

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

Tuesday 11 January 2005

Session 2

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CONTENTS

Tuesday 11 January 2005

	Col.
EDINBURGH TRAM (LINE ONE) BILL: PRELIMINARY STAGE	267
ITEM IN PRIVATE	305

EDINBURGH TRAM (LINE ONE) BILL COMMITTEE

1st Meeting 2005, Session 2

CONVENER

*Jackie Baillie (Dumbarton) (Lab)

DEPUTY CONVENER

*Phil Gallie (South of Scotland) (Con)

COMMITTEE MEMBERS

*Helen Eadie (Dunfermline East) (Lab)

*Rob Gibson (Highlands and Islands) (SNP)

*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Alison Bourne

David Campbell (Scottish Environment Protection Agency)

Carolyn Clark (Scottish Natural Heritage)

Andy Coates (Environmental Resources Management Ltd)

Lily Linge (Historic Scotland)

Mrs Odell Milne (Wester Coates Terrace Action Group)

Steve Mitchell (Environmental Resources Management Ltd)

Karen Raymond (Environmental Resources Management Ltd)

Kristina Woolnough (Blackhall Community Association)

CLERK TO THE COMMITTEE

Jane Sutherland

LOCATION

Committee Room 6

Scottish Parliament

Edinburgh Tram (Line One) Bill Committee

Tuesday 11 January 2005

[THE CONVENER *opened the meeting at 10:12*]

Edinburgh Tram (Line One) Bill: Preliminary Stage

The Convener (Jackie Baillie): Good morning, everybody. I welcome you to the first meeting of the Edinburgh Tram (Line One) Bill Committee in 2005. In doing so, I wish everybody a happy new year. We are getting to know the faces around the table very well by now.

The main item on the agenda is oral evidence taking in respect of the environmental statement, which is one of the accompanying documents to the bill. Members have had an opportunity to consider the folder of written evidence from objectors and the promoter. Our first panel comprises Mrs Odell Milne, Alison Bourne and Kristina Woolnough. I welcome you all. I believe that Odell Milne and Kristina Woolnough want to make opening statements.

Mrs Odell Milne (Wester Coates Terrace Action Group): Good morning and happy new year, everyone. I do not propose to reiterate all the evidence that I have submitted; I just want to stress two points with regard to the environmental statement.

The first relates to its purpose. Before I became involved in objecting to the tramline 1 proposals, I—perhaps naively—understood that an environmental impact assessment was carried out for the purpose of assessing the potential environmental impact of a project. I thought that, following preparation of the report, the evidence that had been collected would be considered and given weight, along with other factors such as costs, passenger numbers and technical difficulty, in reaching a conclusion on the desirability of the project—in this case, especially with regard to the best route to be chosen for the project. I also thought that, if it was determined that the project should proceed, the environmental impact assessment would assist in determining the mitigation that should be carried out to minimise the environmental impact of the project.

However, with the tramline 1 proposal, that does not appear to have been the case. Rather, the promoter seems to have prepared the environmental statement merely to comply with the requirements of the Scottish Parliament—it

has been done rather like a ticking-the-box procedure. There is no evidence that the impact of the proposal, as summarised in the environmental statement, was ever considered by the promoter in determining the route for tramline 1. The financial case shows that weight was given to time saved by car drivers in navigating city traffic and to other aspects, but no weight was given, in the choice of the tram routes, to the detrimental impact as disclosed in the promoter's environmental statement.

A glance at the earlier documentation that was prepared shows that the promoter apparently considered different routes. However, although technical feasibility and passenger numbers were considered, environmental impact was not mentioned. Furthermore, there is absolutely nothing in the bill that binds the promoter to carry out any of the mitigation that is mentioned in the environmental statement or to comply with any undertakings or commitments that the promoter has given to the committee, to individuals or to community groups.

If the bill is passed by the Scottish Parliament, the promoter can, provided that it does nothing illegal—in other words, that it remains within the bounds of existing conservation and planning legislation—do what it likes. For example, provided that it carries out felling operations in the winter months when there are no nesting birds, it can fell all the trees and shrubs along the Roseburn railway corridor. There is nothing in the bill—which by then will be an act of the Scottish Parliament—to prevent that, nor is there any provision to ensure that any replanting is carried out. There is no mechanism within the bill to enforce the promises or undertakings with regard to mitigation.

