

Supplementary Questions for David Anderson

1. A City of Edinburgh Council (CEC) document dated 4 March 2008, "Summary of company secretaries, company liaison officers and company monitoring officers" (**CEC01392168**) notes (at page 3) that the liaison officer of Tie and TEL was "to be advised". Can you advise the Inquiry as to the identity of the company liaison officer for each of TIE and TEL at that time and if the officer changed, the identity of their successors in that role?

2. Andrew Holmes was the monitoring officer for both Tie and TEL (see **CEC02087101**). Mr Holmes, however, left the Council's employment on or around 1 April 2008. A new Operating Agreement was entered into in May 2008 between CEC and Tie (**CEC01315172**). The new Operating Agreement uses the term Tram Monitoring Officer, which is defined as "the Council officer nominated by the Council to monitor Tie in relation to the project" (with the result that it appears that the Tram Monitoring Officer was also the monitoring officer for TIE). Paragraph 3.5 of the Operating Agreement provides that "The Council will appoint a Tram Monitoring Officer. The first Tram Monitoring Officer will be the Director of City Development or their appointed nominee".

By letter dated 5 January 2009 (**CEC02086935**) you advised Marshall Poulton that "Following an internal governance review it has become apparent that a few outstanding matters need to be formalised" and that "With that in mind, you are hereby appointed as the Tram Monitoring Officer for the tram project on behalf of CEC, in accordance with the operating agreement between the Council and Tie".

(a) Given the terms of paragraph 3.5 of the May 2008 CEC/Tie Operating Agreement, is it the case that you were the Tram Monitoring Officer (and monitoring officer for TIE) between Mr Holmes' retirement in April 2008 and the appointment of Mr Poulton as Tram Monitoring Officer in January 2009?

(b) If you were the Tram Monitoring Officer, were you aware at that time that you held that position?

(c) If you were not the Tram Monitoring Officer at that time, who was? Would you be able to direct the Inquiry towards documentation recording the appointment of that person as your nominee?

3. In May 2008 CEC also entered into an Operating Agreement with TEL (**CEC01315173**). The May 2008 CEC/TEL Operating Agreement does not refer to a Tram Monitoring Officer but provides (at paragraph 3.5) that "The Council will appoint a Company Monitoring Officer. The first Company Monitoring Officer will be the Director of City Development or the Director of Finance".

Can you advise the Inquiry who was the Company Monitoring Officer for TEL in terms of the May 2008 CEC/TEL Operating Agreement?

4. In December 2009 a new Operating Agreement was entered into between CEC and TEL (**CEC00645838**), which referred to a Tram Monitoring Officer, which was

defined as “the Council officer nominated by the Council to monitor TEL in relation to the project”. Paragraph 3.5 of the new Operating Agreement provided that “The Council will appoint a Tram Monitoring Officer. The Tram Monitoring Officer will be the Director of City Development or the Director of Finance or their nominee”. Can you advise the Inquiry who was the Tram Monitoring Officer (and, therefore, the TEL monitoring officer) in terms of the December 2009 CEC/TEL Operating Agreement?

The Inquiry understands Mr Poulton’s position to be that he was not monitoring officer for TEL and, indeed, was given a clear instruction by you that he was not to monitor TEL. Is Mr Poulton correct on these matters? Do you have any further comments?

Supplementary Questions for David Anderson

Supplementary Question 1

Response

I was not quite in post on 4 March, 2008 when the summary of company secretaries, monitoring officers and liaison officers was drawn up. It seems to have been prepared to tighten up governance arrangements relating to a wide range of Council-owned Companies. I don't believe I saw the summary at the time of my appointment. My first recollection of dealing with monitoring officers for individual companies was in the exchange I had with Gerry Baker on 11 April. Gerry explained to me, in his response of 14 April, that arrangements had been put in place to ensure that each arms-length company had a dedicated Monitoring Officer, usually a Manager at or below Head of Service level with a close working relationship with the company in question.

Much of my initial focus - in terms of corporate governance concerns within the Council-owned companies - was on EDI and Waterfront Edinburgh. Both companies were badly affected by the 2008 property downturn. Land values had plummeted and they were left exposed to high levels of debt relative to their asset base. I spent a considerable amount of my time in 2008/09 dealing with the Banks, refinancing the outstanding debts of these companies and saving the land and property assets that they had accumulated so that the Council could benefit from them when economic conditions improved.

