivered within budget. This would have been discussed fully by the Board, however I cannot recall the detailed content of the discussions.
217. I am aware that on 30 April 2009 the Council were given an update on the tram project by way of a report by the Directors of City Development and Finance (**CEC02083772**). The Report provided that TIE was conducting a review of the entire programme with the contractor with a view to reaching a revised, commercially agreed, programme. My understanding remained that the Project could still be delivered within the budget of £545m and the assurances on this by the Director of Finance at this time.
218. As a Councillor I had no involvement in the negotiation of the Princes Street Agreement (**TRS00016944**); individual Councillors would not get involved in negotiations. As a member of the Board of TIE, however, I had a greater understanding its individual components and I was at the meet that it was approved.

219. The rationale behind the Princes Street Agreement (**CEC00934643**) was that it would enable work to commence. It was the basis of a new working relationship with TIE and BSC in order to get the tracks laid in Princes Street.
220. The decision to concede a supplementary agreement would have been reached between TIE and BSC. It was a technical matter between the two parties and Councillors would not have been involved. I cannot recall if it was explained to Councillors that the effect of the agreement was that the price changed from "*fixed cost*" to "*demonstrable cost basis*" although individual Groups would have been informed.
221. At the time I believed the statement that the full scope of the Project could be delivered within the previously agreed funding levels was correct. Council officials did not believe at the time that the likely outcome of the agreement would be that the budget limits would be breached.
222. I cannot remember the details the strategic review carried out by the Council and TIE was, nor why the entire programme was subjected to review despite one being undertaken only four months previously.
223. It would be difficult for me to say whether I think now that it was appropriate or sensible for TIE to enter into a supplementary agreement to the contract when there was still disagreement about the original contract terms. In hindsight, I think that the supplementary agreement worked as it did get the tram lines laid in Princes Street and I believe that was the right thing to do. It clearly did not resolve the other disagreements.
224. I received papers for the meeting of the Tram Project Board on 6 May 2009 (**CEC00633071**). At page 12 and in the paper at page 26, consideration is given to the removal of Carillion from the MUDFA contract. I understood that the reasons provided were performance, quality and cost, however I cannot remember if the planned savings materialised as a result of their removal.

225. I am aware that it had earlier been identified in an email from Thomas Caldwell to Graeme Barclay dated 5 March 2009 (**CEC00956515**), that the payment terms under MUDFA were such that Carillion were probably making a loss. I was not involved in the assessment and cannot make comment on this observation.
226. On page 29 of the TPB papers of 6 May 2009 (**CEC00633071**) there is mention of commencing an alternative procurement strategy for the utility and construction works at Burnside Road, at the end of the line. I am aware that later on, works in the city centre were also handed on; however without sight of the original papers I cannot comment on why.
227. I cannot recall any discussions at the meeting around the movement between the "*Base Date Design Information*" (BDDI) and the "*Issued for Construction*" (IFC) drawings.
228. I cannot recall the identified risks in relation to "*designs which may have been altered,*" referred to at page 16.
229. Without the original documents I cannot comment on the treatment strategy for the risk referred to at page 18.
230. At page 11 it was considered that the slippage with the Project could be made up with increased productivity rates. I believed at the time this was reasonable and I cannot remember if any concerns were voiced. I would have thought – although I cannot remember – given this was a key issue, it would have been considered fully by the Board.
231. Without seeing the original papers it would be difficult to comment on the effect of the work on Leith Walk being deferred as a result of the MUDFA works not being completed.
232. I have no knowledge of any of the problems in Princes Street and any issues with regard to BSC not undertaking any on-street works or that they were so

far behind in achieving milestones, as referred to within the table on page 37 of the report.

233. At this stage BSC were supposed to have almost 50% of the work completed and instead had only completed 3%. Also referred to on page 37 of the report is that, in relation to some sections, the problem was that MUDFA works were not finished. This, I would say, was the main issue, the MUDFA works were definitely behind schedule.
234. I cannot recall any reference to works to the west of the city centre or the re-design of temporary and permanent works.
235. I cannot comment on why there was both an *“approved”* and an *“unapproved”* figure for cost, or what the purpose of these figures was. These were very technical matters and I do not have the qualifications or experience to comment.
236. I refer to the minutes of the TPB meeting dated 8 July 2009 (**CEC00983221**) in which it is noted at page 7 that there was discussion of strategic options. The strategic options had already been defined and presented as a paper; however I cannot remember the specific circumstances in relation to them. As a general rule, it would be presented as a paper as opposed to a verbal report because it would be quite detailed. I cannot recall the author of the paper.
237. Within the same minutes I note there is reference to reports to TS in early July. The Time Schedule Report indicates on page 41 that many matters have slipped but that recovery can be achieved. It was not ideal that the project was slipping but again. I was not unduly concerned. As I have stated before slippage in big projects is not unusual and the key issue for me was whether it could still be delivered within budget. If slippage meant there would be extra cost then obviously there would be a serious concern.

238. I believed that there could be a recovery and the Council officials involved with TIE appeared relaxed and did not voice any concerns.
239. The slippage of the Project was discussed within the Labour Group; however I cannot speak for other political groups or individual politicians. I would suspect it would also have been reported to the Council at some point and, although I cannot recall any of the discussions, it would be recorded within the papers.
240. I refer to an email from Andy Conway to Alasdair Sim dated 15 July 2009 (**TIE00763898**) in which I note Mr Conway quotes Richard Jeffrey as saying "*there is no way we'll be able to build the tram for £545*". If Richard Jeffrey had made this statement at a TIE meeting it would have been challenged. Andy Conway and Alasdair Sim were, I believe, Council Officials and this is an internal email. This was not being reported officially, as far as I knew at this point, and if the Council had been aware of this comment there would have been a requirement to take action. I do not remember that being said at any meeting and if it had been said all the Councillors, the Director of Finance would be required to report back to the Council.
241. I refer to the papers for the Tram Project Board meeting on 3 June 2009 (**CEC01021587**), within which it is provided that if the contractor was of the opinion circumstances were such that there was a deemed change to the contract requirements, they were entitled to serve an Infraco Notice of TIE Change (INTC). This might entitle them to additional payment under the contract or additional time in which to complete the works. I cannot recall if this was the first time that the issue of INTCs had been explained to the Tram Project Board. This was only my third or fourth meeting so I would not know if they had been explained before.
242. I have no knowledge how many INTCs had been served on TIE by the contractors by the end of June 2009. Without seeing the original report it is

difficult to know the detail and I do not know what had given rise to these INTCs.

243. I have not seen the minutes of the May 2009 TPB meeting and I cannot comment on why there was mention at 3.8 of a lack of an agreed programme and any impact this may have had on the Tram Project.
244. I cannot recall a meeting between John Swinney and Stewart Stevenson on 7 May 2009, as referred to at 3.9. The general purpose of such meetings was to update Ministers on the progress of the Project, but I have no knowledge what information was provided to the Ministers at this particular meeting.
245. Paperwork relating to issues such as design might be ten pages long and would be quite detailed and therefore, without access to the original report, I cannot comment on any discussion around SDS design being delayed or any subsequent redesign, as referred to at 4.3.
246. I refer to email correspondence from Richard Jeffrey to Councillors/Members of the TIE Board dated 13 August 2009 (**CEC00679723**) informing them of significant developments in the relationship between BSC and TIE, namely that BSC were not happy to start works on Shandwick Place unless this work was undertaken on a cost plus arrangement. I cannot recall if I provided feedback on this to other elected members. Minutes of Group meetings are only held for four years and therefore I cannot identify what was actually fed back. As a general rule as a Board member I reported back on major developments, and as this constituted a major development I am confident I would have reported this back to my Labour colleagues.
247. I am aware of the suggestion that the Princes Street Agreement paved the way for BSC to claim further additional costs in respect of other on-street works, such as Shandwick Place, by changing the basis of payment under the contract so it was no longer fixed price (**CEC00379020**). It was always BSC's practice to try and change the contract from what was agreed, which was

fixed price, into something that was much more flexible. They did this on the basis that they were finding it difficult to operate, but which was, I suspect, also to try and maximise their profit. The viewpoint of the Council and the TIE Board was always that they had signed the contract and therefore they should abide by it. The difficulty was that the contractor did not think they deliver under the contract they signed and that was the basis of all the disputes. This was followed by a desire by Bilfinger to move the contract to a different way of calculating cost and this was the first indication they were really serious.

248. Obviously what we were hoping that the contact would be re-negotiation and compromise solution found. However, as long as Bilfinger were insistent on trying to change the way in which the contract was calculated this was going to be difficult. Any change in the original cost would need to get Council approval particularly if the cost of the contact was revised upwards.
249. In hindsight it was probably inevitable that it was going to end in this manner. It was becoming increasingly obvious that the contract BSC had signed was not working for them and therefore they wanted to change it..
250. I believe that a report to the Council dated 20 August 2009 (**CEC00308517**) was the first report to state that phase 1a could not be delivered within the budget price of £545m and that a revised programme and costs baseline had not been agreed. The report further noted that utility works had given rise to additional costs of £7m, which was said to have arisen from programme slippage and additional costs associated with measured works. In relation to the latter, 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.*"
251. I can provide a number of examples of unexpected ground conditions: in Haymarket an air raid shelter was discovered that was not detailed on any

available maps; another example was at York Place, which I visited personally, where all the utility representatives were looking down a hole at a trunking pipe that no one would claim ownership for. This highlighted that none of the utilities had accurate maps of their underground assets. We were not aware of the difficulties or had an understanding of how challenging it was to relocate utilities. We knew historically from other tram projects that it was a difficult process and that there would be delays; however it was thought this would be covered by the contingencies of £40m to £47m.

252. As far as I understand the ground conditions were investigated prior to the commencement of works. All the utilities were contacted and maps were obtained, however this still did not provide an accurate picture.
253. I am not aware if the utilities provided assurances that their data was accurate. The only way to verify the information provided by the utilities was to excavate and check what was underground.
254. The report continued to note that TIE was invoking formal contractual dispute mechanisms and that they had taken Counsel's opinion. I agreed that, given the nature of the process and the complexity of certain issues, it was unreasonable to expect that all adjudication outcomes would be awarded in favour of TIE. I based this understanding on the results of the first three or four adjudication decisions, which certainly had an impact on my confidence.
255. The report notes that, in view of the disputes, it was not going to be possible to forecast accurately the budget outturn. It was understood by both officials and politicians that if the budget was going to overrun a report to Council would be required. The only issue to be agreed was the timing of the report and in this instance it was required to be submitted as soon as possible.
256. The Council affirmed their commitment to provide the whole of the tram line to Newhaven despite not being able to accurately forecast the cost of the project. I can only assume that this was because the Council had not

recommended a change and therefore the policy would remain in place until such times as the Council decide to overturn it. I do not think anyone was under any illusion that there would need to be changes because of the costs involved.

257. I was provided with papers in advance of the meeting of the Tram Project Board meeting on 26 August 2009 (**CEC00739552**) which contained the minutes of the previous meeting in July 2009. I note there is mention on page 5 that at the July meeting Richard Jeffrey, who had been in the post for three months, gave his thoughts on the five strategic themes. Due to the passage of time I am unable to recall what these thoughts were.
258. I note that at page 7 of the July minutes it is recorded that Infraco works were delayed due to commercial issues arising from design changes. I understood this to mean that there was a dispute about the design and that Bilfinger were attempting to alter the designs.
259. Without sight of the original documents I could not comment on whether the commercial issues solely related to movement between BDDI and IFC drawings, or if they were related to other design changes, nor what the reasons for those changes might be.
260. The minutes also suggest on page 9 that the DRP process that had been undertaken need not go all the way to a conclusion, which refers to if a settlement was reached before the adjudication stage. There would be no detail about what that would entail; I would surmise that would be dependent on negotiations between the two sides.
261. I believe this is tied to the terms of the Project Directors report and the statement "*It is unreasonable to expect that adjudication outcomes will be awarded in favour of TIE*". It is impossible for me to comment on this and the consequences it may have for the Tram Project as there is no detail contained in the report.

