EDINBURGH AIRPORT RAIL LINK BILL COMMITTEE

Tuesday 27 February 2007

Session 2

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EDINBURGH AIRPORT RAIL LINK BILL COMMITTEE
†3rd Meeting 2007, Session 2

CONVENER

*Scott Barrie (Dunfermline West) (Lab)

DEPUTY CONVENER

*Mr Jamie McGrigor (Highlands and Islands) (Con)

COMMITTEE MEMBERS

*Mr Charlie Gordon (Glasgow Cathcart) (Lab)
*Christine Grahame (South of Scotland) (SNP)
*Iain Smith (North East Fife) (LD)

*attended

CLERK TO THE COMMITTEE

Jane Sutherland

LOCATION

Committee Room 5

† 2nd Meeting 2007, Session 2—held in private.

Scottish Parliament

Edinburgh Airport Rail Link Bill Committee

Tuesday 27 February 2007

[THE CONVENER *opened the meeting at 13:00*]

Edinburgh Airport Rail Link Bill: Consideration Stage

The Convener (Scott Barrie): I welcome everyone to the third and final meeting of the Edinburgh Airport Rail Link Bill Committee in 2007. I ask everyone present to switch off their mobile phones and pagers please. We have only one item on our agenda today—phase 2 of consideration stage.

At phase 2, the committee must consider and dispose of all admissible amendments that have been lodged. The procedures that we will follow today are very similar to those that are followed for a public bill at stage 2, except that only members of the committee can lodge amendments and participate in the meeting.

Ninety-five admissible amendments to the bill have been lodged, and they fall into four broad categories. The first contains amendments that have arisen from issues highlighted in the committee's consideration stage report. The second category contains amendments that have been sought to reflect agreements that have been reached between the promoter and former objectors. The third category contains the minor or technical amendments that have been provided by the promoter and lodged on the promoter's behalf by a member of the committee. The final category contains the amendments that arose from discussions held on the committee's behalf between the committee clerks, our legal adviser and the promoter on certain aspects of the bill.

I should also make it clear that because only members of the committee can lodge amendments to the bill, no particular inference should be drawn from which member speaks to and moves an amendment. Amendments have been lodged by individual members for procedural reasons only.

Finally, I point out to members that the marshalled list incorrectly refers to today's proceedings as being at stage 2 when, as we all know, this is phase 2 of consideration stage.

Christine Grahame (South of Scotland) (SNP): I am obliged to the convener for making it plain that amendments have been lodged for procedural reasons only. It is a rather strange and quirky procedure that we will not use in the next session of Parliament. I make it clear that my moving amendments does not intimate any change in my position with regard to this particular development of the railway, in this particular way and on this particular track. I just wanted to make it clear before we start that I am participating on behalf of the committee for procedural and technical reasons and not because I have changed my views. I will speak to my position at final stage, when I am free to do so.

The Convener: Thank you for that; your position has been duly noted.

We now begin to consider the amendments at phase 2 of consideration stage.

Sections 1 and 2 agreed to.

Schedule 1

SCHEDULED WORKS

The Convener: Amendment 1, in the name of Iain Smith, is grouped with amendments 2 to 11, 33 to 36, 38 to 40, 47 to 51, 89, 92, and 95.

Iain Smith (North East Fife) (LD): Thank you, convener. This group contains a lot of amendments that are all concerned with land that is occupied by Edinburgh Airport Ltd—EAL—and how it may be entered and used by the promoter.

The bill as introduced made special recognition of the operation of an international airport in an effort to minimise disruption to its operations and to enhance co-operation between the parties. A number of the amendments in this group reflect the fact that the parties have agreed an alternative route for one of the proposed road diversions that will be required as a consequence of the works. An alternative route for work 4C is now to be constructed wholly on EAL land and, as this land benefits from EAL's permitted development rights, there is no need to obtain powers under the bill to construct the road. Amendment 1 deletes work 4C from schedule 1 and amendments 33 to 36 and 38 to 40 delete all mention of work 4C from schedule 6.

Sections 5 and 34 cover the airport's operations and its interaction with the scheme. Section 5 provides for the precise design and location of the station and southern tunnel portal to be agreed between the appropriate undertaker and BAA. Where the parties cannot agree, any dispute falls to be determined by arbitration under section 48.

Section 4 permits the promoter, when constructing the works, to deviate vertically upwards at any place from the levels provided. The promoter may deviate by up to 3m upwards generally and by up to 7m at Winchburgh junction. The promoter may also deviate to any extent downwards.

To address concerns that such a degree of upward deviation could impact on airport operations, amendment 3 provides restrictions on upward deviation on airport land. The first part of the amendment restricts upward deviation to a maximum of 1m on operational airport land. The second part allows deviation on safeguarded EAL land up to a maximum of 1m, or up to 3m with the agreement of EAL, on other airport land that falls within the bill's limits.

Amendments 2, 4 and 5 are consequential, and amendment 6 provides a definition of "safeguarded airport land" by reference to a plan contained in a white paper from December 2003, which shows land

"within the possible new airport boundary."