Andrew Holmes is likely to have continued 'de facto' as Monitoring Officer for Tie and TEL in the few weeks that remained until his departure. Marshall Poulton took up his post as Head of Service for Transport in April 2008. Jim Grieve was the acting Head of Transport prior to Marshall's appointment but I don't believe he had any involvement as TMO. The Council Review of 2007 had identified a need for revenue savings of £25m across all Services. Marshall's first task following his appointment was to carry out a restructuring exercise within the Transport Service to achieve the necessary savings in his area. Jim Grieve helped him undertake this exercise and Jim then left the Council in the autumn of 2008. Until Marshall's appointment as Tram Monitoring Officer (TMO) in January 2009 - Duncan Fraser, leading on civil engineering matters and Alan Coyle on financial matters were the key monitoring and liaison officers working with tie. Donald McGougan and I relied upon their advice with regard to all tram and tie related issues and any points they felt we should raise when attending the Tram Project Board.

Once Marshall was up to speed in his new role and the Service restructuring exercise had been completed the operating agreement with Tie of May 2008 was reviewed and revised governance arrangements were put in place. Marshall was then formally appointed TMO for Tie from January 2009, reporting on progress each month to the Tram Project Board (TPB). I met informally each month with Marshall and Duncan Fraser to discuss any issues that needed to be reported to the TPB.

Supplementary Question 2

(a) Responses

No, the Tram Monitoring Officer role was not intended to be filled by a Director because of the wide span of responsibilities that Directors had – in my case around 750 staff across 4 major service areas. In the case of the tram project it was also a role that required some transport engineering expertise. My own career background had been in economic development, unlike Andrew Holmes who was a Transport Engineer by profession.

Responsibility for assigning all arms-length Company Monitoring Officer roles fell within the ambit of the Council's Director of Corporate Governance, Jim Inch. The fact that Andrew Holmes had, by default, been identified in March 2008 as filling the role was, I suspect, due to the fact that my appointment was imminent. I have no recollection of being advised of any TMO responsibilities that ever fell to me. However, I was aware that I was the principal adviser within the Council on transportation infrastructure matters and also the company liaison officer insofar as any matters concerning a future integrated bus and tram network were concerned. I therefore met Willie Gallagher of Tie and Neil Renilson of Lothian Buses on several occasions to discuss issues with regard to future transport network operations and how the two companies – tie and Lothian Buses – would come together under the umbrella of TEL. These meetings covered things such as plans for expanding the tram network beyond the scope of line 1a as well as more mundane matters such as the design of the livery for the trams.

(b)

I don't believe that at any point I was fulfilling the role of Tram Monitoring Officer.

(c)

As indicated above Duncan Fraser and Alan Coyle were, de facto, carrying out the functions of this role in the period until the review of autumn 2008 that led to Marshall Poulton's appointment from January 2009. I am afraid that I cannot point you to any documentation to that effect. There were a number of staff roles in transition in the summer of 2008 following the departure of Andrew Holmes as Director, the retirement of the previous Head of Transport, Keith Rimmer who I never met and then the early retirement of Jim Grieve, the acting Head of Transport.

Supplementary Question 3

Response

I was not party to the Operating Agreement with TEL. The agreement was drawn up by the Council's Legal Service and I have no recollection of seeing it. However, it is fair to say that in relation to TEL the principal liaison in respect of matters of Corporate Governance (company reporting etc.) fell to Jim Inch the Council's Corporate Director, while in relation to transport strategy and the development of the future, integrated bus and tram network the lead role fell to me. One of the important points to note is that, at this stage, TEL was little more than a shell company. Its Board Meetings took place immediately after tie Board meetings – and although I didn't attend the TEL Board meetings – my recollection from discussions with David Mackay, Graeme Bissett and

others is that they were rather perfunctory affairs in the early days. In practice, tie and Lothian Buses were the two companies that had substantial staff and budgetary resources that required to be managed and therefore monitored. The role of TEL became more significant from around late 2010 and in particular, post mediation, as there was a need to gear up for operations and for TEL to take responsibility for assets such as the Tram Depot.

Supplementary Question 4

Response

Mr Poulton was the Tram Monitoring Officer from January 2009 onwards but it is correct to say that his focus was entirely on tie. In relation to dealings with TEL as indicated above Jim Inch dealt with the routine corporate governance matters and I dealt with discussions on transport policy matters. In early 2009, these longer-term strategic issues were over-shadowed by the Princes Street stand off and the unfolding contractual disputes between tie and BSC. David Mackay was Chairman and acting Chief Executive of both tie and TEL at this time and his focus was on getting BSC back to work in the belief that they were failing to adhere to the terms of the contract. David briefed Tom Aitchison directly on the here and now issues affecting the tram project and both Marshall and myself were given a clear steer by Tom to support David during this difficult period. The role of monitoring TEL was seen as a low priority at this stage given that the company was not yet fully formed and operational in the way that tie and Lothian Buses were.