262. I cannot remember in the Project Director's report for the August TPB, or the reference on page 13 to BSC failing to submit preparatory paperwork. In addition. I cannot recall which of the listed reasons for delay had the greatest effect.
263. Within the minutes **(CEC00739552)** the figure on page 14 for MUDFA works completed shows an increase from the figure provided to TS the previous month. As there is no reference within the report it would not be an issue for the Board.
264. I cannot recall what the problem was as referred to in a note in the Costs section of the Project Director's report which provides that TIE may not have "*sufficient contractual leverage to instruct commencement of works*" and I cannot remember what was missing from the contract.
265. In the TS report for August 2009 there are references to "*Temporary and permanent works re-design*", however I cannot recall what the nature of the re-design was, why it was required, or the reason it had arisen at this time.
266. I cannot recall if it was part of the problem that BSC would not start work until the cost impacts of the changes were agreed.
267. It is impossible for me to recall if there was discussion at the TPB of the issue of '*betterment*' in relation to recovery of the costs of the MUDFA works from statutory utilities. I do recall that the utilities were upgraded when we moved them, so there were obviously savings for the utility companies. Consequently there was a betterment agreement in place with the utility companies to recover some of the costs of us doing so.
268. I was not aware that Steven Bell, in the minutes for late July 2009, provided that he was to prepare a summary statement for the August meeting of the outstanding areas where betterment would arise. I am not aware if this exercise was undertaken or not.

269. I was provided with papers in advance of the meeting of the Tram Project Board on 23 September 2009 (CEC00848256). In relation to progress, the August minutes recorded on page 6 that, "*Steven Bell reported that progress remains slower than desirable for the Infraco works, largely due to on-going contractual matters*". I agreed with this report and believe it was a fair reflection of where we were at that time.
270. The August minutes also record on page 6 that works on the Shandwick Place Tramstop had not commenced due to on-going discussions with BSC regarding treatment of on-street sections. My understanding was that this was as a result of disagreement over payment. I was aware of the contractor's position, although I cannot remember the detail. My understanding of matters remained the same at this point: it had become clear that Bilfinger was trying to change the way the cost of the works was calculated.
271. On page 57, the Report to TS of September 2009 continues to note that it was expected that programme recovery could be achieved in respect of the majority of items and I believed at that time that there was a reasonable basis for this view. This was as a result of the information provided by TIE to the TIE Board at the time and, in addition, there were people on the Board who were better qualified to make technical judgements with issues like construction. They appeared confident and at no point did anybody say this could not happen.
272. The significance of the Dispute Resolution Process (DRP) was that disputes could be resolved. It was in the contract, both sides agreed the contract and therefore it should have been a way to resolve the disputes. There was no reason for the contractor not continuing to work while the DRP was in place as the cost would thereafter be decided by the DRP.
273. I cannot remember if the giving of instructions in relation to the DRP was the subject of consideration at the TPB, although I would assume that it was.

274. At this time I considered that the real causes of the delay in the Infraco contract were the disputes over costs.
275. I cannot comment on the section of the TS report on page 32 that begins with reference to the appointment of direct BSC resources and the final appointment of package contractors. I do not have knowledge of the references made within this statement.
276. I note a reference in the September 2009 report, page 33, to a "*Challenge Process*" to which possible disputes were subject before referral to DRP. This was testing TIE's case; however without reference to the original document I cannot remember the detail.
277. Within the September 2009 Report to TS, I note that there is a statement in relation to design that, "*This slippage has been addressed as part of the re-calibration of the programme. TIE is identifying and implementing opportunities to mitigate the impacts of this slippage.*" Without access to the original documents that outlined how the slippage was to be addressed, I would not be able to give any more detail. Similarly I cannot remember what opportunities were identified to mitigate the effect of the slippage or if any of those opportunities were implemented.
278. I would require sight of the original report before I could comment on how long works at Shandwick Place were held up as a consequence of the recorded disputes ((**CEC01891463**) and (**CEC01891622**)).
279. I was provided with papers in advance of the meeting of the Tram Project Board on 21 October 2009 (**CEC00842029**), within which I would have expected to receive details of the dispute.
280. At page 8 of the September Minutes within these papers is a note that Steven Bell was to prepare a summary report to the next TPB outlining areas of dispute within the current supplementary agreement arrangements. I note that

this document was not included with the papers for the October meeting although it was covered in his Project Director's review. I do not recall whether this document was ever provided to me or anyone else on the Board. It would be very unusual for someone to call for a report and that request just be ignored, however I would require access to all the papers and agendas to provide a full response as to whether or not such a summary report was ever produced.

281. I cannot remember what the position was at that time in relation to the Supplementary Agreement for the Infraco works and I cannot recall if this was discussed at meetings of the TPB.
282. I was provided with papers in advance of the meeting of the Tram Project Board on 18 November 2009 (**CEC00681328**). I note the minutes for 21 October, page 9, provide that BSC refused to undertake on-street works without a supplementary agreement entitling them to payment on a cost plus basis. This was not a surprise to me as the dispute had reached a stage where it was a possibility this might occur.
283. It is difficult to quantify my knowledge of specific delays and their causes without defining the types of on-street works and the location of each issue. The general principle, however, was that there was a lack of agreement on the way in which it would be priced.
284. I note that within the minutes for October there was a statement that there was a lack of agreement on programme, lack of suitable contractor agreements and a lack of completion of final design assurance checks. My understanding of these matters was that these three topics were all causing problems, however the main issue was the lack of understanding on how things would be priced.
285. These matters were not reported to the Council as they were again of a technical nature. It was only when matters could not be resolved, leading to a

- failure to complete the contract within the funding envelope, that it would be reported back to the Council.
286. I note that within the Minutes for October, Steven Bell is charged with preparing a quarterly report on betterment contributions for MUDFA, however, although I would certainly have expected it, I cannot remember if the Board ever received such a report.
287. I note that on page 7 of the minutes for the meeting which took place on 18 October it is also provided that there were discussions with Carillion regarding their exit from the contract, despite it being said that the MUDFA works were 98% complete. I cannot remember why it was thought necessary and appropriate to make the change.
288. I am led to believe that in the table on page 40 of the November report, all the figures showing the cumulative fall behind schedule in the right hand column are inaccurate. I also believe the same is true of the tables in the December Report (**CEC00416111**), the January report (**CEC00473005**), the February Report (**CEC00474418**) and the March report (**TIE00894384**). The first three columns of these tables are correct and demonstrate the trend, which was all minus. There were a number of experienced people on that Board with expertise in delivering these types of projects, who were used to dealing with and interpreting these tables, and I would have expected them to identify this. I was not aware of these inaccuracies at the time.
289. The decisions of the Carrick Knowe and Gogarburn adjudications were made available, however I cannot remember who carried out the reviews and I do not remember the extent to which the TPB were involved. I was certainly not involved in the review.
290. I cannot remember any discussion that took place as to what approach TIE should adopt in relation to "*Changes*" under the contract.

291. I cannot recall if it was a concern that by the time of the November 2009 report to TS it was apparent that nearly all the risk provision was exhausted.
292. I cannot comment on any drawdown attributable to the movement between BDDI and the IFC drawings. This is a technical matter that would require someone with the necessary experience to pass comment on.
293. I note that in November 2009 DLA provided the Solicitor to the Council with an "Overview of Adjudicator's Decisions" (**CEC00479382**), in relation to decisions dated 16 November 2009 by Mr Hunter on the disputes in respect of the Gogarburn and Carrick Knowe Bridges. I recall receiving a number of regular briefings, including one from DLA, although I cannot recall if this briefing was on this particular subject matter.
294. My understanding of the Adjudicator Decisions was that it was more of a "no score draw". I do not know if anybody appeared to come out more favourably, although there was a clear expectation that the decisions would be more favourable to TIE than BSC.
295. I read the decisions at that time however I cannot recall the detail now. We could not win them all, that is for sure, but I think it is fair to say, from the briefings we received from various officials and experts, that BSC would have been more satisfied with the decisions than TIE.

Events in 2010

296. I refer to an opinion provided by Richard Keen QC on the interpretation of the Infraco contract (**CEC00356397**), which was given in the course of dispute resolution on 14 January 2010. I note that the opinion found that TIE did not take full and proper account of the wording which appeared in the last three lines of paragraph 3.4 of Schedule 4 which provided, "*for the avoidance of doubt, normal development and completion of designs means the evolution of*

design through the stages of preliminary to construction stage and excludes changes of design principle, shape and form and outline specification."

297. I remember we were receiving legal opinion from Richard Keen and would assume we were receiving briefings on this, but I cannot recall them. I remember this document and, looking back now, I would say we should have sought this opinion sooner.
298. I think that the Council as ultimate stakeholder should have sought separate legal advice at an earlier stage. It is of note, however, that the Council have a legal department for Council officials to have consulted with on what the approach of TIE was.
299. No contracts are ever entirely accurate and there are always different interpretations to be had of different words and phrases. My view of why parties had differing interpretations of the contract is that all parties will interpret it to what suits them best.
300. Councillors would know what the content of the contract was and should therefore have known what was covered in the price of the original contract. If they needed to ask questions to make sure they understood the content, they could have done so. Somewhere along the line it would have been explained to us why we needed to change the contract and change the tram destination, however I cannot think where and when that was reported.
301. I am aware in Jan/Feb 2010 CEC requested legal advice from Dundas and Wilson (**CEC00450359**), (**CEC00479797**), (**CEC00480029**), (**CEC00551307**). I cannot recall the date and time we were informed of this, but when we were assessing the need to change the contract that would have been fed in at some point.
302. I note an email sent by Alan Coyle to the Directors of City Development and Finance dated 4 March 2010 (**CEC00474750**) and attached Briefing

document (**CEC00474751**), which set out the estimated cost of the three options that formed part of "*Operation Pitchfork*". It records that the estimated cost of completing the works appears to be between £644m and £673m. I was a member of the TIE Board therefore I was aware of the options, which were also discussed at the Council. Due to the passage of time, however, it is very difficult for me to be precise as to when and where it was discussed,

303. There were on-going discussions about what was the best option, but I did not have an opinion at that time as to what the best or the preferred option was.
304. At that time I was aware of the cost estimates although I cannot remember if they were put to the Council, it would be documented in the relevant minutes.
305. The Chief Executive can either provide a report with options, or submit a report with his preferred option. The normal process would be to look at the preferred options and get the politicians to move a motion to decide, but I am not sure what happened in this case.
306. I am aware of a letter sent by Richard Walker of BBS to Tom Aitchison, Gordon Mackenzie, Donald McGougan and David Anderson dated 8 March 2010 (**CEC00548823**). Within the letter Richard states that TIE had sought to insist it had signed a fully fixed price lump sum contract when, in Mr Walker's view, the pricing assumptions and the adjudications on the interpretation of those pricing assumptions indicated that this was not the case. I cannot recall if I saw this letter at that time and I cannot remember if the Chief Executive brought these matters to the attention of elected members or me.
307. If I had been part of the Administration at that time I would have expected Officials to bring this to my attention although there was no requirement for Officials to make us, as opposition, aware of these matters.
308. Having now reviewed the letter I would not say there is anything contained within it that comes as a surprise.