As I have indicated, section 5 covers arrangements for the precise design and location of the station and southern tunnel portal to be agreed between the parties. Amendment 7 makes it clear that such agreement extends to their construction as well as their design and location. Amendments 8 and 9 reflect a request from BAA that it is with EAL that all those agreements should be made. BAA is the holding company of EAL, which is the operator.

Where agreement cannot be reached between the parties under section 5, the section provides for an appointed arbiter to determine the dispute. Amendment 10 requires that, in so determining, an arbiter must have regard to the needs of EAL and the authorised undertaker to secure their respective safe, effective and efficient operations. Should the parties be in dispute, the authorised undertaker cannot take possession of the land until the dispute has been resolved, unless of course they can agree to possession being taken pending resolution. Amendment 11 makes the necessary changes for that.

Section 34 provides that, before any land can be compulsorily purchased or temporarily possessed, EAL must agree. Where the parties cannot agree, any dispute falls to be determined by arbitration under section 48.

Amendment 48 alters the ground on which EAL may withhold agreement to that of ensuring that the taking of land compulsorily will not have any material impact on the operation of the airport or safety at the airport—I am sure we would all agree that it is vital to preserve that.

Amendment 49 corrects a minor error in the bill's drafting, and amendments 47 and 50 make changes for the sake of consistency to reflect the description of EAL elsewhere in the bill.

Amendment 51 makes a change to section 34 that is similar to the proposed change to section 5 that is to be made by amendment 11. It prevents the authorised undertaker from taking possession of EAL land while a dispute is pending. Amendment 51 also introduces a new subsection (5) in section 34, recognising that one way in which any land-take dispute may be resolved would be through a leasing of the airport land, in which case the maximum length of any lease is increased to 250 years. I am sure that members will recollect from the Parliament's work on feudal tenure that the set maximum would otherwise be restricted to 175 years. I am sure that that makes a major difference.

I move amendment 1.

The Convener: Thank you. I certainly remember all about feudal tenure, but I do not particularly want to go back there.

Amendment 1 agreed to.

Schedule 1, as amended, agreed to.

Section 3 agreed to.

Schedule 2 agreed to.

Section 4—Permitted deviation within limits

Amendments 2 to 6 moved—[Iain Smith]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Work No 4: station and southern tunnel portal

Amendments 7 to 11 moved—[Iain Smith]—and agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

Section 7—Construction and maintenance of new or altered roads

The Convener: Amendment 12, in the name of Mr Charlie Gordon, is grouped with amendments 13 to 16, 81 and 88.

Mr Charlie Gordon (Glasgow Cathcart) (Lab): The amendments in the group are all concerned with ownership of roads built by the authorised undertaker after they have been completed and maintained for 12 months. A number of roads are required to be built as a consequence of the scheme, most of which will become public roads once they are completed and ownership is transferred to the roads authority. I will deal separately with the few private accesses that will also require to be built.

Section 7 provides for the construction, initial maintenance and transfer of ownership of new or altered roads. The main amendment to section 7 will be made by amendment 14, which replaces the general arbitration scheme currently provided

for in sections 7(4) and 48. The new arbitration scheme will be triggered when the roads authority serves a notice disputing that a road has been completed. The issue will be referred to an arbiter, whose decision will depend entirely on the facts that are presented. Because the arbiter's decision will be final there will be no need to provide for appeals to the court on points of law—that is different from the general position that is currently allowed for in section 48. Amendment 14 also makes provision for the date of vesting. Amendment 12 makes a minor consequential change in that regard, and amendment 81 makes a necessary change to section 48 to reflect the different approach to arbitration.

In addition to the land on which the road is built, the authorised undertaker might well take small parcels of "associated land" alongside the road, such as verges, to allow the road to be constructed. Associated land will also be transferred to the roads authority and amendments 13 and 88 make the necessary changes in that regard.

Three private roads and seven private accesses will be reconstructed by the authorised undertaker as part of the works. After a 12-month maintenance period following completion, those private roads and accesses will be vested in their original owners. Amendment 15 replaces section 8 with a new section, which, in general terms, mirrors for private roads the procedure that I described for public roads. Out of necessity, proposed new section 8 is longer than section 7, because it covers vesting for rights of access and a definition of the "intended owner", in whom a road is vested. There should be no dispute over who the "intended owner" is—it is the person who owned or had rights over the original road. However, the arbitration provisions in proposed new section 8 will apply if there is a dispute.

Amendment 16 adds a new section that sets out the method of recording with the keeper of the registers of Scotland the rights granted by section 7 or proposed new section 8. The procedure has been agreed with the keeper, who I understand initiated the amendment.

The amendments clarify the procedure for transfer of ownership of new roads and increase the protection available to those to whom ownership is transferred.

I move amendment 12.

Amendment 12 agreed to.

Amendments 13 and 14 moved—[Mr Charlie Gordon]—and agreed to.

Section 7, as amended, agreed to.

Section 8—Vesting of private roads

Amendment 15 moved—[Mr Charlie Gordon]—and agreed to.

Section 8, as amended, agreed to.

After section 8

Amendment 16 moved—[Mr Charlie Gordon]—and agreed to.

Sections 9 to 13 agreed to.

Schedule 3

STOPPING UP AND DIVERSION OF ROADS

The Convener: Amendment 17, in the name of Jamie McGrigor, is grouped with amendment 41.