10:15

Secondly, I draw the committee's attention to the part of the environmental statement dealing with noise increases along the Roseburn railway corridor. Again, there is no evidence that the negative noise impact on houses along the Roseburn corridor was considered before the choice of route was made. I submitted evidence, including two reports from an independent acoustic expert, on the noise impact on the houses of Wester Coates Terrace. I stress—particularly in light of my previous point on enforceability—that residents of the streets where the proposal will result in a significant increase in noise disturbance have no recourse to redress, other than by persuading the committee that the proposals are not acceptable or by taking action under the common law of nuisance or human rights legislation.

As the promoter pointed out to the committee, there are no maximum noise levels for railways in Scotland. Effectively, if the bill is passed and the route of line 1 is agreed, the Parliament will be allowing the operator of the railway to make as much noise as it likes night and day, irrespective of whether in the normal course of events that would constitute a nuisance. We are talking about increased noise not in an industrial area, but adjacent to domestic property and within a few metres of people's back gardens and bedroom windows. Our acoustic expert states that the noise increase will be sufficient to cause significant sleep disturbance.

The operator will be able to do that unless the statutory authority that the Parliament grants is qualified to the effect that the promoter's actions are sanctioned only if they do not harm other people's rights or if the noise does not constitute a breach of human rights. Otherwise, the residents of houses that back on to the Roseburn railway corridor will have no means of ensuring that noise is kept to a minimum and is restricted to acceptable times of day or night or that operating systems and rolling stock are used with a view to minimising noise impact, not just when the tram scheme is newly built, but in future.

I consider that increased noise in our homes and rear gardens, as evidenced in the environmental statement and the independent acoustic reports, constitutes a breach of article 8 and article 1 of protocol 1 of the European convention on human rights. Article 8.2 of the ECHR, which I quoted in appendix 3.3 to the letter of the Wester Coates Terrace action group dated 28 October, does not refer to proportionality. Proportionality may be relevant where the rights and freedoms of others must be weighed, but in this case—where there is no issue of public safety, national economic well-being, national security or public safety, or a need to protect the health, morals or rights and freedoms of others—there is no proviso to the law that a public authority shall not interfere with the exercise of a person's right to respect for his private and family life and his home.

We can clearly distinguish between this situation and the recent case in which increased noise caused by a new runway for a London airport was found not to be a breach of human rights legislation. In that case, not only was the public interference justifiable in the economic interests of the country, but it was clear that the planes had to pass over someone's home. In this case, there is no national economic need and the trams could be routed along the roads, where the noise impact on people's homes would be less. Indeed, if the residents of Lyon are to be believed, the introduction of trams would lessen the noise from the road, because of the decrease in traffic.

Kristina Woolnough (Blackhall Community Association): I have a little bit of new evidence, so I will not hold back proceedings. We are deeply disappointed that the promoter should bring forward a tram alignment that will result—as has been made clear in previous evidence—in negligible environmental gain for huge environmental loss. Presenting tramline 1 as a green project is untrue and misleading to the public. The promoter is putting its developer interests at the Granton waterfront ahead of the Roseburn urban wildlife corridor, which is designated as such on the current statutory north-west and central Edinburgh local plans.

Local and national biodiversity policies and guidance require "reasoned justification" of development to assess sustainability. Despite the fact that the promoter has a sustainable development strategy, no loss-gain assessment of environmental sustainability has been carried out. We believe that the loss would far outweigh the gain in local and citywide contexts. There is also no proper environmental assessment of the alternative alignments.

We have been extremely concerned by the lack of detailed surveys of the corridor's wildlife and, in particular, human users. Environmental impact assessment guidelines include humans among the ingredients that should be taken into account. The promoter has severely underestimated the usage of the corridor and its popularity and amenity value to humans and it has failed, as a *quid pro quo* for severe adverse impacts, adequately to demonstrate local environmental benefit and patronage for the tram. There is no mention in the background papers of mitigation for loss of amenity.

To evidence our view that the corridor has been established as a linear park for more than 30 years for people from all over the city, as well as for visitors, we undertook a survey in partnership with a new organisation, the friends of the Roseburn urban wildlife corridor. I will share the conclusions of that survey with the committee.