309. As a member of the Opposition did not give consideration to meeting with BSC, although if I had been in the Administration I would have advocated it.
310. After the adjudication, my confidence in TIE's ability to bridge the gap between the two interpretations of the contract was reducing.. I was clear that trust was breaking down between the officials of both organisations. It concerned not have a working relationship was always going to make it difficult to implement the contract.
311. I was copied into an email from Jenny Dawe to Andrew Burns, dated 9 April **(CEC00235026)**, which noted that "*it has been a bit of a nightmare pulling together the few facts that TIE, legal, financial etc. would actually allow to be committed in paper*". I cannot remember what members of the Council were advised at that time and I would need to see the briefing note referred to in the email before passing comment on how it was distributed. I cannot remember the email being sent to me and I cannot remember what I was advised at that time.
312. I would interpret Jenny Dawe's statement "*Bringing together everything which can be published*", as referring to commercial confidentiality.
313. This did not affect the ability of myself and other members to take informed decisions relating to the tram project. The key issue for the politicians to know was whether we could deliver the project within the agreed price. And if the answer was no - a discussion could then commence around how best to realign the project and to deliver the council policy to build the tram
314. I was provided with papers in advance of the meeting of the Tram Project Board on 14 April 2010 **(CEC00420346)** and **(CEC00379024)**, within which there is mention of Richard Jeffrey outlining "*next steps*" and the strategy presented by the Executive Team. These are also referred to in the minutes of the April meeting **(CEC00245907)** on page 7 and were just Richard's opinion of how to negotiate with, and obtain agreement from, BSC. I cannot

remember any detailed discussion about the strategy or the advantages and disadvantages of any particular course however.

315. I am aware that Steven Bell reported on TIE's audit of BB's performance and that it was noted that whilst TIE Changes had driven some of the delay, for example in areas such as Gogar Interchange and Picardy Place, there had been no clear justification from BSC as to the reasons for overall delay or any evidence of design management and mitigation of delay. This was a one off report about the understanding of the dispute and it did not concern me. I have no idea what was done in response to this report.
316. I note that Richard Jeffrey confirmed that, whilst TIE had no dispute with the utility diversion delays, which were to TIE's account, and had caused substantial delay to the construction programme, BSC had not demonstrated that they had effectively sought to mitigate delay. I cannot remember if it was the case that BSC were attempting to mitigate the delay.
317. The minutes note that TIE had expressed concerns about BSC's approach to fulfilling certain obligations and interpretation of particular clauses in the contract. I believe that, because of the previous history, TIE's concern was well informed. It would appear from the minutes that these are general concerns rather than anything specific.
318. I cannot remember if I was aware that Richard Jeffrey confirmed that independent legal advice, including advice from Counsel, had been analysed and had affirmed TIE's approach to these matters. I am unable to recall what legal advice Richard Jeffrey was referring to and I cannot remember if I was provided with a copy of this advice. Similarly I cannot recall if it affirmed TIE's approach and interpretation of particular clauses in the contract.
319. I am led to believe that Richard Jeffrey also confirmed that TIE had attended a series of detailed reviews of the current financial position with CEC and Transport Scotland. Stewart McGarrity reported that a detailed financial analysis had been undertaken over a range of possible outcomes and

presented the results of this analysis to the Board. Without sight of the original financial analysis report Stewart McGarrity presented I cannot comment on the affordability of the project at that time as I cannot remember the detail.

320. A strategy was drafted for the way forward which included a new way of working with BSC to mitigate against further dispute risk. The main point of that strategy was there was a new pricing mechanism to be agreed, although there were other items to be agreed which I cannot recall in detail. There would be a paper to the Board which would outline all that and without seeing that paper it is difficult to remember the detail.
321. By email dated 16 April 2010 [CEC00266715] Richard Jeffrey wrote to Board members to inform them that he and Tony Rush had met with Michael Flynn (Siemens) and Richard Walker (BB). I cannot recall if clause 80, a clause 65 based approach for on-street and the Siemens 33 initiative were explained or discussed with me. If I was to see documentary reference I could possibly provide comment on discussion.
322. It did not concern me that the Infracore were alleging they were owed £15m for work done that they had not been paid for. The nature of the dispute was not that they were not owed money for work they had undertaken, the dispute was about the figure of £15m. I cannot recall what action was taken by Board members in relation.
323. As a result of the positive signs from Siemens before the meeting there was an expectation that something could be negotiated and therefore both sides would compromise. Richard Jeffrey's observation that the position of BB, namely that they will not work in any areas where there is an alleged change until that change is resolved, had hardened suggested that BB were not willing to compromise. As far as they were concerned, it was non-negotiable just like some of the issues on our side would be non-negotiable. You can easily compromise on what both sides consider non-negotiable so you have to start what is negotiable. It would not have been sensible for Richard

to have gone in thinking everything was negotiable. I cannot remember what comments Board members made in response to this development.

324. It is difficult to determine if Richard Jeffrey had provided a balanced view and was actively seeking solutions and compromise. I think it is difficult the particular situation to produce a truly balanced view. That is not a criticism of Richard; I do not think anybody in any circumstance can provide an absolutely balanced view on everything. I did think, however, that he was actively seeking solutions and compromises.
325. Due to the passage of time I cannot remember what next steps were required at that stage.
326. I am aware that by email dated 19 April 2010, Richard Jeffrey wrote to party leaders Jenny Dawe, Ian Whyte, Steve Cardownie, Andrew Burns and Steve Burgess (**TRS00010706**), setting out TIE's position on the main matters in dispute. This email was forwarded to me as a member of the Tram Project Board shortly thereafter (**CEC00245727**). Within the email Mr Jeffrey noted that "*there is disagreement over what is or is not included in the original 'fixed price' contract*" and BBS are "*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*". He would not allow the city to be "*held to ransom*".
327. In relation to the adjudication decisions Mr Jeffrey noted, "*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*". My opinion at the time was that Richard Jeffrey was correct in his interpretation of the contract in terms of confidentiality.
328. I am aware that the email refers to legal advice having been received from a number of sources; however I cannot remember if I ever saw this legal advice.

Similarly, I cannot remember whether I gave any consideration around that time to whether CEC should seek its own legal advice independently of TIE.

329. I recall seeing the adjudication decisions. They were reported to the Board and I understood that other – non board Councillors could not be “*fully briefed*” on the adjudication decisions as they were confidential and were defined as such in the contract. This did not affect my ability to make informed decisions in relation to the tram project. It was not important to know the intimate detail of any particular adjudication. The key was to understand that what went wrong and by losing it were we going to overspend.
330. I cannot recall if I or other CEC officials gave any consideration to requesting that BSC agree to the adjudication decisions being disclosed to members.
331. I am aware that a meeting occurred in Carlisle on 21 April 2010 between TIE and BBS where they had agreed to investigate a way forward that would result in a line being built to St Andrew Square for a guaranteed maximum price and completion date. I was copied into emails to Board members from Richard Jeffrey dated 30 July 2010 (**CEC00387018**) and 4 August 2010 (**CEC00247389**) with updates on the negotiations.
332. I received papers in advance of the meeting of the Tram Project Board on 5 May 2010 (**CEC00245907**), within which the April Minutes provide, on page 6, that MUDFA works were 94% complete. I am led to believe that six months earlier in the October minutes they were reported to be 98% complete. The MUDFA issues were very complicated and it may have been assumed that all the works in a particular section were complete. It could then have transpired that there were actually additional works required and I would not have been surprised about that given the nature of MUDFA work. .
333. I note that the minutes intimate that a progress report was provided by Susan Clark. I can only assume that I received a copy of this report at the time; however I cannot recall the content.

334. I note that it is stated within the Minutes that the project budget increased to £530m. I would need to see the original report that mentions this increase before I would be able to comment.
335. Although the budget was expanding as the risk elements grew this was not unexpected and refers back to what I previously stated: there were £30m plus contingencies to deal with risk and you would expect the budget to expand as the risks expanded. It would not cause me concern as long as it stayed within the overall budget agreed by the Council.
336. This was the normal way to manage risk. At the beginning of any contract you assess the risk and put a contingency in place to deal with it. A figure is decided and if the risk actually happens, the base budget increases, if the risk does not happen you do not have to use the contingency.
337. The May Project Director's Report states on pages 18 and 19 that works cannot be started on street where sites are available as BSC have failed to satisfy their contractual obligations (**CEC00245907**). I could not comment on what obligations BSC had failed to satisfy unless I had access to the original report, nor could I comment on the assertion that this appears at odds with statements elsewhere that the problem is that BSC refused to work on street without a new agreement.
338. I could not comment on whether the problem was a refusal to work by BSC or the fact that they had not done works required to enable a permit to be issued. This is a very technical issue and one I would not be expected to have and intimate knowledge.
339. The May report to TS highlights on page 31 that it is apparent that SDS are causing problems. According to the report the issues identified referred to the non-provision information in a timely fashion. It is difficult to provide an opinion on whether the difficulties with SDS were having a practical effect on the progress of the works. I presume that if they were not providing the

technical information related works could not progress and therefore I would assume there would be an issue about costing.

340. I would not be expected to know the outcome of the design audit referred to on page 32 of the report; there was no written report produced or circulated.
341. Although it appeared that there was a new design programme almost every month, this did not concern me. I had a limited knowledge of delivering infrastructure projects and would have expected other people on the Board who had that experience to identify any concerns.
342. On page 7 of the minutes of the TPB meeting on 5 May 2012 **(CEC00261936)** it is noted that an independent expert review of the programme had been conducted and that it had concluded that delivery of phase 1a could be achievable by December 2012. I cannot recall if I was provided with a copy of this report and would assume that if there was one produced it would be within the Directors report. It is difficult with the passage of time to remember if a report was produced and if it was who the author would have been.
343. The Council were given an update on the tram project by means of a joint report by the Directors of City Development and Finance on 24 June 2010 **(CEC02083184)**. The report stated at paragraph 3.3 that *"The essence of the [Infraco] 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"*. The report also noted at paragraph 3.12, that *"Whilst there have been disputes on design-related matters ... it is normal in any large construction project for the scope of the project to change in material ways, for a variety of technical and commercial reasons"* and that *"The outcome of the DRPs, [Dispute Resolution Procedures] in terms of legal principles, remains finely balanced and subject to debate between the parties"*.

344. The Report concluded that it was "*prudent*" to plan for a contingency of 10% above the approved funding of £545m because of the current lack of clarity on programme and cost. I believe that at that time the report was an accurate interpretation of where we were in relation to the contract.
345. I think that the actual wording of the report highlights that the Infraco contract was fixed, but also acknowledges that if it changed, for whatever reason, there would be a financial and a time impact. That was always my understanding, but I think other politicians understood that it was more hard and fast in terms of being a fixed price. My understanding was never that it was a fixed sum, but that the 5% was not going to cause any difficulty. The Dispute Resolution was finely balanced, although the understanding was that they would favour TIE more than BSC. The result was the biggest surprise and this report was saying that we needed to put 10% above the £545m because we were losing the DRPs. My view was that if the DRPs had been more favourable to us we could probably have kept within £545m. The report was a fair reflection on where I thought we were at that time.
346. I cannot say if members of the Council were adequately advised and informed, both when the Final Business Case was approved and prior to the Infraco contract being signed, of the risk or likelihood of the "*scope of the project to change in material ways*", with a resulting increase in cost. It was within the contract, however whether members reflected on it and understood it I could not possibly say, I can only speak for myself.
347. I think it was a fair reflection that the outcome of the Dispute Resolution Procedures was "*finely balanced*".
348. I believe that it was "*prudent*" to plan for a contingency of 10% above the approved funding of £545m, although that contingency was probably not sufficient given what occurred with the MUDFA works and the associated difficulties. As a result of the delays in the project and the difficulties with TIE and Bilfinger coming to a negotiated settlement.