Mr Jamie McGrigor (Highlands and Islands) (Con): Amendment 17 corrects a typographical error in a reference to Beatlie Road, which is due to be temporarily stopped up during the construction of the scheme.

Amendment 41 corrects a typographical error, whereby work 6D was listed twice in, and work 6E omitted from, schedule 6, which specifies works numbers for land over which the promoter can take temporary possession while authorised works are carried out.

I move amendment 17.

Amendment 17 agreed to.

Schedule 3, as amended, agreed to.

Section 14—Discharge of water

13:15

The Convener: Amendment 18, in the name of Christine Grahame, is grouped with amendments 19 and 76.

Christine Grahame: The amendments relate to controls over the discharge of water by the authorised undertaker. Amendment 18 deletes section 14(6), which refers to statutory provisions on pollution and discharge into rivers and controlled waters that have been repealed since the bill was introduced. New provisions that relate to those matters are governed by the Water Environment and Water Services (Scotland) Act 2003, which implements current European Community requirements.

Amendment 19 ensures that the permissions that section 14 grants will be subject to the regulations under the 2003 act that relate to controlled activities—the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348). The Scottish Environment Protection Agency must authorise controlled activities in advance of their being carried out.

Amendment 76 clarifies that the same regulations will continue to apply to the river diversion works. SEPA specially requested that amendment.

I move amendment 18.

Amendment 18 agreed to.

Amendment 19 moved—[Christine Grahame]—and agreed to.

Section 14, as amended, agreed to.

Section 15—Safeguarding works to buildings

The Convener: Amendment 20, in the name of Mr Jamie McGrigor, is grouped with amendments 21, 31 and 32.

Mr McGrigor: Section 15 provides for safeguarding works to be undertaken at buildings that the promoter has identified as vulnerable to damage arising from the project's construction, operation and maintenance. Safeguarding works may include underpinning and strengthening or any other works to prevent or rectify such damage.

Works could affect the boundary wall of Carlowrie House, which has a grade A listing. Amendments 20 and 21 ensure that, should safeguarding work to the wall be required, it can be undertaken quickly without the need to obtain listed building consent. By including the additional provision in the bill, the operation of section 39 and schedule 8 will disapply the need for such consent. The amendments have been agreed by Carlowrie House's owners, the promoter, the City of Edinburgh Council and Historic Scotland.

As for amendments 31 and 32, schedule 6 to the bill lists the plots of land that are to be temporarily acquired and the purpose of their temporary possession. Column 5 of schedule 6 details the relevant works numbers for each plot. In reviewing that schedule, the promoter has identified that incorrect works numbers were referred to in column 5 for plots 246 and 246a. Amendments 31 and 32 replace the incorrect works numbers with the correct works numbers and have been agreed with the landowner of the plots of land.

I move amendment 20.

Amendment 20 agreed to.

Amendment 21 moved—[Mr Jamie McGrigor]—and agreed to.

Section 15, as amended, agreed to.

Schedule 4 agreed to.

Section 16—Power to acquire land

The Convener: Amendment 22, in the name of Christine Grahame, is grouped with amendment 24.

Christine Grahame: Section 31 provides for the period of compulsory acquisition of land and applies to the power in section 16 to acquire land; it also applies to section 18, which relates to the purchase of specific new rights over land. The amendments improve the bill's drafting by simply deleting unnecessary cross-references to section 31 in sections 16 and 18.

I move amendment 22.

Amendment 22 agreed to.

The Convener: Amendment 23, in the name of Jamie McGrigor, is grouped with amendment 37.

Mr McGrigor: In paragraph 265 of its consideration stage report, the committee agreed that it would amend the bill to reflect the promoter's having informed the owners of land that was included in the bill for compulsory purchase that it no longer required their land permanently. Amendments 23 and 37 give effect to an agreement that has been reached between the promoter and the landowner—Premier Property Group—not to acquire permanently plots 349 and 352. Instead, the promoter will acquire the plots temporarily. Accordingly, amendment 37 adds them to schedule 6.

I move amendment 23.

Amendment 23 agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18—Purchase of specific new rights over land

Amendment 24 moved—[Christine Grahame]—and agreed to.

Section 18, as amended, agreed to.

Schedule 5

ACQUISITION OF LAND, ETC OUTSIDE LIMITS OF DEVIATION

The Convener: Amendment 25, in the name of Charlie Gordon, is grouped with amendments 26 to 28.

Mr Gordon: In paragraph 265 of its consideration stage report, the committee agreed that it would amend the bill to reflect the promoter's having informed the owners of land that was included in the bill that it no longer required their land permanently. Amendments 25 to 28 give effect to the recommendation by removing eight plots of land from the bill.

Amendments 25 and 26 remove plots that were originally required for compensatory flood plain. The promoter has undertaken further flood modelling and is satisfied that the construction of the authorised works will not worsen the existing

flood position. That view is supported by the City of Edinburgh Council as well as by SEPA. Therefore, those plots of land are no longer required and amendments 25 and 26 remove them from the bill. I reassure members that, as a result of our amendments to the mitigation of environmental impacts, the authorised undertaker remains under an obligation to ensure that any flooding impacts that may arise after mitigation works are no worse than those that were identified in the environmental statement.