We surveyed the wildlife corridor at Maidencraig on 16 and 18 December in very inclement weather over 12.5 hours. Our tally chart recorded 726 cyclists and pedestrians. Our local experience is that summer usage would be at least double that. The cycle path is like a human motorway in May and June particularly.

We were able to survey 232 of those users to establish their purpose, their journey start and end, frequency of use, knowledge of the tram proposals and their priorities in terms of amenity. The survey reveals a fascinating range of information, not least the fact that the cycle path is important to people far beyond Edinburgh. Journey origins as far away as Penicuik,

Dunfermline, Winchburgh and Dalgety Bay are recorded.

The majority of our respondents—86 per cent—use the cycle path either most days or one to two times a week. A large majority of users—69 per cent—consider their knowledge of the tram proposals to be vague or non-existent. For 70 per cent of respondents, the most important amenity feature was the absence of traffic. Sixty-one per cent of respondents felt that their usage would be affected by the introduction of the tram. Significantly, only 12 of those who were surveyed were members of cycling organisations—they were not consulted on the tram proposals.

I have here a summary statement of the survey, plus survey results and sheets of comments made by those who completed the survey. We tried to present the survey neutrally; we did not lead on any tram issues or specifically ask people whether they were for or against the tram. We just asked people to make comments.

I also submit an annual bird identification survey undertaken by a local resident. It was conducted on behalf of the British Trust for Ornithology as part of the national garden bird watch project. Twenty-six bird species are recorded, to which we can now add the ring-necked parakeet.

I am presenting both surveys to demonstrate the inadequacy of the promoter's work on the wildlife corridor and the absence of an overview of tramline 1's environmental sustainability. The two surveys indicate how much Edinburgh citizens value the corridor as it is—a rare, traffic-free, green artery connecting many parts of the city. The enormous amenity value of the corridor in the daily lives of human users has not previously been quantified or assessed. We submit the surveys to the committee for due consideration.

The Convener: Thank you, Mrs Woolnough. I should say two things to the committee. First, we have all the information, as it has been submitted to the clerks. We will, of course, take a view as to whether it is acceptable to consider late evidence, but I am sure that we can do that quickly at the next meeting. Secondly, I am sorry to go on about this, but I remind members that we are here today to consider the adequacy of the accompanying documents—the environmental statement in this case—and whether the methodology that was used is sound. I have no doubt that we will hear many specific concerns and problems but, rather than focusing on those, we can use them as illustrative. If the bill proceeds to consideration stage, that is when we will consider those matters in detail.

I will kick off with a general question to each member of the panel. One of the original concerns was that there was an absence of detail of

mitigation measures in the Roseburn corridor. The promoter has provided more details in a report entitled "Development of Environmental Mitigation in the Roseburn Corridor", which is dated 4 October 2004. In outlining the proposed mitigation measures, how far has that report met your concerns?

Kristina Woolnough: I submitted comments on the report and my concerns were similar to those that Mrs Milne raised. In particular, we want to know how the measures will be enforced.

We felt that a lot of the mitigation detailed in the report repeated what was in the environmental statement. There was some watering down and there were indicative and generic wishes rather than promises to act. We found that the report was not robust; it was generalised and it did not indicate that there had been any new work other than some generic drawings.

It looks as though the report recommends the removal of noise barriers that the environmental statement had said would be included. We were also concerned that certain factors, such as the human amenity use and the air quality benefits of the vegetation along the alignment, had not been taken into account. By that, I mean that if all the trees are removed, we will lose the CO₂ benefit—or rather, the oxygen benefit; I am not very technical.

We did not find that the report helped. It did not address the central question of who will enforce mitigation or deal with our concerns that mitigation will be a victim of cost cutting and that the suggested outcomes are merely desirable.

The Convener: I will move on to commitment to enforcing mitigation shortly. Do you have a view on the detail?

Mrs Milne: I was not satisfied, partly because the additional information related only to four specific locations; the report was not an environmental impact assessment of the whole route of the cycleway. Although it may be valid in so far as it relates to those four locations, it is certainly not valid for the rest of the route. It is not specific—it contains no definite proposals for mitigation. It provides an indication of potential impacts and says that certain measures could be taken, provided that it would be practicable to do so, but there is nothing specific. I do not know how a decision can be made on the basis of the information that it provides.