349. I thought that constructing a line from the Airport to Newhaven would cost in excess of £600m, which would have been £545m plus the 10% contingency. It would be a question for Officials to answer whether members should have been advised around that time that there was a significant risk that the actual cost of phase 1a was likely to be much higher.
350. This did not affect members' ability to take informed decisions in relation to the tram project around that time. Members were making informed decisions based on what they were being provided by the Director of Finance and the Chief Executive.
351. Members knew that there were difficulties, the Evening News covered this extensively and everybody in Edinburgh knew there were difficulties. What is most important for Councils is for the Officials to acknowledge what has happened and report it back in. Councillors were telling Officials to rectify the problems and if they could not be resolved then they needed to be reported to the Council. There was no point in Officials informing us that there might be an overrun they needed to give a precise information for the Council to act upon. I believe though that every member knew of the issues as a result of the Evening News coverage and because they were receiving briefings from the politicians who were on the Board. No member could turn round and say they did not realise there was a problem.
352. Once it was clear as a consequence of the Dispute Resolution Process, significant additional finance would be required, I believe Officials were diligent in informing the politicians. I do not think they delayed conveying this information. Whether Councillors understood the exact nature of the problems is different but they all understood there were problems.
353. I was provided with papers in advance of the meeting of the Tram Project Board on 30 June 2010 (**CEC00223543**). I cannot remember if there was a change in approach to BSC about this time in view of the decisions of the adjudicators in the disputes, nor, if there was, what this new approach was.

354. The Minutes of the meeting in early June 2010 note that Richard Jeffrey outlined the current position regarding the options available in relation to BSC and two options were being worked on. Without the original papers the Minutes refer to I cannot recall precisely what the two options were.
355. The Minutes also note, on page 8, that a contract was to be let for utility works in Baltic Street. The original papers provided at the meeting would detail the reason for any new contracts being awarded and without sight of them I cannot comment on their being awarded at this stage.
356. The papers for the meeting include a letter from David Mackay to Marshall Poulton explaining that the contract could not be completed within the funding envelope of £545m. It had been reported since August 2009 that this was unlikely to be possible and I believe that it was the reports on the back of the adjudication meetings that instigated the letter being sent. These reports were not as favourable as had been reported to the Board when we went into the adjudication. The decision to send the letter was based on the outcome of the first three adjudications and I cannot remember if Marshall Poulton participated in the decision to send the letter.
357. I am aware that the Project Directors report for late June 2010 noted, on page 24, that there were two independent reports to the effect that recovery was possible, however I cannot remember if I was given a copy nor what were the basis of these conclusions.
358. The PD Report also notes, on page 12, a new twin track approach to Infracore (CEC00223543). I assume that the old approach was to work to the specifications within the contract. We were trying to resolve the disputes that arose and TIE was trying to be flexible within the contract. I understood that the advantage of the new approach would be its flexibility.
359. The following paragraphs in the report refer to the outcome of the adjudication decisions. I could not commit to whether they accurately represented the

position. What these paragraphs illustrate is they went to adjudication and came to an acceptable view that both parties could agree . I cannot remember if there was discussion about these decisions in the report to TS or others.

360. Councillor Gordon Mackenzie, who called for the termination of BB's contract highlighted within PD Report of late June, is the same politician who sat on the TPB. If it had been suggested in private discussion it would not be in the Minutes and would not therefore have been subject to the Freedom of Information Act. Whether Councillor Mackenzie called for termination of BB's contract in public or private and whether it had been discussed in advance, I am not in position to confirm or deny.
361. I note that page 26 of the papers sets out what the caused the problems in the Infraco works. It would be difficult to recall what the particular circumstances were at that point in time. Furthermore, I cannot remember if I was provided with information in addition to what was stated within the reports.
362. I was provided with papers in advance of the meeting of the Tram Project Board on 28 July 2010 (**CEC00244400**). The new twin track approach is discussed in a bit more detail in the Minutes of the June meeting on page 7. As I understand, within the contract there is what is called the "*Remedial Termination Notice*" (RTN), which gives the consortium 30 days to prepare a remedial plan. This is a mechanism within the contract to get the contractor to come forward with a plan - within 30 working days stating - about how the remedial work will be carried out. It was not the intention to terminate the contract as part of this process.
363. If the contract had been terminated at that point it would have been re-tendered.
364. I cannot remember in how much detail the issue of the Remedial Termination Notices was discussed

365. Politicians were not party to the negotiations. Responsibility for the negotiations rested with the he officials in TIE. Consequently, I do not know the detail of what was being discussed with BSC.
366. There was still an expectation that the present contract could be fulfilled on the basis of a negotiated settlement. There was always an expectation that a compromise would be reached. I do not remember an Option A, nor whether if that failed there would be a necessity for producing a Option B. It was a staged process and our focus was on trying to resolve the dispute.
367. I am aware from the minutes of the July meeting (**CEC00013703**), at page 7, that advice had been taken on the merits of the RTN approach. I think that advice had been obtained from Senior Counsel, although I do not know the name of the Counsel or the Lawyers. I do however remember somebody attending a Board meeting.
368. In the July Minutes it is noted that Board members were to be kept informed of each step of progress though the coming week and beyond. I cannot remember the detail of how this happened.
369. The TS report for July 2010 recognises that programme recovery is not possible this appears to be for the first time this was acknowledged. I have no idea what caused this change of heart.
370. I note an email Nick Smith sent Alastair Maclean dated 1 August 2010 (**CEC00473789**) and attached document titled, "*Tram-Potted History*" (**CEC00473790**). Nick Smith's email noted "*dissemination of the actual history here could cause serious problems and we definitely don't want to set hares running ... be very careful what info you impart to the politicians as the Directors and TIE have kept them on a restricted info flow*".
371. This is clearly correspondence between two officials. If they were seriously concerned it was up to them to raise these concerns with politicians. It would

appear that Mr Smith was seriously concerned but at no time - as far as I can I remember - were these issues brought forward to Councillors. I can only assume the officials concerned took the decision not to release any of this correspondence.

372. The reason for not releasing this information would be the responsibility of senior officials with conflicting opinions. Without sight of the information from all officials who were discussing this at the time, it would be quite easy to arrive at the wrong conclusion. It would be easy to conclude from the email content and the attached document, that there were serious difficulties but I would need to see the full email chain before I could come to a judgement. If, collectively, the officials thought there was a problem they should have informed the politicians. I cannot speak for other politicians but I was certainly unaware of the email and attachment.
373. I did not consider that CEC Directors or TIE kept me on a "*restricted info flow*". Officials would discuss the issues, come to conclusions and present them to the politicians. It would be impossible for or politicians to be involved in all the internal discussion undertaken by officials.
374. I had no concerns at that time. The assumption a politician makes is that even though there may be some serious allegations, there is possibly another side to the issue. The officials clearly took a decision not to brief us on any this correspondence. .
375. If I felt that we were not getting all relevant information I would have done something about it, however I was not under that impression at that time. I could meet any official at any time and ask questions. As far as I was concerned I was not concerned about the information I was given and there was no restricted access to officials.
376. I am aware that on 20 August 2010 CEC officials met with TIE representatives to consider TIE's Project Carlisle Counter Offer (**CEC00032056**). A record of

the meeting noted a range of costs of between £539m-£588m for the Airport to St Andrew Square and a range of between £75m-£100m from St Andrew Square to Newhaven, giving a total range of costs, from the Airport to Newhaven, of £614m-£693m.

377. The record further notes that it is mentioned this was essentially a re-pricing exercise for the completed design, which was thought to be approximately 90% complete, the intention being to give TIE certainty and that all of the pricing assumptions in Schedule 4 of the Infraco contract would no longer exist. I cannot remember the exact detail but I do recall there were discussions about various options.
378. I was provided with papers for the Tram Project Board meeting on 22 September 2010 (**CEC00013818**), which contained the minutes of the meeting that took place on 25 August 2010. These minutes, on page 7, refer to Workstream A, which appears to be focussed on Contract Administration. I am led to believe the minutes of the previous meeting in July provide that Option A appears to be focussed on termination of the contract. Without seeing the original papers for both meetings it is difficult to assess the significance. I cannot remember if TIE took the view that termination was no longer the correct course of action.
379. At item 2.4 of the minutes and in the PD Report at page 15, there is mention that no further Dispute Resolution Process referrals would be made. As far as I can recall at that stage there was a realisation that if the Dispute Resolution was going to repeat the first three results there would not be enough money to finish the contract. Therefore there was a requirement to address the issue of disputes in a different manner. That led to a discussions about what the next step would be, including possible termination of contracts. It was, however, apparent at that stage that the present contract could not be delivered within the budget.

380. My understanding of the Contractual Strategy in the Project Director's Report, page 29, was that it was an assumption that we were still applying the conditions of the contract.
381. I refer to a letter BBS wrote directly to Councillors and dated 13 October 2010 (TIE00301406), which provided their views on the dispute. Within the letter BBS advised that of the nine formal adjudication decisions issued, BBS had six decisions in its favour, there were two split decisions, with the principle found in favour of BBS, and there was one decision in favour of TIE.
382. Additionally, BBS stated that, in the interests of accuracy and transparency, and if TIE agreed, BBS had no objection to the disclosure of the adjudication decisions to elected members in order that they could make their own judgement.
383. I am not sure I had any views on the letter. The adjudications, according to the contract, were confidential and I assume from the letter they were trying to release that obligation. It became very difficult for Councillors to report back on any adjudication because it was confidential and this proposal actually assisted Councillors to report back on the detail of the adjudications.
384. As a member of the TIE Board at that stage, I did see the adjudication decisions, although they were not made available to non-board councillors at that time as they were confidential. Without a change to the contract they could not be disclosed to members, however the proposal within the letter would release the TIE Board from the obligation of confidentiality. My understanding that the adjudications remained confidential and that was part of the contract.
385. The key fact was not how the independent adjudicator came to the decisions, but the result of the decisions, and that TIE's position was not as sound as had been first thought. The reason for the decisions would have been of

interest but it would not affect the outcome and the decisions we had to make as politicians.

386. The adjudication decisions themselves went against TIE. A lot of the detail was very technical so actual detail the adjudications was very difficult to understand. If I required an explanation of the detail it could be obtained from officials who were technically qualified. The fact that TIE lost the adjudications changed my perception of the possibility of delivering the tram using the present contract.
387. On 10 October 2010 TIE sent an email to Councillors (**TIE00463778**) addressing misleading articles within the media. I cannot remember the actual details but there were a lot of people leaking information at that stage. One of the most difficult aspects of being a politician is have to deal with confidential information that is leaked to the press. The email acknowledges the leaks but states *"Some of the stuff that was in the press is not accurate"*. The email is putting forward an accurate picture. All politicians have to deal with the inaccuracies of the press. This email is not wrong it just provides a different emphasis, redressing the tendency of the press to omit certain facts that do not fit in with the line they are pursuing. Providing an opposing view provides some balance.
388. I am aware that a report to Council dated 14 October 2010 (**CEC02083124**) noted that at the meeting on 24 June 2010 the Council had required a refreshed Business Case, detailing the capital and revenue implications of all the options currently being investigated by TIE. This also took into account assumptions contained within the original plan that either no longer applied or whose timescales had now substantially changed.
389. The report went on to note that the contingency planning work undertaken by the Council and TIE had identified funding options which could address project costs of up to £600m. It was stated in paragraph 3.1 *"Due 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”.