Amendment 27 removes plot 358a, as it is no longer required. That plot was required to access land owned by Premier Property Group. Alternative access arrangements have been agreed between the promoter and PPG, which enables the plot to be removed from the bill.

Amendment 28 removes plot 745 from the bill, as it is no longer required by the authorised undertaker. Members will recall that the bill identified three plots of land to be acquired as compensatory land for the 24 hectares that the Scottish Agricultural Science Agency will lose as a result of the EARL scheme. Two of the plots are owned by PPG and the other is owned by Freelands Farm. In the interests of acting fairly, the promoter agreed with PPG to remove plot 745, which is the smallest of the three, and amendment 28 accordingly removes it from the bill. The promoter believes that that leaves both landowners with a similarly sized potential loss of land. Members will be aware that, as we noted in our consideration stage report, it is the promoter's intention to try to limit the impact on any one landowner by sharing the possible land take between the two landowners.

I move amendment 25.

Amendment 25 agreed to.

Amendments 26 to 28 moved—[Mr Charlie Gordon]—and agreed to.

Schedule 5, as amended, agreed to.

Section 19 agreed to.

Section 20—Temporary use of land for construction of works

The Convener: Amendment 29, in the name of Christine Grahame, is grouped with amendment 30.

Christine Grahame: Amendments 29 and 30 are technical amendments to section 20(8) of the bill. They will clarify the exceptions to the rule that powers of compulsory purchase in the bill do not apply to land that is taken into temporary possession. The amendments will achieve that effect by replacing the reference to "land for environmental mitigation" with a reference to "land to be acquired or used for any purpose specified in schedule 5 to this Act".

The amendments will address an apparent drafting inconsistency in the bill regarding land that is identified for both compulsory acquisition and temporary possession, and will bring the provision into line with similar provisions in more recent private bills.

I move amendment 29.

Amendment 29 agreed to.

Amendment 30 moved—[Christine Grahame]—and agreed to.

Section 20, as amended, agreed to.

Schedule 6

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Amendments 31 and 32 moved—[Mr Jamie McGrigor]—and agreed to.

Amendments 33 to 36 moved—[Iain Smith]—and agreed to.

Amendment 37 moved—[Mr Jamie McGrigor]—and agreed to.

Amendments 38 to 40 moved—[Iain Smith]—and agreed to.

Amendment 41 moved—[Mr Jamie McGrigor]—and agreed to.

Schedule 6, as amended, agreed to.

Sections 21 to 29 agreed to.

Section 30—Correction of errors in Parliamentary plans and book of reference

The Convener: Amendment 42, in the name of Jamie McGrigor, is grouped with amendment 79.

Mr McGrigor: Amendment 42 applies to the plans and book of reference, which are in the bill's accompanying documents. The amendment provides a procedure that will enable the correction of inaccurate descriptions of land or its ownership or occupation in the parliamentary plans or in the book of reference. Under the proposed procedure, the promoter may initiate an application to the sheriff to correct an error and must notify the owner and any lessee or occupier in order to give them an opportunity to object. If they object, a hearing will be held. The sheriff will determine whether an error has taken place and a mechanism is provided for any plan and the book of reference to be amended accordingly.

The bill authorises compulsory acquisition of land as shown on the plans and sections, and as described in the book of reference. A minor mistake in a description in one document might result in its being inconsistent with the other, which

might in turn prevent proper identification of land that is to be compulsorily acquired. The proposed new section that amendment 42 will insert will ensure that implementation of the bill's provisions, if it is enacted, is not prevented by such errors.

Amendment 42 also provides a mechanism for amendment of the plans or book of reference to reflect any binding agreement that is reached with land owners and other owners to limit the land that will be taken under the bill. An almost identical procedure will apply to such cases as applies to the correction of errors, although in this case, either the promoter or the owner may make the application to the sheriff. The effect of the amendment will be that the powers of compulsory purchase will no longer apply to land that was identified in the amended documents. Amendment 42 is similar to changes that were made to earlier transport private bills by previous private bill committees.

Amendment 79 is simply a plain English rewrite of the process for obtaining and using certified copy documents in any future proceedings. The amendment will not affect the purpose, effect or intent of the section that it would substitute.

I move amendment 42.

The Convener: We are all in favour of plain English.

Amendment 42 agreed to.

Section 30, as amended, agreed to.

13:30

Section 31—Period for compulsory acquisition of land

The Convener: Amendment 43, in the name of Mr Charlie Gordon, is grouped with amendments 44 to 46.

Mr Gordon: Amendments 43 to 46, taken together, will introduce control over the maximum period within which the promoter can compulsorily acquire land under the bill. At present, the bill will give the promoter the power to acquire land and rights compulsorily until a date 10 years after the act comes into force. Several objectors are concerned that that is too long and that it will create uncertainty for them.

In our consideration stage report, we agreed that 10 years is appropriate but that, after five years have elapsed without compulsory purchase powers having been exercised in relation to all land, the authorised undertaker should be required to seek an order from the Scottish ministers to extend the allowable period. The maximum extension will be restricted to a total of five years, thus leaving the theoretical maximum period unchanged at 10 years. The promoter has said that it is content to follow the precedent that has been established by other private acts in that way. The requirement to seek by order any extension of the initial period should, I hope, encourage all who are involved with the scheme to work towards the initial five-year deadline.