Alison Bourne: I agree. Community liaison groups have been asking for details of mitigation for the Roseburn corridor for more than a year but have met with no success. It was only when the committee asked about the issue that the report was produced. However, the report contains no more than what is already in the environmental

statement. It is not worth the paper that it is written on, because none of it is enforceable or guaranteed. We took it that the purpose of the report was to placate the committee's concerns about the Roseburn corridor.

I find it surprising that no exercise to quantify the number of trees that will be lost has been undertaken. My understanding is that the promoter is asking for permission to construct a tramline within specified limits of deviation. Within those limits of deviation, it can do whatever it likes. As Mrs Milne says, there is no guarantee that it might not choose to take out all the vegetation. Once it has permission to build the tramline, there will be nothing to prevent it from doing that. It struck me that the production of the report was very much a pat-on-the-head exercise. It makes the right noises and tries to address people's concerns by saying, "Yes, we are listening," but there is no guarantee that any of the mitigation measures will be implemented. Given the financial constraints, that is a significant worry.

My understanding is that it is the job of Transport Initiatives Edinburgh Ltd to implement the tram scheme—in other words, to put in a tramline on the ground. Mitigation is an entirely different issue. TIE's priority is to get a tram scheme implemented on the ground.

The Convener: Let me try to distinguish between whether you feel that the mitigation is appropriate and whether you feel that it would be enforced. You all allude to the concern that, regardless of whether the mitigation proposals are appropriate, there is "no mechanism"—to use Mrs Milne's words—to ensure that they will be implemented. Will you expand on those concerns? What are you looking for?

Kristina Woolnough: No detail has been provided on mitigation. We want detailed and thorough assessments of all the wildlife—which should include annual surveys of the wildlife and the nesting season and the checking of bat roosts under bridges—to be carried out. I do not see how the environmental benefit or loss can be assessed until such work has been done.

The mitigation report contains no details. It provides a little more information on noise barriers in that it says that they will not be put in at various points at which the environmental statement had said that they would be put in.

We need vegetation surveys to be carried out. In carrying out our survey, I met a man who was a fungi specialist. He said that such matters were always overlooked, even though the city's whole ecosystem depends on the way that fungi and spores behave. Mention is made of trees being replaced elsewhere, but we would like to know

where replacement trees will be planted and what kind of trees they will be.

We rather resent the language that is used to describe the wildlife corridor, which implies that it is a derelict, disused former railway. It is not derelict or disused. Like the environmental statement, the mitigation report says that people feel insecure in the Roseburn corridor. Where is the evidence that people feel insecure? If the council replaced the lights properly, there would be no question of security issues. There is also a disparaging description of the lack of street furniture in the corridor. We like it like that; it is an urban wildlife corridor. We feel that there is a distinct lack of respect for that and there is no detail.

10:30

Mrs Milne: I am concerned about whether the environmental statement means that it is acceptable to sacrifice the corridor for the project. I do not think that it is acceptable to sacrifice the corridor. When the bill is passed—if it is passed—nothing in it, as an act of Parliament, will be able to be used to enforce any of the promoter's obligations, promises, undertakings or statements. We could put the environmental statement in the bin for all the difference that it would make. Nothing in the bill says, "We shall replant trees between points A and B on the plan. If we do not do so, there will be a mechanism for enforcement." I do not know whether that would involve Scottish Natural Heritage in relation to replanting. Replanting would be in accordance with SNH requirements. On other mitigation affecting residences, nothing enables anyone to say, "You said you'd put a sound barrier behind my house, but you haven't." That is the second step, if we get to it.

Kristina Woolnough: We would like a human survey—a proper, professional, user-group survey. We tried our best to conduct one. We cannot understand why the value and loss of the amenity to people have not been assessed. A requirement of environmental legislation is that that should be taken into account, but it is glaringly obvious that it has not been in this case.

Alison Bourne: I get the feeling from the question that you are asking what mitigation would make it acceptable to put a tramline on the Roseburn corridor—

The Convener: I am sorry to interrupt you, but that was not my question. With my first question, I was trying to establish whether you were satisfied with the detail of the mitigation and, with the second question, I wanted to tease out some of the enforcement issues that are emerging. The

issue is not what compromise is acceptable to you; my questions were straightforward.