390. At paragraph 2.50, it was, again, noted that *“The overall outcome of the DRPs, in terms of legal principles, remains finely balanced and subject to debate between the parties”*. Termination of the contract was one option. It was further noted that extensive legal advice had been taken and continued to be taken. The report did not, however, give an indication of the likely cost, or range of costs, of the different options with the Project Carlisle offers and counter offers, for example, not being referred to.
391. I cannot remember if Councillors were concerned with the level of detail provided and I cannot recall the discussion around a request for a detailed update of the Business Case.
392. I understand the statement within the report *“To date the applications of the Dispute Resolution Process to disputed matters have reduced BSC’s claims for additional payments from £21m to £9m, a saving of £12.5m”* to mean that TIE disputing BSC’s claims had resulted in savings of £12.4m. If we had just agreed with BSC’s claims there would have been an additional cost of £21m and through the Disputes Resolution Process we had reduced that to £9.5m. This £9.5m would still represent an increase in the price of the contract, thereby demonstrating there was still an issue with the contract.
393. I cannot remember individual instances when legal advice was provided to me and other members and I cannot recall if legal advice was provided for this report. In general terms, however, legal advice was forthcoming when members requested it and was both readily accessible and understandable.
394. Papers were provided to me in advance of the meeting of the Tram Project Board on 21 October 2010 (**CEC00014055**). I note that the Project Directors Report for October states that BB were intending to reduce their workforce. I have no idea if the reduction of the BB workforce was as a result a new TIE

tactic and I do not know what, if any, justification was provided by BB for the reduction in their workforce. Similarly, I cannot remember what the reaction was within TIE to the news.

395. I am led to believe that the Transport Scotland Report for October, on page 33 within these papers, notes what has been done by way of serving notices on BSC. I have no knowledge of this and I do not understand why a report to Transport Scotland, which is the Government's agency, would be used to pressurise BSC; that report would have been confidential.
396. I cannot remember what is meant by the term "*financial metric*" as referred to within the Transport Scotland report, page 31.
397. I am led to believe that an email dated 4 November 2010 by the Council Solicitor, Alastair Maclean (**CEC00012984**) stated that CEC were to instruct "*our own independent analysis of TIE's position by CEC's QC*" and that McGrigors had been appointed to lead that work stream in place of DLA.
398. I also believe that in further emails dated 22 and 30 November 2010 (**CEC00013411**), (**CEC00014282**) and (**CEC00012450**) Mr Maclean expressed concerns about TIE and the legal advice received by TIE. Within another email dated 30 November 2010 Nick Smith is
399. In an email to Alastair Maclean dated 24 November 2010 (**CEC00013441**), Richard Jeffrey stated, "*if the Council has lost confidence in TIE, then exercise your prerogative to remove TIE from the equation*".
400. At that time I was not aware of these matters and I have no idea why CEC had not instructed their own QC earlier. I can only presume Alastair was of the opinion that the Council needed to assess the advice that had been provided. I was aware the council had involved a QC although I cannot recall the exact time this occurred.

401. At that time I was not aware that CEC officials were starting to lose confidence in TIE and their advisers. If they wanted to change direction or look at a different approach they should have informed us as Councillors.
402. The main issue for me at the time was the progress and outcome of adjudications. I was seriously concerned when we started to lose adjudications. I highlighted this a number of occasions in discussions with fellow politicians. The minutes of Labour Group meetings are no longer available so I cannot confirm exactly when I raised this matter in the Group.
403. Following the resignation of David Mackay, the Chairman of TIE, Richard Walker of Bilfinger Berger wrote to myself and other elected members on 5 November 2010 ((**CEC00013011**) and (**CEC00013012**)). The letter stated that the resignation was not conducive to progressing the project and that the comments made by Mr Mackay in the media were sufficiently harmful to BBS's reputation to warrant legal action against him. The letter urged the Council to distance themselves from these comments and to request Mr MacKay make a public apology. I also understand that a meeting took place between BSC and John Swinney on 8 November 2010.
404. I am led to believe that the Chief Executive of CEC then wrote to BSC on 15 November 2010 (**CEC00054284**), restating that negotiations in respect of the contract must be carried out between Infracore and TIE and went on to indicate that the Council would be willing to meet with TIE and Infracore officials on a without prejudice basis.
405. I also understand that the Council Leader, Jenny Dawe, wrote to the Managing Director of BSC dated 16 November 2010, offering a meeting with Council officers. Later the same day Ms Dawe and Mr Aitchison met with John Swinney.

406. Additionally, I believe that on 18 November 2010 Jenny Dawe tabled an emergency motion proposing mediation as a means of progressing the tram project (**TIE00306955**).
407. Tom Aitchison, the Chief Executive, was technically correct. Until we as politicians made a decision to change the way in which we were going to deliver the tram project, matters had to be dealt with through TIE. Jenny Dawe, as the Leader of the Administration, made the decision when David Mackay left that there was a requirement for re-negotiation of the contract. Ms Dawe therefore put an emergency motion forward proposing a process of mediation in an attempt to resolve the dispute. My observation was she was suggesting a change of direction and that mediation would be directly between the Council and BSC. Until that motion was passed the Council's position was that all discussion would be done through TIE.
408. I am not aware what was discussed at the meeting between Jenny Dawe, Tom Aitchison and Mr Swinney. Those matters may have been discussed with members of the administration, but they were not discussed with members of the opposition.
409. I believe that at some point after the adjudications it was clear there would be a requirement for a negotiated settlement.
410. I am led to believe that on 16 November 2010, Richard Jeffrey advised Alastair Maclean of certain serious concerns he had in relation to events at the time the Infraco contract was entered into. As a consequence, I believe Mr Maclean produced a Note for the Councils Monitoring Officer on 17 November 2010 (**CEC00013342**). The note by Mr Maclean set out Mr Jeffrey's concerns.
411. I cannot remember seeing this document and therefore was not aware of the accusations contained within it.

412. The Monitoring Officer had a responsibility to investigate the concerns contained within the Note. The Note identifies certain Directors and employees of TIE and also makes mention of Council officials. TIE was a Council company and consequently comes under their Code of Conduct. There is a quote within the Note that states "*Certain Directors and employees were incentivised to negotiate a concluded deal with Infracore at a certain headline rate. In order to achieve this headline rate and receive bonus payments other softer options were agreed.*" Richard Jeffrey is not actually saying it openly, but there is an implication there is corruption involved, which would surprise me if it was true. If it was true then it should have been fully investigated at the time.. If any Council official had been aware of the issues detailed in this letter, it should have been reported and investigated by the Monitoring Officer.
413. I believe a report for the meeting of the Internal Planning Group (IPG) on 17 November 2010 (**CEC00010632**) noted that a range of cost estimates for the different scenarios was being produced. The draft estimate for Project Carlisle varied between TIE's estimate of £662.6m and BSC's estimate of £821.1m. These estimates were for the full scheme and the report noted that the cost estimates, as they stood, indicated that delivery of the project to St Andrew Square could be achieved for £545m-£600m. All these figures were contained within the report and therefore I was fully aware of them.
414. I was provided with papers in advance of the meeting of the Tram Project Board on 17 November 2010 (**CEC00014175**). As a result of the resignation of David Mackay as chair a new appointment was required. The chair sets a direction and his direction was very much that Bilfinger had to deliver the contract. It became more and more apparent, however, that there would have to be a renegotiation of the contract. As a result, his position became more difficult and his resignation made it easier to renegotiate the contract. . It became apparent that if settlement and an agreement between both sides were to be achieved, more funding would be required.

415. I believe that the requirement for renegotiation affected Dave MacKay's position. After Dave's public statement that they were "*delinquent contractors*", it was clear he could not negotiate with the contractor.
416. I cannot recall where discussions had reached at that point in respect of Project Carlisle.
417. As I have stated, there was a growing realisation after the adjudications and the breakdown of communication between David Mackay and BSC, that some sort of negotiated settlement was required. This meant the contract could not be delivered without addition funding.
418. I cannot recall any detail of the feedback I received from TIE officers dealing with BSC. There was a lot of information provided to the TIE Board and in addition I could meet officials from TIE at any time if I wanted to discuss matters. I cannot recall any time I was refused information.
419. I believe an exploratory meeting occurred on 3 December 2010 (**CEC02084346**) between Alastair Maclean and Donald McGougan on behalf of CEC, Richard Walker of Bilfinger Berger and Antonio Campos of CAF. I was not aware of the meeting at that time. As the Labour Party was not part of the administration and there was no obligation on the administration to share any information until it reached the stage of being a Report to the Council or a Committee. I cannot therefore make any comment on what my views were in relation to the position of BSC.
420. I was provided with papers in advance of the meeting of the Tram Project Board on 15 December 2010 (**TIE00896978**). In the minutes of the November meeting the possibility of mediation was noted. There was always a possibility of mediation and I think it is fair to say that we all wanted the dispute to be resolved. I cannot recall what prompted this however, or what was said by the Scottish Ministers.

421. I cannot remember if there was a specific discussion around the outcome of the adjudication on Landfill Tax, as referred to on page 16.
422. I recall being aware of the content of the adjudication decisions, but I cannot remember when and whether it was at a Board meeting.
423. I am aware that Tom Aitchison provided the Council with an update on the refreshed Business Case on 16 December 2010 (**CEC01891570**). The report stated that a line from the Airport to St Andrew Square was capable of being delivered within the current funding commitment of £545m and goes on to state that mediation discussions involving the Council and BSC would commence early in the New Year. It also stated that, by their nature, mediation discussions had to be conducted on a confidential basis. It would therefore not be possible to report in detail on the process until it was completed or interim proposals emerged which required a decision by the Council.
424. An amendment was passed at the meeting by members to request that a review of the Business Case be undertaken by a specialist public transport consultancy that had no previous involvement with the Edinburgh tram project. This was detailed within the relevant minutes on page 22 (**CEC02083128**).
425. At that time I remember not being convinced that it was likely a line could be built from the Airport to St Andrew Square within the current funding commitment of £545m.
426. There was sufficient detail in the report but what we should have been briefed on is whether it could be done for £545m. It may be that members of the administration were briefed and were therefore confident that it could be delivered ..

427. I cannot remember members were consulted on CEC and TIE's proposed approach to the mediation process.
428. My understanding of why members requested a review of the Business Case, by a specialist public transport consultancy with no previous involvement was that there was a feeling we required somebody independent to come and examine the figures. This would ensure that the proposed line could be delivered for £545m, although, to the best of my knowledge, such a review was never undertaken.
429. In hindsight an independent review should have been undertaken at an earlier stage in the project. The adjudication decisions were a turning point for the project and I think an alternative delivery plan should have been worked up sooner.

2011

430. I was provided with papers for the Tram Project Board meeting on 12 January 2011 (**TIE00897052**) which contained the minutes of the meeting that took place on 15 December 2010. Both the papers for the meeting on 12 January and the minutes of the meeting on 15 December considered mediation. I note that it is mentioned that the Board want this progressed as soon as possible. Mediation was the preferred option because this was seen as the best way to deliver the Tram Project. All other options had been fully explored and mediation was now accepted as the best option. It was not a change of heart as other options had previously been considered.
431. I am led to believe the Project Directors Report provides possible inconsistencies regarding the progress of BSC on page 16 and 18. I also believe there are further inconsistencies in the PD's report for March, which notes on page 17 that Infracore progress is focussed on the off-street section between Haymarket and the Airport (**TIE00897064**). This notes that the only progress had been at the depot and the depot access bridge and that, on

page 16, there had been a cessation of works across the site. I do not have any knowledge of what they relate to and consequently can offer no comment.

432. I cannot remember if any of the issues were discussed at any Board meetings.
433. I believe the Highlight Report for the meeting of the IPG on 21 January 2011 (**CEC01715625**) notes that both Nicholas Dennys QC, on behalf of CEC, and Richard Keen QC, on behalf of TIE, had advised on the best option. This was to enforce the contract until grounds for termination could be established as a result of a failure to perform the works. This option would also place TIE in the strongest position with regard to any mediation or negotiated settlement. I believe it appears unclear the extent to which there had been a rigorous approach by TIE regarding the enforcement of the contract pending the Carlisle negotiations and the focus on the termination option.
434. The report noted at page 7 that *"TIE Ltd presently 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 (RTNs) which do not set out valid and specific grounds for termination"*. It also appears to suggest that the consortium appeared to be extremely well prepared.
435. The report goes on to state, *"However, there was a desire commercially and politically to move towards mediation notwithstanding TIE Ltd's (apparently) relatively weak tactical and legal position. That is likely to have a financial implication with the Infracore 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"*.
436. I was not aware of the content of this report, which I believe would have been sent to the Chief Executive. At that time, however, I was aware of the issues contained within the report as these matters were obviously pertinent to resolving the dispute.