I move amendment 43.

Amendment 43 agreed to.

Amendments 44 and 45 moved—[Mr Charlie Gordon]—and agreed to.

Section 31, as amended, agreed to.

After section 31

Amendment 46 moved—[Mr Charlie Gordon]—and agreed to.

Sections 32 and 33 agreed to.

Section 34—Restrictions on compulsory purchase of operational airport land

Amendments 47 to 51 moved—[Iain Smith]—and agreed to.

Section 34, as amended, agreed to.

Sections 35 and 36 agreed to.

Section 37—Powers of disposal, agreements for operation, etc

The Convener: Amendment 52, in the name of Iain Smith, is grouped with amendment 53.

Iain Smith: Although the promoter, TIE Ltd, is seeking powers to construct the EARL scheme, it is not intended that the promoter will be the operator of the completed railway. Section 37 will enable TIE to transfer to another body the powers, functions or works of the bill that would not otherwise be transferable. It is envisaged that Network Rail will probably be the recipient and the operator of the railway as part of the national rail network. Section 37(6) makes specific provision that, should that happen, the powers and works that will be transferred cannot be subject to further agreement. In effect, Network Rail will not be able to enter into a further agreement to divest itself of the works and powers that it has received from TIE.

Amendments 52 and 53 are technical, but they seek to clarify the effect of section 37(6). Amendment 52 will clarify that, should the authorised undertaker agree to vest any powers or works in Network Rail, Network Rail will be prohibited from entering into a further agreement with another undertaker to provide for any of the matters that are listed in subsection 37(2), namely the transfer of the functions and powers that are conferred; the disposal of the railway works and

associated land; and the creation of securities on the undertaking. Amendment 53 is entirely consequential on amendment 52.

I move amendment 52.

Amendment 52 agreed to.

Amendment 53 moved—[Iain Smith]—and agreed to.

Section 37, as amended, agreed to.

Section 38 agreed to.

Schedule 7 agreed to.

After section 38

The Convener: Amendment 54, in the name of Mr Charlie Gordon, is in a group on its own.

Mr Gordon: Amendment 54 has been particularly requested by BRB (Residuary) Ltd, which objected to the bill on the basis that historic statutory liabilities would remain with BRBR despite land passing to the authorised undertaker. A similar amendment was made in the previous railway bills that have been passed by Parliament. The new section that amendment 54 will introduce will take effect from the authorised undertaker's acquisition of land or entry on to the land, whichever happens first. From that date, BRBR will be discharged from any obligations that it might have in relation to that land, as imposed by any private act or related provisional order in respect of the former railway.

I move amendment 54.

Amendment 54 agreed to.

Section 39 agreed to.

Schedule 8 agreed to.

Section 40—Saving for town and country planning

The Convener: Amendment 55, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: I do not propose to go over the reasons for an appropriate assessment being undertaken on the impact of the Edinburgh Airport Rail Link Bill on the Firth of Forth special protection area, but I refer members to our report on the issue for further detail.

In our appropriate assessment report on the Firth of Forth special protection area, we agreed to amend the bill to confirm that the Scottish Parliament is deemed to be the competent authority in relation to the Conservation (Natural Habitats &c) Regulations 1994 (SI 1994/2716). Amendment 55 will give effect to that recommendation and will put beyond doubt which body is the appropriate competent authority. That cannot be a bad thing.

The Convener: Indeed.

Christine Grahame: I move amendment 55.

Amendment 55 agreed to.

Section 40, as amended, agreed to.

Section 41—Interpretation of sections 42 and 43

The Convener: Amendment 56, in the name of Iain Smith, is grouped with amendments 57 to 71.

Iain Smith: This will take slightly longer than some of the earlier groups. Sections 41 to 43 provide for the securing of developer contributions for the EARL scheme. By way of background, the legislation that governs planning agreements is contained in section 75 of the Town and Country Planning (Scotland) Act 1997. As drafted, the bill attempts to extend the scope of what may be dealt with by a relevant planning agreement beyond the confines of what may be covered in a section 75 agreement under the 1997 act.

Members will be aware that the promoter has held discussions with the City of Edinburgh Council and some objectors, including Edinburgh Airport Ltd, on developer contributions. As a result, the promoter agreed that it would seek changes to sections 41 to 43. The amendments in the group will give effect to those agreements and were requested by the promoter. The amendments will restrict all relevant planning agreements to section 75 agreements and will reduce the period during which such agreements can be entered into, or have effect, from 30 to 10 years. They will also amend the provisions on developer contributions and make consequential and tidying-up changes.

Section 41 provides definitions for some of the phrases that are used throughout sections 42 and 43. Amendments to section 41 were lodged after discussions between representatives of the promoter, Edinburgh Airport Ltd and the City of Edinburgh Council, all of whom argued that existing planning criteria for requiring developer contributions should apply. That will simplify matters by allowing such planning agreements to be described as "section 75 agreements". All agreements related to the EARL scheme will now be triggered on the basis that usually applies. The test for application is the necessity test, which is a test of whether the rail link is necessary for the proposed development. If it will benefit the development, developer contributions can be sought.