Alison Bourne: Right. I can only agree with what has been said about enforcement. There is no guarantee about how the mitigation measures will be enforced. I spent a couple of hours conducting the survey and even I was surprised at some of the comments that other users of the cycleway made. There is no way that one can put a tramline on the Roseburn corridor and retain its current nature. That is simply not possible. The area is forested—it is a bit of countryside—so one cannot stick a motorised transport system through it and hope to retain the current feel of the place. That is the problem.

Phil Gallie (South of Scotland) (Con): In your submission, Mrs Bourne, you suggested that walking and cycling had not been adequately assessed. You addressed that issue in a wider sense with respect to the closing off of areas during construction and the after-effects. It seems to me from the drawings, on the Roseburn corridor in particular, that walking and cycling have been provided for. What are your concerns in that respect?

Alison Bourne: The promoter is saying that it hopes to retain a 3m-wide track for cyclists and pedestrians. At the moment, the tarmac area of track is a little more than 3m wide, but there is a lot of vegetation on either side. There is plenty room for pedestrians and cyclists to pass. However, if the promoter restricts the track to 3m, with a barrier for retention or a noise barrier on one side, there will be a canyon effect on stretches of the track. The promoter is talking about lowering the height of sound barriers, but they would still restrict pedestrians and cyclists passing. There is also the safety aspect. I had it in my head that the railway inspector would be looking for about 1m clearance between a cycleway and the tramway, in case a cyclist came off their bicycle. There has to be sufficient clearance for safety reasons.

Another aspect is the promoter's suggestion that it is healthy to sit on a tram, as if the tram was a healthy mode of transport. I do not understand that. Walking and cycling are the healthiest modes of transport. It does not make sense to put a tramline beside what is already a busy route if we are trying to promote the use of sustainable forms of transport. The survey results showed that the vast majority of cyclists—in percentage terms, it was in the high 60s—believe that their use of the Roseburn corridor would be affected if the tramline were to be constructed there. The main reason why people use the Roseburn corridor for cycling is the absence of traffic.

Phil Gallie: You have talked about the problems concerning the dimensions or the combined width of the tramway, walkway and cycle track. Does

that issue also conflict with ambitions for the environment, such as the desire to maintain trees and bushes?

Alison Bourne: In stretches of the Roseburn corridor, there is barely sufficient room to squeeze in the 3m track and 7m tramway with 1m clearance. The section at the back of my house is a good example. When the promoter lodged the mitigation report, people at Groathill became even more alarmed by the various issues that arose. The promoter then visited the Groathill stretch of the corridor to see the space problem there. At that point, the person from TIE who came out to see us had not previously been up on the cycleway. Once he saw the stretch at the back of my house, for instance, he had to admit that virtually all the vegetation would need to be removed at least from one side of the track. There will be no room to replace that vegetation with new trees. The promoter talks about replacing trees with more trees, but where will those trees be put? There simply will not be room. The promoter might stick up new trees down at Granton or elsewhere but not at Groathill.

Phil Gallie: Will such environmental mitigation encroach on other people's property, including yours?

Alison Bourne: At my property, the promoter will try to retain the hawthorn hedge. However, because so many metres will be required for the cycleway and the tramway, I have doubts as to whether that will be possible. So much of the roots and vegetation will need to be cut away that I doubt that the hedge will withstand the shock. On the other side of the cycleway—the Groathill Avenue side—the engineer from TIE agreed that there was no way that any of the vegetation would be able to be retained. Therefore, we are probably talking about fences and ivies.

Phil Gallie: The effect on badgers was another concern, on which some well-founded points were made in the submission. Kristina Woolnough referred to the fact that the proposed route was a railway line some time ago. Was there evidence of badgers there at that time? Can anyone recall what effect the railway line had on the badgers?

Kristina Woolnough: There are two badger setts, of which one has certainly been there for at least 40 years. When the railway was in operation, the track supported wildlife and vegetation. It certainly supported vegetation, because local people can recount how the vegetation would catch fire from the sparks of the trains. When the railway was in use, the track supported vegetation—that has continued as the pathway has been used for human recreation and cycling.