437. I cannot remember if these matters were discussed with members and I cannot recall if we, the Labour party, had seen this report at the time. We were aware of a number of the issues the report highlights: that there was a continuing debate about termination, continuing the contract and related matters.
438. I was provided with papers for the meeting of the Tram Project Board in February 2011 (**TIE00897058**), which contained the minutes of the January meeting, where there was discussion on page 13 of the Audit Scotland report.
439. My opinion of the Audit Scotland report was that there was general agreement that Transport Scotland should be involved in the project, which made sense as TS were providing the funding for the project.
440. I cannot remember any discussions about the objectives that were to be secured at any mediation event.
441. I cannot recall seeing the Audit Scotland report therefore I am unable to comment on any reference to the role and responsibilities of Directors for TIE and TEL.
442. I cannot recall what the concerns were around the existing governance arrangements that Brian Cox was tasked with documenting to CEC. Similarly I cannot recall if these concerns related to the letter from Brian Cox to Marshall Poulton of CEC on 18 January 2011 (**TIE00081663**).
443. I believe that on page 232 of the paper on Project Change Control, submitted to the February 11 meeting (**TIE00897058**), there is a reference to a "*write back budget*" of £13m, which increased the risk allowance. I cannot remember what the "*write back budget*" was intended to achieve.

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should be
page 23

444. I did not take part in any of the preparations for mediation or indeed the actual mediation talks at Mar Hall in March 2011. It would be the responsibility of the administration to deal with such matters.
445. As far as I can recall we were provided with adequate briefings in respect of the mediation process.
446. As far as myself and other Labour members were concerned there was no opportunity to express our views on the process before or during mediation. The only time we afforded an opportunity to make comment was when the report was presented to the Council.
447. We were made aware of the outcome of the mediation talks via Council report and briefing sessions. My views on the outcome of the mediation were that it was probably the best that could be achieved in the circumstances.
448. I was provided with papers for the Tram Project Board meeting which occurred in April 2011 (**TIE00897066**). The paper relating to the utility works at page 40 is about betterment and the process of removing old cables and upgrading them, rather than reinstating the old cables, and the cost apportioned to each of the utilities for that work.
449. I received papers for the meeting of the Tram Project Board on 11 May 2011 (**TIE00896987**). On page 3 concerns are expressed by Kenneth Hogg in the May TPB meeting in relation to the mediation agreements. Without access to the original documents and the actual wording of the Minute of Variation 4, I cannot comment the concerns expressed by Kenneth Hogg.
450. Similarly without having a copy of the original Business Case I cannot comment on its content.
451. I cannot remember the origins of the cost estimates contained within the Business Case without having a copy of the original Business Case

452. I cannot recall the detail of how the sums in the Business Cases were made up without having a copy of the original Business Case
453. I cannot recall what discussions occurred in relation to the Final Business Case (FBC).
454. I am unable to provide a date for when I was first provided with a copy of the Business Case to consider.
455. Without having a copy of the original Business Case I am unable to comment on what provision, if any, was made for risk and Optimism Bias when the estimate of cost was considered.
456. The Quantified Risk Assessment (QRA) was a process to assess a risk then put a figure against this risk. I believe that this process was undertaken by Quantity Surveyors and was used to determine the final cost of the contract.
457. It was understood that the FBC expressly stated that CEC must balance its desire to support the project with its fiduciary responsibility and limited resources. It was also understood that TS made it clear they were only providing £500m of funding. The whole risk of overrun then fell on CEC. I would say that full consideration was given to this and that a 10% overrun on the contract as a whole would have cost an additional £55m, which would have more than doubled the Council's contribution.
458. The risks were managed by the officials who were delivering the contract. The risk provision would have been assessed at the beginning of the contract and there was a risk assessment at every Board meeting to ascertain if the assessment was correct. If it was not correct you would be required to take steps to either put more money into the base budget or remove the risk in another way. The function of drawdown against risk allowances was to allow risks, when they become real, to be dealt with. The factors that were taken into account when making a decision whether to approve a drawdown would

depend on the risk. All risks are different therefore the factors in relation to a specific risk would be different.

459. I am aware of a report to the Council on 16 May 2011 which stated, in the Minute of Variation 4, that mediation had made progress, work had started in priority locations and further work had been undertaken on other issues. I was not advised at that particular meeting of the outcome of the mediation and in particular, the sums for the off-street and on-street works were not discussed or agreed. I was advised of the sums involved but I cannot remember when this occurred. Council would have to agree the figures at some point otherwise we could not provide instructions to officials to release the money.
460. I am aware that the Council were advised of the options for the tram project in a report by the Director of City Development on 30 June 2011 **(CEC02044271)**. It was recommended that the Council complete the line from the Airport to St Andrew Square/York Place, at an estimated cost of between £725m and £773m, depending on the risk allowance. The report stated that in the 12 months between preferred bidder stage and Financial Close of the contract there were significant negotiations on commercial matters including management of risk arising from incomplete design work. It noted that claims related disputes were apparent from an early stage and tested the parties' respective understanding of the contract. Difficulties had been exacerbated by delays with utility diversion works, slow progress in clearing design related activities and problems with sub-ground conditions during utility diversion works.
461. I cannot remember what my views were at that time on the best option available to the Council, although I thought that the recommendation by the Director of City Development was expensive.
462. I was not surprised when the cost for the tram project increased; however I was surprised by the amount it had increased. My understanding is that these estimates were arrived at during the Mar Hall mediation discussions.

463. I recall there were appendices to the report but they were considered confidential due to the content being commercially sensitive.
464. I am satisfied that we were provided with sufficient information to arrive at an informed decision.
465. I am unable to say whether the Report to CEC on 30 June 2011 presented a contrast to the position presented to the Council at the time of Financial Close. I would require more detail to be more specific around when Financial Close occurred.
466. Consideration was given to the interest that would accrue on the large sums the City of Edinburgh Council was borrowing.
467. There were claims made that the cost of terminating the Edinburgh Trams Project would have been more expensive than building it to St Andrew Square and this was one of the reasons the Council wished to proceed with the project. Even with hindsight and given the interest payable on the loan for completing the project, I do not believe that the cost of terminating the contract would have been more expensive than continuing the line to St Andrew Square. This is also confirmed in an email dated 15 May 2011 to Council Leaders (**TIE00687940**) detailing the costs.
468. The Council were provided a further update by way of a report by the Director of City Development on 25 August 2011 (**TRS00011725**), which noted that Faithful and Gould had worked with Council officers in validating the base budget for the proposed works. The report states there was a requirement for funding of up to £776m for a line from St Andrew Square/York Place, comprising a base budget allowance of £742m plus a provision for risk and contingency of £34m. Additional funding of £231m was required, which would require to be met from Prudential borrowing, at an estimated annual revenue charge of £15.3m over 30 years. At the Council meeting, members voted in favour of an amendment that a line should be built from the Airport to

Haymarket. At a further Meeting of the Council on 2 September 2011 however, the Council overturned the decision to go only to Haymarket **(CEC01891495)**, apparently in response to a letter from Transport Scotland stating that there would be no further payment of grant if the line stopped at Haymarket.

469. There was concern about the increased costs to St Andrew Square and consequently consideration was given to what could be achieved for the original budget. We considered that it would be feasible to build to Haymarket within the original budget, although it would make an operating loss. The alternative to build to York place would require the council to borrow with an ongoing revenue cost of £15 million. Part of this revenue cost could be used to subsidise the route to Haymarket until we reassessed the best way to finance the future expansion of the tram.
470. The concern was that nothing would be built. The Labour motion to take the tram to Haymarket was agreed. The Scottish Government and Transport Scotland decided the best option was for the council to borrow the extra money and complete the tram to York place. He instructed the Liberal Democrats and the SNP administration to overturn the Labour proposal and to vote to take the tram to York Place. At an emergency meeting of the council SNP councillors voted with Liberal Democrats to overturn the Labour motion.
471. As I recollect, Members were provided with a summary of a report dated 19 August 2011 by Faithful and Gould **(CEC01727000)** and not the full report.
472. I believe the full report by Faithful and Gould mentioned, in the Executive Summary, that the current costs for the on-street works for Siemens were *“extremely high and not value for money”* and that the cost of the other on-street works was *“grossly inflated”*. At that time I was not aware of this information.

473. A Settlement Agreement was entered into on 16 September 2011 between the Council and BSC which, ultimately, resulted in a reduced tram line being built for a total capital cost of approximately £776m. The Scottish Government guaranteed continuing to provide the funding for the project which secured the project. The advice to members on the settlement agreement being reached in September 2011 was that it was acceptable.
474. I am led to believe the main features of the contractual arrangements were set out in an Update Report for the Audit Committee (**CEC01914665**) and included details of a lump sum price for the off street section between the Airport and Haymarket subject to certain exceptions and a measurement contract basis for the on street section which included the Council carrying certain risks, including those risks associated with utility diversions. I do not recall reading the report and therefore are not able to comment on my understanding of the contractual arrangements that were set.
475. The only realistic alternative to the settlement agreement would have been to stop the project which would not have been acceptable. I cannot remember what advice was given to members at the time.
476. I believe that the additional borrowing of £231m was justified. If Edinburgh was going to grow economically as a city it required a light rail rapid transport system. At that time it was not appropriate to seek the views of members' constituents as that would have required a referendum and Members did not believe that would be appropriate at that time. You have to make decisions on the basis that this was a long-term decision for the future of Edinburgh. In the short term it may be unpopular when the tram is being constructed but we believed when it was operational it would be popular.
477. An announcement that Ministers and Transport Scotland would oversee the project and that the grant would be re-instated was made on 14 September 2011. The Council appointed external project managers, Turner and

Townsend, to assist with the process, revise the governance arrangements and begin to wind down TIE (**TRS00012622**).

478. I have no knowledge of the role that Transport Scotland played after the settlement agreement. I was not involved in the delivery of the tram at this stage as TIE had been wound up. Additionally, I have no knowledge of the role Turner and Townsend played after the settlement agreement.
479. At the meeting of the City of Edinburgh Council on 24 November 2011 (**CEC01891428**) Lesley Hinds noted that Jenny Dawe had requested an inquiry into the Edinburgh tram project and asked whether she would circulate this request to elected members. The letter from the First Minister confirmed that the Scottish Government would be delighted to have an inquiry into the problems surrounding this project.
480. I think a public enquiry was necessary. During the period of the Tram Project there were a lot of claims and counter claims about the viability of the tram and the way the project was handled. The only way to get some clarity was to have an external inquiry. There was discussion at the time about an internal inquiry but that was deemed to be inappropriate. An internal inquiry is for the benefit of politicians, not for public. The Tram Project was a highly public and highly news worthy event and therefore requires an independent assessment of its successes and failures and what lesson can be learned for the future.
481. I agreed with the view of the Chief Executive, Sue Bruce, that any Inquiry would be an unwelcome distraction and that it should wait until the project was complete.
482. Following the Mar Hall mediation and the Settlement Agreement, works progressed to complete a tram line from the Airport to York Place, which opened for revenue service on 31 May 2014. The main changes as a result of the Mar Hall agreement were an agreed financial framework, which the

contract was delivered against. Responsibility for delivering the project was taken in-house and delivered with the support of external organisations.