Section 42 deals with developer contributions and enables financial contributions towards the cost of providing the authorised works to be made through the application of planning agreements. There are a large number of amendments to section 42 that will refine and improve the existing

provisions on developer contributions and correct a number of errors. As was said earlier, section 42(2) sought to widen the scope of agreements that might be made under section 75 of the 1997 act beyond the necessity test that generally applies to section 75 agreements. Upon reflection, the promoter accepts that subsection (2) of section 42 is unnecessary and can be deleted. The scope of section 75 of the 1997 act is wide enough to capture the necessary range of possible agreements. Amendments 56, 57, 61 and 63, taken together, will give effect to that.

I hope that members are all still with me.

Amendment 66 will alter the period for developer contributions. As drafted, section 41(6) allows for developer contributions to be made up to 30 years after the opening of the railway. It became clear to the promoter that a more usual and, perhaps, fairer approach would be for the costs to be borne at the outset, and then only in the event that the timing of the developments coincided with the building of the rail link. Amendment 66 will limit to 10 years—commencing when the bill receives royal assent—the period during which section 75 agreements under the bill can be sought towards the cost of the railway. It will also remove the potential worry that, once the railway is established, future development would be inhibited by the potential for developer contributions specifically to the railway to be made. Developer contributions may, of course, still be sought by the planning authorities using their normal powers under section 75 of the 1997 act for purposes other than contributing to the cost of the railway, provided that the section 75 test is met.

Amendment 68 will remove any developer contributions but only in relation to development on Edinburgh Airport's operational land, which could never have been levied under section 75 agreements. Development on operational land will be carried out by EAL using its existing permitted development rights, which do not require planning permissions. Section 75 agreements can be linked only to a grant of planning permission. If EAL were to carry out any related development on land outside the airport operational land—for example, the construction of a hotel near the airport—planning permission would be required and a section 75 agreement could be sought.

Amendment 66 proposes that developer contributions under the bill be reduced by the amount of other contributions that are made to the cost of the railway. The amendment acknowledges that real contributions to the rail link are being made even now, prior to the bill's being enacted.

Section 43 provides for the payment of developer contributions that are collected by the local planning authority to the authorised undertaker. However, the authorised undertaker may not have made any contribution to the capital cost of the project. Amendments 69, 70 and 71, taken together, will provide for payments to be made to a burdened undertaker as any person who has borne the financial cost for all or part of the authorised works.

I move amendment 56.

Amendment 56 agreed to.

Amendment 57 moved—[Iain Smith]—and agreed to.

Section 41, as amended, agreed to.

Section 42—Planning agreements

Amendments 58 to 68 moved—[Iain Smith]—and agreed to.

Section 42, as amended, agreed to.

Section 43—Application of developer contributions

Amendments 69 to 71 moved—[Iain Smith]—and agreed to.

Section 43, as amended, agreed to.

Section 44 agreed to.

Section 45—Application of the Crichel Down Rules

The Convener: Amendment 72, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: In drafting the bill, the promoter applied at section 45 the Crichel Down rules, which set out the circumstances in which surplus land that is acquired compulsorily should, as a matter of good practice, be offered back to its former owners. The committee is satisfied that those rules should be binding on the authorised undertaker in respect of land. The effect is that if land that is compulsorily acquired under the eventual act or part of it is no longer required by the authorised undertaker for the scheme, the authorised undertaker will be obliged to offer the land back to the person from whom it was acquired. Amendment 72 will ensure that the wording of the section reflects a revised formulation that was agreed for the Glasgow Airport Rail Link Bill, which will make the section clearer. I move amendment 72.

Amendment 72 agreed to.

Section 45, as amended, agreed to.

Section 46—Mitigation of environmental impacts

13:45

The Convener: Amendment 73, in the name of Mr Charlie Gordon, is grouped with amendments 74, 75, 77, 78, 90, 91, 93 and 94.

Mr Gordon: The assessor and the committee heard evidence from objectors and the promoter on mitigating the environmental effects that will inevitably arise during construction. While our remit in relation to operating the railway is limited, both under the bill and as a consequence of matters devolved under the Scotland Act 1998, we carefully considered the promoter's approach to controlling noise and vibration, as set out in its code of construction practice and its noise and vibration policy. We took a lot of evidence on environmental issues and concerns and we scrutinised the promoter's environmental statement, including taking advice on its terms from our external adviser. While we welcome the commitments made by the promoter in all those documents, we are aware of the objectors' concerns about what could happen on the ground. We therefore stated in our consideration stage report that we would amend the bill to make specific reference to those documents.

The standards of mitigation set out in the code of construction practice, the noise and vibration policy, the mitigation commitment documents and the environmental statement will, as a result of these amendments, be applied to contractors, because the undertakers are bound by those standards and will therefore have to ensure that any subcontractor is similarly bound by them. Further, any subsequent revisions to the latest version of the code of construction practice, the noise and vibration policy and the mitigation commitment documents will not be permitted to reduce the standards of mitigation that are detailed within those documents.

The code of construction practice is now more robust than when it was introduced as part of the environmental statement. It reflects many of the objectors' concerns about the day-to-day impact of the railway's construction. Similarly, the noise and vibration policy has been substantially enhanced, especially in relation to noise and vibration monitoring. The practical effect of the amendments is to give those documents enforceability. Failure to comply with the documents will result in the local authority being able to enforce compliance in the same way that it can enforce any planning condition. The amendments ensure that the minimum standards set must be met.