As I see it, there is room for two ingredients out of a possible three: we can have the tramway and

nature but no cycleway or footpath, or the tramway and the cycleway or footpath but no nature. The choice seems to be black and white. Even were the tram to be put through cuttings, hard-surfaced retaining structures would be required. All the banking that is at present covered in trees and bushes, which provide a foraging ground for many species, would need to go, because, obviously, trees cannot grow on concrete retaining structures.

Phil Gallie: I am quite interested in the wildlife aspect, and in badgers in particular. When the trains ceased operation 30 years ago, many cyclists and walkers began to use the route. Surely closure of the line changed significantly the lives of the badgers in the area. What was the effect on the badgers? Did they relocate or are they happy with their new situation?

Kristina Woolnough: The badgers did not relocate. We have had meetings with the Lothian badger group and local people and families have gone on badger watches with its members. I understand that badgers adapt easily to humans; they avoid people when we are on the cycle path but creep out again when we have gone. Obviously, badgers are nocturnal. Although they can get used to light, they choose to use routes where there is less light. In terms of interaction between humans and badgers, there has been no change—the sett is still there and is still inhabited.

Phil Gallie: Notwithstanding the construction period, which will not be all that brilliant for the badgers, is there sound evidence to demonstrate the effects of trams on the badgers? Will the trams upset them, particularly during daylight hours, or is there simply the fear that that might happen?

Kristina Woolnough: Again, from the evidence of badgers' bodies on the roads, it is possible to see that badgers and vehicles do not mix, whatever the time of day. The tram will run in the dark, which is when badgers are out and about—indeed, I am led to believe that they come out at dusk. The promoter's evidence is that badgers might have to be—

Phil Gallie: I am sorry. Can I stop you there? Have the cyclists and people who use the route, particularly during daylight hours, seen badgers on the route? Do badgers cross the path?

Kristina Woolnough: Yes. Badgers cross the cycle path and people frequently see them. We have been conducting a badger survey and are busy pulling together the results. As I was saying, the promoter's evidence shows that badgers might have to be relocated. However, our meetings with the Lothian badger group suggest that badgers cannot be relocated; they are territorial animals and relocation can end in warfare or conflict.

A badger population has lived in our area for a long time; local people are used to seeing them foraging in their gardens. I am not a badger expert, but I understand that badgers can travel quite long distances to forage for food. I also understand that the promoter's badger expert came from Somerset last Thursday to survey the area. At this time of the year, because the leaves are off the trees, it is possible to see badger paths all over the embankments and cuttings. We can see how busy they are—their tracks are everywhere, not just at their setts.

Phil Gallie: Thank you.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): In your submission, you expressed concern that the community liaison groups and local councillors have not commented on the environmental mitigation measures in the Roseburn corridor report. Will you expand on those concerns?

Kristina Woolnough: Our concern is simply that the promoter continues to say—as it has done in respect of other sections of the bill—that because it has not had funding for detailed surveys, it does not have the detail. We have been engaging with the CLGs in the hope that such detail would emerge. Although little bits and pieces have emerged, there is nothing that we can take to our local residents and wider user groups for their comments. There is nothing on the table for us to discuss, other than the promoter's aspirational and generalised statements about the mitigation measures that it would like to offer.

Alison Bourne: Other residents in Groathill Road South and Groathill Avenue who take part in the Craigleith CLG were very upset about the lodging of the "Development of Environmental Mitigation in the Roseburn Corridor" report, as was our local councillor, Iain Whyte. We thought that details of that report should properly have been discussed first with us. Although we are grateful to the committee for getting the promoter to lodge the report, I know that Iain Whyte was very upset that he had to visit the Scottish Parliament's website to have a look at TIE's proposals for the Craigleith stretch of the route. Those of us who have dealt with TIE for over a year are more cynical and were not surprised by that—we know that TIE is much keener to keep this committee happy than it is to keep local residents and community groups happy.

Kristina Woolnough: I would like to draw the debate back to the need to weigh up the environmental pros and cons of the scheme, which are not included in the environmental statement. The promoter has not measured the sustainability of the project. We know that the trams will reduce the number of cars on the road by less than 1 per cent and that there will be no

clean-air benefit. Those are key environmental pieces of evidence. When one considers the loss in terms of usage and amenity—citywide and in the south of Scotland—one must ask why there is no assessment of whether the project is environmentally sustainable. That is a big question.