483. As there was a workable financial framework to deliver the project, a trust built up between the Council and the contractor and so, when problems did arise, they were settled amicably and out of the glare of the media.

Project Management and Governance

General

484. CEC were the funders and were responsible for delivering the project. TIE was the organisation that was created to deliver it on behalf of CEC. TEL was the organisation to create an integrated transport strategy for the city. The Tram Project Board was set up to oversee the delivery of the project. Transport Scotland are the representatives of the Scottish Executive and, as one of the funders, it was obviously important for them to be involved in the decision-making process of how the tram was to be delivered.
485. At the time I did not see any problems with the working relationships between these bodies. I thought if all these organisations were working effectively and in a joined up fashion, I did not see any difficulty. I think the original problem may have been the contract.
486. When the tram project commenced there was a change of Government and the SNP formed a minority administration. The SNP were against the project therefore Transport Scotland withdrew from TIE and I think TEL as well. This meant that TS were no longer overseeing the project on behalf of the Government which was not helpful. . The Scottish Government's attitude was support by SNP councillors. This was a change from the beginning of the project which had all party support and resulted in a fair degree of opposition within the council. However I think the biggest single issue was the contract. In hindsight the issues with the contract were not identified quickly enough.

Also the relationship between Council and Bilfinger was not developed early enough for trust to be established.

487. I believe that the roles and responsibilities of each of the bodies involved in the delivery and governance of the project were sufficiently clear.
488. I do not think there were too many bodies and organisations involved in the governance of the project. The roles of each were quite clear and separate and I do not believe that was an issue. If the contract had been written differently and Bilfinger and TIE had establish a better working relationship, the contract would have been delivered, although not without an increase in budget.
489. The body or organisation that was ultimately responsible for ensuring that the tram project would be delivered on time and within budget was the Council.
490. A report to Council on 25 August 2011 (**TRS00011725**) noted that *"The existing governance arrangements for the tram project are complex and have not been effective, the governance arrangements had had to take account of the complexity of the arm's length bodies that were proposed to deliver an integrated transport service once trams had become operational and that there was a need to revise the overall arrangements to ensure effectiveness, accountability, probity and integrity going forward"*. The main issue for me was not so much the governance, as I have said before, it was the contract. If the contract had not run into difficulty none of the relationships would have been so fraught. In hindsight, we were not quick enough to appreciate that the difficulties we were running into had long-term consequences. The structure of the contract needed to be revised.
491. Once the contract was taken in-house the issues were resolved. Trust built up between the two parties and therefore any disputes that happened afterwards were resolved amicably. If it had been in-house from the start and the same issues had arisen with the contract, a solution would still have been required.

It would have been the same Council officials dealing with matters as those that had overseen TIE.

492. I do not think the issues were about structure. It was more about being able to spot difficulties early enough for them to be resolved. If we had identified early that the contract needed revising, we may have been able to deliver tram at less extra cost. There would still have been a requirement for extra money however there might not have been the same level of extra funding required.
493. I do not believe that the existing governance structures, at that time, were complex. They were not effective in dealing with the problem but I do not think they were necessarily complex. TIE was tasked with delivering the tram and as far as I am aware nobody interfered with their ability to deliver the project. . Although Transport Scotland withdrawal was not helpful.
494. I am aware of Jim Inch's Briefing Paper on Governance dated 20 July 2007 [CEC01566497] which had noted that it was "*vital that more rigorous financial and governance controls are put in place by the Council*". It was the Council's responsibility to ensure that rigorous financial controls were put in place. I understood that and that it was for officials to manage that in tandem with overseeing the project. Changes were made which then resulted in them being able to monitor the contract more rigorously.
495. Slides setting out a new governance structure (**TRS00014775**) were agreed by Council on 25 August 2011 and 2 September 2011. I was aware of a number of the changes made by Council Officers to alter the governance arrangements. I cannot remember the detail but I did form the impression that the changes were effective.
496. The paper notes that there will be an "*All Party Oversight Group*", the role of which was to ensure that elected members remained informed of progress on the tram project and to allow a formal channel through which key issues could

be raised (**CEC01890123**). The All Party Oversight Group was developed because the project was brought in-house. When the project was delivered by TIE, information Councillors received would be through their representatives on the TIE Board. This Group was made up of members from each of the political parties and it was their responsibility to disseminate information outside formal briefings and reports to the committees. The same process was adopted by the TIE Board, except it was the responsibility of individual politicians on the Board to feedback.

497. Delivering a project in-house changes things for politicians, as the politicians then had a direct say in the way the project should be delivered. The Scottish on a revised delivery mechanism which Transport Scotland to again participate.

TIE

498. There were three politicians on the Board of TIE: one from the Labour Party, the Liberal Democrats and the Conservative Party, the SNP declined a position. The Director of Finance was also on the Board as was the Director of Economic Development and this ensured there was direct oversight and control of TIE. There were also reports to the Council, both to the full Council and to other committees on a regular basis. Each political party would have been briefed, or had the ability to be briefed, by TIE officials at any time. I certainly know that in the Labour Group discussed tram matters on numerous occasions.
499. I had no concerns during my time on the Board, or as a Councillor, about the performance of TIE, either as an organisation, or in relation to individual Board members or senior employees.
500. Members would receive updates via reports going to the committee and during the full Council meetings. I do not know the number of reports that

went to the full Council, but it was reported regularly. I could not comment on how the senior officers of the Council were provided with updates or information.

501. At that time I had no concerns about TIE's reporting to the Council including whether information was always fully and accurately reported. If I had concerns at the time I would have raised them.
502. In hindsight it would appear that TIE had insufficient experience and expertise to project manage a complex infrastructure project like the Edinburgh tram project.
503. I cannot recall if consideration was given to instructing an organisation with an established track record of managing major infrastructure projects to assist CEC or TIE with the Edinburgh Tram Project. There were obviously a number of experts involved over a long period of time but I cannot recall them all or the detail of their roles.
504. A TIE report on Ingliston Park and Ride One dated 14 September 2007 **(CEC01465362)** noted a number of points in respect of "*lessons learned*": I do not remember this report and have no knowledge of its content.
505. I cannot comment on suggestions that concerns had been raised about TIEs project management of the Stirling-Alloa-Kincardine (SAK) Railway, which was reported as costing more than double the original budget of £37m **(CEC00784171)**. I have no knowledge of TIEs involvement in this particular project
506. I believe that a report to Council on 26 June 2003 **(CEC02083550)** noted that a performance related bonus scheme had been introduced for TIE staff. I cannot remember the reasons a bonus scheme was introduced for TIE staff. I was aware there was a bonus scheme, but I cannot recall the details I cannot remember the formal means by which the Council exercised supervision and

control over the scheme. I am sure that information in relation to the sums paid in bonuses to TIE staff each year would be available to Council members, but I cannot recall having any particular views on it. I cannot say whether CEC exercised sufficient and effective control over these bonus payments.

507. I am led to believe that by email dated 23 September 2009 (**CEC00672873**) David Mackay sent Tom Aitchison a paper (**CEC00672874**) containing proposals to revise the TIE bonus scheme. An accompanying slide presentation noted "*No formal linkage between bonus payments and corporate performance ... linked mainly to individual performance*" and "*Inadequate performance management processes to underpin/justify payments*" (**CEC00672875**). Additionally, an email dated 25 September 2009 (**CEC00673126**) from Jim Inch set out a number of concerns in relation to TIE's proposed revised bonus scheme. I am led to believe that it appears Mr Inch met with Richard Jeffrey to discuss these concerns, as outlined in an email dated 9 October 2009 (**CEC00674778**). Within a further email dated 23 November 2009 Mr Inch advised Tom Aitchison that he was content with the mechanics of the new scheme (**TIE00034046**). As I have mentioned, I was aware of a bonus scheme but not the details. It is not unusual for Council owned companies to have bonus schemes, so it would not have raised any alarms. I cannot remember if Council officers discussed these matters with councillors.

508. The post of Chief Executive of TIE became vacant around June 2006 and thereafter Willie Gallagher acted as both Chairman and Chief Executive of TIE between June 2006 and November 2008. I cannot remember if Mr Gallagher's appointment as both Chairman and Chief Executive of TIE was ever discussed with members.

509. I would not say that, in general terms, Mr Gallagher's appointment as both Chair and Chief Executive of TIE was necessarily bad corporate governance although I would be considered to be unusual.

510. I had no concerns that Mr Gallagher's appointment would be detrimental to the TIE Board's ability to exercise independent and effective oversight over the company.

The City of Edinburgh Council

511. CEC officers were able to exercise oversight and control over the tram project by ensuring that there were a minimum of two CEC officers on the Board; at that time the Director of Finance and the Director of Economic Development . As far as I am aware there was also regular contact between the Chief Executive and the Chair of the Board.

512. At that time I had no concerns about the oversight and control over the tram project exercised by officers and members. Similarly, I was under the impression that CEC officers were able to, and did, exercise effective oversight and control over the tram project. CEC officers were also able to report any concerns they had about the project to politicians.

513. As Councillors we are not expected to be experts. At present I chair the Planning Committee of the Council and, although I have no formal planning training, that does not preclude me from chairing the Committee. I expect the officials to support me in that role and provide me with the correct information and I would rely on their experience. Similarly, in relation to the TIE Board, I would not be expected to be a qualified chartered surveyor or a construction engineer but would expect officers to be able to give the necessary support and information in order to perform my function as a Board member.

514. There was general training provided for all Councillors who sit on company Boards. I would say that the training provided was comprehensive.

515. I do not consider that there was conflict of interest, or potential conflict of interest, that arose from Councillors being members of both the Council and organisations with responsibilities for delivering the project, such as TPB, TIE

and TEL. The training we received outlined clearly what our fiduciary duties were in relation to sitting on Boards.

516. I believe every Councillor had access to the necessary support and training be clear in their role. There was an agenda item at each Board meeting where members were asked to identify any conflict of interest.. Councillors also need to keep a register any individual Register of Interests. These register is a public document.

Tram Project Board

517. I cannot remember the date but the Tram Project Board (TPB) was created after David Mackay left and TIE ceased to be an entity, when the project was taken in-house. When this occurred it was deemed necessary to have a number of officials and politicians involved in overseeing the project.

518. The role and remit of the TPB was to oversee the delivery of the tram. The oversight group included relevant officials and relevant Councillors.

519. The powers delegated to the TPB came from the full Council. .

520. I think that the TPB formally reported to a committee, the Transport Committee, or the full Council.

521. I cannot comment on how these matters changed over time as I was not on the TPB.

522. I would agree with the statement that the TPB was acting as the "*eyes and ears*" of Councillors. All the political parties were represented and the individual Councillors on the TPB would be expected to report back to their respective Groups.

523. At that time I had no concerns in relation to the TPB as an organisation or in relation to individual members of the TPB.
524. I am aware that a joint report by Andrew Holmes and Donald McGougan to Council on 20 December 2007 (**CEC02083448**) sought approval for the proposed new governance arrangements, illustrated in appendix 1, of the report. The report explained that the TPB would be formally constituted as a committee of TEL, para 4.2 and it outlined what powers, duties and responsibilities had been formally delegated to the TPB. The Chief Executive chaired the Project Board; however it would be the full Council that had the final say about delegating powers to the Board.

TEL

525. TEL was created after it was identified that we required a coordinate body to look at integrating and promoting transport. I believe the actual roles and responsibilities are identified within a paper (**CEC00475229**), which was sent by email dated 8 February 2010 (**CEC00475228**). I think we all agreed that, politically, there was a need to integrate and create a transport strategy.
526. I believe that the two main reasons TEL was created was to promote Edinburgh's economic growth and to promote an integrated transport strategy.
527. The powers delegated to TEL would be agreed by the Council. TEL would report formally to either the Transport Committee or the full Council.
528. I was not aware that TEL's role changed over time.
529. At that time I had no concerns in relation to TEL as an organisation or in relation to individual members of the Board or senior employees.