It might assist the committee if I provide a little detail on how the amendments work in practice. Amendment 73 meets the requirements that we sought in our consideration stage report. Having considered the evidence, we agreed that it was imperative that the environmental impact of the railway should be no worse than the residual impact identified in the bill's environmental documents. If the impacts can be mitigated then that must happen, but amendment 73 makes it clear that the standards set out in the environmental statement are the minimum that must be achieved.

The amendment does, however, allow the promoter flexibility in how those standards are met and should enable the benefits of good design and developing practices to be incorporated. For example if, due to technological advances, the railway is quieter than assumed in the environmental statement to the extent that specific noise mitigation measures are not required, the authorised undertaker is not obliged to institute any of the stated measures if those technological advances that are incorporated achieve the same or a better end result on the level of noise. The inclusion of that requirement in the bill ensures that the promoter must deliver on the environmental protections promised.

Amendment 73 also ensures that the standards embodied in specific pledges made by the promoter to objectors or to the committee will be delivered. That means that either the proposed mitigation will be provided or the standard of protection envisaged by the pledge will be met. The approach provides the flexibility to take account of technological advances. For example, if the promoter agreed with an objector that they would provide a noise barrier to reduce noise to an acceptable level, but the same noise level can be achieved by using a quieter train, there will be no obligation on the authorised undertaker to provide the barrier.

I move to amendments 74 and 78. The assessor heard extensive evidence about proposed mitigation, in particular in relation to noise and vibration. We carefully considered the promoter's approach to controlling noise and vibration, which is set out in the code of construction practice and the noise and vibration policy—the promoter submitted both documents as written evidence. Although we welcome the commitments that the promoter made, we are aware of objectors' concerns about construction noise monitoring, for example. We therefore said in our consideration stage report that we would amend the bill so that it makes specific reference to the code of construction practice and the noise and vibration policy. The approach is similar to the approach to environmental monitoring, so the practical effect of amendments 74 and 78 will be to make enforceable the code of construction practice, the noise and vibration policy and any mitigation

commitment document. The local planning authority will be able to enforce compliance with those documents in the way that it enforces any planning condition.

Amendment 75 ensures that the standards that we have agreed in the code of construction practice, noise and vibration policy and mitigation commitment documents are the minimum that must be met and that all the obligations of the authorised undertaker in relation to such matters and environmental impacts must be enforced by the local planning authority.

Amendment 77 is a drafting amendment and reiterates that the bill's aim—to build a new railway, including all associated works—is as far as the Parliament can go under the Scotland Act 1998. Although the promotion and construction of railways that start and end in Scotland are devolved to the Scottish Parliament, the provision and regulation of railway services are—with very limited exceptions—reserved. The amendments in the group clarify that enduring commitments that are associated with the environmental effects of the railway's construction, such as commitments to provide planted areas or animal habitats, are protected. At the same time, however, the bill will make it clear that such obligations do not interfere with activity associated with reserved operational railway services, which are regulated under the Railways Act 1993.

The 1993 act provides that a railway network operator must hold a licence and that licence holders are governed by the regulatory regime. The licence includes provisions that are designed to protect the environment. Network Rail's environmental policies not only comply with the licence but are based on ISO 14001, which is the international standard for environmental management. Railway operators have a statutory obligation to comply with the conditions of their licence and the rail regulator ensures that they do so.

The promoter made it clear that amendment 77 does not reduce the environmental commitments in the bill or other commitments that it has given, all of which are made enforceable by local authorities as a result of amendments to the bill. Amendment 77 avoids any prospect of conflict arising between the reserved 1993 act's provisions and our environmental mitigation provisions.

Amendment 90 is a technical amendment and defines "code of construction practice".

Amendment 91 is also a technical amendment and provides a definition of "the Committee" in relation to references in the bill to undertakings given to us or to the assessor, who heard evidence on our behalf and reported to us. For example, there is such a reference in the provision inserted by amendment 73. Amendment 91 provides that

"'the Committee' means the Edinburgh Airport Rail Link Bill Committee … and includes any assessor appointed in respect of that Bill".

Amendment 93 provides a definition of "local construction plan" that covers all codes of practice intended to define the authorised undertaker's policy in relation to construction works within a specified geographical area. Those must be included in the directory of documents that is mentioned in amendment 75. Local plans, therefore, are like the code of construction practice in that they allow the local authority to monitor compliance and to require consultation before they are altered.

Finally, amendment 94 provides a definition of "mitigation commitment document". The definition encompasses any document that the authorised undertaker prepares in relation to specific impacts of the authorised works, including the environmental management plan. The plan brings together in one place all the environmental requirements that derive from the various mitigation documents, plans and third-party agreements that have been produced.

I move amendment 73.

Christine Grahame: That was heroic, Charlie.

Mr Gordon: Thanks.

Christine Grahame: Could you repeat it? [*Laughter.*]

Amendment 73 agreed to.

Section 46, as amended, agreed to.

After section 46

Amendments 74 and 75 moved—[Mr Charlie Gordon]—and agreed to.