530. I believe that Papers for a meeting of the Tram Project Board dated 7 December (**CEC01400187**) contained a status update on the TIE/TEL operating agreements from Graeme Bisset. I cannot recall the detail of these papers.
531. It is difficult to remember the detail of the concerns Lothian Buses expressed in relation to which body would be responsible for ensuring integration of the tram and bus services. I do know there was concern that somehow the trams were going to take over Lothian Buses and the buses would be side-lined. however this was never council policy. No politician ever expressed that view as far as I can recall, although there was a certain anxiety about bringing the two organisations together. We were always of the opinion, as far as I can recollect, that the two organisations had to operate as one company. There would be two operational arrangements but they could not be in competition with each other. The policy was that they had to be integrated. The trade unions were particularly vociferous at this time because they did not support the tram and this might have affected some of the senior managers in Lothian Buses.
532. I think Lothian Buses had concerns that the trams would have a detrimental effect on their services. As far I can recollect they were assured on numerous occasions that this was not council policy. The latest patronage figures for both the tram and the buses proved that this would not happen. Both have increased.

Transport Scotland

533. I am aware that following the debate and vote in the Scottish Parliament in June 2007, Transport Scotland's role in the governance of the project changed. I think the change occurred because the SNP Government at the time did not support the trams. I presume the rationale was that it would not be appropriate for Transport Scotland to provide support or comment on the

tram project, although I thought that was a mistake because they were still providing funding to the project.

534. I have no idea what regular reporting to TS, and by whom, took place after the change.
535. Transport Scotland was used to delivering big transport projects on the ground and therefore the expertise they had was denied the Board of TIE. It was left to the other expert who appoint to the Board to fill that role'
536. After TS's role changed I do not think there was any less scrutiny of the information and estimates that were provided by TIE. I believe that the decision to change the role of TS removed the opportunity to utilise the experience TS had in delivering and managing a major projects,
537. I am led to believe that a paper summarising the proposed governance and management model in the construction period as it stood at December 2007 (**CEC01387398**) suggests TS were still to have a role in the project. As I understood, the role of TS in the governance of the project at that time was through contact with Council officials. I have no recollection of any meetings, although that might not be unusual because there were all sorts of informal contact, but as far as I remember there was no formal contact with Transport Scotland.
538. I could not comment on whether TIE provided all the information to TS that you would have expected. As a member of the Board I was not aware of anybody claiming that TIE did not provide TS with any information they requested.
539. I have no idea if TS were kept fully informed of the problems with the project. That is not something I would have been expected to have been aware of.

540. I can only assume that TS were kept fully informed of the likely cost of completing the project as Government money was still involved. I do not know who would be able to provide information about any contact between TIE and TS or the associated procedures around this.

Audit Scotland

541. I am aware that Audit Scotland produced reports on the tram project in June 2007 (**CEC00785541**) and February 2011 (**ADS00046**) and I read both reports.

542. I agreed with the conclusion of both reports regarding the trams and EARL as I do not believe there is a requirement to have a tram and a heavy rail link. A transfer hub is probably the better option and much more cost-effective. Like all these reviews they were suggesting the project could be improved, but there was a general acceptance that the tram project was on time and on budget and consequently there was no reason for discontinuing the trams. The SNP Government was in a minority and they instructed the Audit Commission to review both projects. If the report had identified serious shortcomings then there was every possibility the funding for the project would have been in serious jeopardy

543. Absolute reliance was placed on these reports by myself and other Council members. . When the Audit Commission said that it was on time and on budget and they saw no reason for it to be halted, I provide the Council with confidence to continue the project.

OGC Reviews

544. I am led to believe that an Office of Government Gateway (OGC) Readiness Review was carried out and a report was delivered to the Chief Executive of TIE on 25 May 2006 (**CEC01793454**). The overall status of the project was assessed as "*Red*", I cannot remember having seen this report.

545. I am led to believe that a second OGC review was carried out in September 2006 (**CEC01629382**), which resulted in an “*Amber*” rating. Again, I cannot remember if I saw this report and cannot provide comment on whether the content of the report caused me any concern.
546. I am led to believe that a third OGC Review was undertaken in October 2007 (**CEC01562064**), which resulted in a “*Green*” rating, meaning that the project was on target to succeed provided that the recommendations were acted upon. Again I do not recall seeing this report.
547. I believe that a further OGC report on 15 October 2007 titled “*Project Risk Review*” (**CEC01496784**) described the risk provision as “*prudent*”. This sort of report would normally appear as an appendix to a report to Council, however again, I do not recall if I saw a copy of it at the time.

Public Relations and Communications

548. Information in relation to the tram project was provided to the public through TIE and the Council's PR teams. If a representation from a member of the public came into Council then Council officials would answer it on behalf of the politicians. If a politician received a representation from a member of the public, or other external agency, the normal procedure is to ask Council officials to respond. If the response was acceptable it would be send to the individuals or organisations concerned with their own comments critical or otherwise. If the Council received a general enquiry or representation, the lead politician would take responsibility for providing an answer and a request would be made for an official to write the answer. A representation made directly to TIE would be answered by TIE's PR team.
549. It is difficult to say whether the public were kept fully informed of developments relating to the Tram Project. What is printed in the press does not reflect the view of the Council and therefore some of the information would

not necessarily be inaccurate. Politicians would put out as many press releases. Additionally, every single Council document can be accessed by the any member of the public.

550. As a general principle, every politician would agree that we needed to get better in handling information, but the reality is very difficult to do in practice.

551. I am aware that an action note dated 1 December 2008 (**CEC01069093**) noted that Jenny Dawe met with Jane Wood, Chair of Essential Edinburgh who informed her that TIE's communication with traders had been severely criticised. I was aware of the traders concerns.

552. As I recall there was a lot done in response to the traders concerns. There was a PR campaign around Edinburgh being 'open for business'. I cannot remember all the details, but a lot of effort went into to trying to mitigate the effect of the tram work on local business.

553. It would not have mattered if the Council had become involved earlier with the project. If you close Princes Street to buses and all traffic it is going to affect business.

554. There was a compensation scheme in place for small businesses, as detailed in an email from City Development to Councillors dated 16 May 2008 (**CEC01231803**). As I recall, however, there were not a large take up on the scheme. I think a lot of trader were under the impression that the effect of the trams on businesses was going to be disastrous but it was not. My understanding was that within Leith Walk there were not a huge number of businesses that closed.

555. I believe an action note from the special Tram Internal Planning Group dated 1 December 2008 states that a single Communications Plan for the whole project needed to be developed, although I cannot remember the detail of how this was implemented.

556. I am aware of an email dated 8 January 2008 from Willie Gallagher outlining proposed MUDFA Utility Diversions in the City Centre and further emails in the same chain concerning associated PR issues (**TIE00147176**).
557. I cannot recall the detail around calls for the Council to hold a referendum on the Tram Project, as referred to in the Minutes of a meeting of the Transport, Infrastructure and Environment Committee on 6 May 2008 (**CEC01241182**). I do remember request to hold a referendum when the tram project progressing. In my opinion having a referendum half way through a construction project is not a good idea. It was understood from the experience of other cities that construction phase would be unpopular, but in long term it would not.
558. I am led to believe that by email dated 26 October 2007, Graeme Russell requested that TIE give consideration to increasing the funding behind the small businesses compensation scheme (**CEC01507257**) on the basis that savings of £47m had been widely reported. I do not recognise that figure nor how it had been saved. If there had been such a saving it would have been reported in the Council and we would then have reduced the funding to the tram. I think if we failed in the public's expectations it was because we did not convince people how disruptive the project was going to be. I believe we should have been much more forceful in telling people about the initial disruption..
559. I under the impression that the compensation scheme was identified that Edinburgh Businesses as important. I believe the compensation scheme was promoted by the businesses themselves or representatives of small businesses. There were no alternative options put forward for consideration.
560. Leith Business Association (LBA) sent an email to all Councillors on 30 November 2010 (**CEC00127068**), which mentioned that, due to the lack of accurate plans, the utility works took far longer than was anticipated or communicated to the businesses on the route. I note that within the email LBA

made a number of demands of the Council in relation to the on-going works. I am aware of the detail about how the Council responded to these demands.

561. Consultation did take place with constituents, including the LBA, although whether it was often enough and to the constituents' satisfaction, you would need to ask them. However, as far as I remember and in general, politicians were satisfied with the level of consultation. Individual politicians might not have been satisfied with the results of the consultation but I do not think the amount of consultation was the issue.

Cost Overrun and Consequences

562. As I have stated previously, I first became aware there was likely to be a significant cost overrun during the process of the adjudications when it became evident we were not going to be as successful as was projected. The main reasons for this were the realignment of the utilities and the MUDFA contract. The consequence of this was the delays which in turn delayed all the subsequent work.

563. My understanding of the report after the Mar Hall mediation was that the Council would raise the capital, which would lead to a charge on the revenue budget. The interest charge for raising the additional finance would come out of revenue.

564. I cannot remember what the actual or exact effect was on the Council's finances and expenditure, including services. I do recall though that the consequence of the interest payments meant we could not spend on services or use that money to raise further capital.

565. As Councillors we only started to discuss a possible overrun of the budget when adjudications started going wrong. Whether or when officials were discussing the matter privately I am not aware. I believe that all the required

information was available however whether it acted upon in timeous matter is a question I cannot answer

566. The main consequences of the failure to deliver the tram project on time as the detrimental effect it had on the council's budget. It will also take longer to realise the benefits of the tram. There is also the adverse publicity created by the dispute which had an effect on the credibility of the Council. There was also the reduction in Council services as a result of having to spend money on the tram.
567. I have previously detailed what action was undertaken to mitigate the impact on businesses. The only residents who were directly affected would be on the tram line itself and that would be in Leith Walk and the West End. All the other tram work was off-road.
568. There was a belief that the tram was built to service the airport. However the main purpose of the tram was to link centres of population with the main areas of employment. Line 1a was chosen because it linked Leith (centre of population) with the City Centre and the Gyle (main areas of employment) Leith and Leith Walk are the most densely populated parts of Scotland. It would be intention in the future to link other centres of population to the City Centre and the Gyle.


Final Comments

569. As previously stated the main reasons for the failure to deliver the Tram Project in the time and within the budget was Firstly, an under-estimation of the difficulties of relocating the utility works. There was no appreciation of how difficult that was going to be. There did not appear to be no reliable maps identifying where the utilities were located and this caused a major problem. Secondly, I think there was the notion that somehow this was a 95% fixed price contract. And thirdly, it was clear that there were problems with delivering the project using the agreed contract.

570. Politicians are not expected to be experts and none would have necessarily have experience of building a tram. We were reliant on the officials in the Council and the expert board members appointed by TIE, to obtain the proper information in order to guide the strategic decision we are required to make. Therefore there have to be question mark on the advice we were given.

571. In my opinion these failures may have been avoided if the level of advice and expertise available at the beginning of the project had been better. It also looks like the advice we sought and received did not prepare us for the eventuality of what was going to happen with the contract. As politicians we have to accept ultimate responsibility for the difficulties that the project experienced. In the future we the need to ensure that we have sought and acquired as wide a range of advice a possible from as many experts as possible who had – in this case - experience of managing large projects.

I confirm that the facts to which I attest in this witness statement, consisting of this and the preceding 114 pages are within my direct knowledge and are true. Where they are based on information provided to me by others, I confirm that they are true to the best of my knowledge, information and belief.

Witness signature..........
Date of signing..... 2/08/2017