Amendment 76 moved—[Christine Grahame]—and agreed to.

Amendment 77 moved—[Mr Charlie Gordon]—and agreed to.

After schedule 8

Amendment 78 moved—[Mr Charlie Gordon]—and agreed to.

Section 47—Certification of plans, etc

Amendment 79 moved—[Mr Jamie McGrigor]—and agreed to.

Section 47, as amended, agreed to.

After section 47

The Convener: Amendment 80, in the name of Christine Grahame, is in a group on its own.

Christine Grahame: This is what happens, Charlie, when I get the long straw.

Amendment 80 is a technical amendment that is designed to address a problem with land registration. Members will recall from the Title Conditions (Scotland) Act 2003 that servitudes are rights over land—for example, a right of access over land that belongs to someone else. The amendment provides that a servitude that is acquired by the promoter under section 17 or 18 of the bill will apply to all the land that is acquired under the bill. The amendment also avoids the need for dual registration. To be effective, servitudes that are created under the bill need be registered only against the land that is burdened by those servitudes. They do not need to be registered against all the land that benefits from them. I move amendment 80.

I understood that.

The Convener: I am sure you did, Christine.

Amendment 80 agreed to.

Section 48—Dispute resolution

Amendment 81 moved—[Mr Charlie Gordon]—and agreed to.

The Convener: Amendment 82, in the name of Charlie Gordon, is grouped with amendment 83.

Mr Gordon: Section 48 contains provisions on arbitration and dispute resolution. It states that section 108 of the Housing Grants, Construction and Regeneration Act 1996 shall not apply to any dispute under the bill. The 1996 act sets out the arbitration procedures for disputes that involve construction contracts, but the bill disapplies those to avoid ambiguity about the arbitration procedures that are to apply.

Amendment 83 changes that position in the case of disputes about contracts where a contractor other than the authorised undertaker is responsible for the construction or funding of the works. In such cases, section 108 of the 1996 act will continue to apply.

Amendment 82 is a consequential amendment that relocates the full title of the 1996 act within the section.

I move amendment 82.

Amendment 82 agreed to.

Amendment 83 moved—[Mr Charlie Gordon]—and agreed to.

Section 48, as amended, agreed to.

Section 49 agreed to.

Section 50—Incorporation of enactments

14:00

The Convener: Amendment 84, in the name of Iain Smith, is grouped with amendments 85 to 87.

Iain Smith: I started, so I will finish.

Section 50 applies specific provisions of the general law of compensation to land use under the powers in the bill. Incorporating those provisions is essential to ensure that compulsory purchase and land use under the bill are on the same basis as are other compulsory purchase and land use in Scotland. Rather than repeating the content of four 19th century statutes, the bill applies the relevant provisions by reference to the statutes, which means that they become part of the bill. Section 50 also disapplies sections in the old statutes that are not relevant to the bill.

Our legal advisers have scrutinised the applied provisions and the amendments will leave out further parts of the old enactments that are no longer relevant. Some provisions, such as parts of the Lands Clauses Consolidation (Scotland) Act 1845, have been superseded by modern standards required by roads authority and railway standards and guidance, as I am sure that members are all aware. Unless the modern standards and requirements are met, Her Majesty's railway inspectorate will not approve the railway. Some provisions refer to the danger to horses from passing trains, which modern design standards provide for more adequately—I am not sure whether they apply to the trains or the horses.

Amendment 86 removes provisions on bridges over tidal waters, none of which are affected by the bill. That amendment leaves the application of only section 12 of the Railways Clauses Act 1863, which contains obligations that concern signals.

I move amendment 84.

Amendment 84 agreed to.

Amendments 85 to 87 moved—[Iain Smith]—and agreed to.

Section 50, as amended, agreed to.

Section 51—Interpretation

Amendment 88 moved—[Mr Charlie Gordon]—and agreed to.

Amendment 89 moved—[Iain Smith]—and agreed to.

Amendments 90 and 91 moved—[Mr Charlie Gordon]—and agreed to.

Amendment 92 moved—[Iain Smith]—and agreed to.

Amendments 93 and 94 moved—[Mr Charlie Gordon]—and agreed to.

Amendment 95 moved—[Iain Smith]—and agreed to.

Section 51, as amended, agreed to.

Sections 52 and 53 agreed to.

Long title agreed to.

The Convener: I am sure that members will be pleased to know that that ends the committee's consideration of the bill at phase 2 of consideration stage. Before I close the meeting, I will say a few words. I thank my colleagues on the committee, who have spent much time on scrutinising the oral and written evidence on the bill. Committee members are to be congratulated and, as convener, I am exceptionally grateful for their hard work and for the dedication and professionalism that they have displayed throughout the process.

I thank Professor Hugh Begg for the open and transparent way in which hearings were conducted and for the thorough and robust report that he provided to us. It was a fair and accurate representation of the evidence at consideration stage and certainly assisted us greatly in reaching our views on each outstanding objection. I also thank our legal advisers for their help and advice during the bill's progress.

The next stage is the final stage, when any member may lodge an amendment and the whole Parliament will vote on whether to pass the bill.

I close the Edinburgh Airport Rail Link Bill Committee's final meeting.

Meeting closed at 14:05.

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