10:45

Mr Stone: I note your disappointment with the methodology that has been pursued in the past, but I would like to press you further. It is our understanding that councillors have not commented. You have clearly expressed your view that that is not acceptable, no matter how scanty the information that has been available. Would it not be helpful at least to get some comments back, while accepting that there may have been mistakes in the process in the past?

Kristina Woolnough: The mitigation report was never submitted to any councillors and the first that we all knew about it was when it was lodged with Parliament. We would welcome dialogue. As Alison Bourne said, everyone was most surprised that the mitigation report, which directly affects local people and might reflect what local people have been concerned about, appeared here first and was not the result of discussions with us. It just appeared as a result of the committee's request, which is fine and good, but there was no opportunity for councillors to be involved in it. They were not consulted before it was lodged, nor were they asked for input. They had to look at it themselves and, in the CLG context, although we have looked at some of the drawings, we have not worked through the mitigation report, even subsequent to its being lodged.

Mr Stone: You are reiterating the point; you may be right that the process has not been satisfactory. I will not gainsay that, but many things happen in Government—at Westminster and here—that people are not consulted about. I do not like that, but it does not hold me back when push comes to shove. Would not it be possible in future for the CLGs and councillors to say something, while accepting that there may be faults and that they may not have been properly roped in?

Kristina Woolnough: When we went to our councillors and said that we were concerned and that there was a mitigation report, they told us that the matter was with Parliament and was no longer for the council. We are constantly shuttled to and fro; we have been throughout the process. That is the response that we get.

Alison Bourne: There is a strong feeling that, because the Roseburn corridor was identified as the best-fit option in paragraph 1.3 on page 1 of the very first report on the tram scheme—the

Anderson report—everything has been made to fit the use of the Roseburn corridor, simply because it is there. It is not because it has great benefit in terms of public transport or because it will attract high passenger numbers—it will not—and it is certainly not because of environmental benefit. It has been chosen simply because it is there. That is why the promoters are using it.

It is true that, technically speaking, the Roseburn corridor has been earmarked for future transport policy for the past 40 years. It is also true that other United Kingdom cities have used disused railway corridors. However, the big difference in Edinburgh is that the disused railway corridor here has been an urban wildlife corridor for more than 30 years. In other cities in the UK, it was a question of taking heavy rail off during one month and putting down a tramline the next, and local residents were delighted because they were getting rid of trains and seeing them replaced by trams. That is not the case in Edinburgh. People who live close to the corridor, or who live in Fife or elsewhere but who will use it, think of it not as a disused railway corridor but as an urban wildlife corridor. However, the promoter would have the committee believe that it is disused and neglected ground.

We were talking about the badgers and their foraging areas. The area around the Telford Road stop—the one that is supposed to serve the Western general hospital—is described in the environmental statement as disused ground. It may be disused by humans, but it is certainly not disused by badgers, which use the area for foraging. Badgers feed on worms; they go to Easter Drylaw park to forage on the grass there and they go to people's gardens and to waste ground to forage for worms. TIE may think that the corridor is disused railway ground, but the badgers certainly do not.

Mr Stone: I think we understand each other.

You have concerns about the design manual and its status. Could you elaborate a little on that?

Alison Bourne: The design manual was supposed to have been lodged in the libraries during the consultation period, and certainly before the period for parliamentary objections had finished, but as far as I am aware it did not make an appearance in the libraries until two or three weeks before the deadline for submitting objections. I seek clarification; I am not sure what the legal status of the design manual is, or whether it is an exercise in which the promoter says, "This is how things are going to be and it is going to look wonderful. We will have all this wonderful noise proofing, and overhead line equipment will be kept to a minimum." What status does the manual have? Is it enforceable? I do not

know. All I have seen so far is a draft—I have not seen an approved design manual.

Rob Gibson (Highlands and Islands) (SNP):

Mrs Milne suggested that the final design of all mitigation measures must be produced now. To follow on from the point that has just been made, do you consider that a final design is still necessary, given that the promoter has said that it has already provided an assessment of the worst case, including loss of the majority of vegetation along the Roseburn corridor?

Mrs Milne: The mitigation is based on four specific locations, is it not? That is the case in the most recent version that I have seen, which does not take account of the site's being a wildlife corridor. It has value because wildlife can pass along it. It is fine for the promoter to consider one location and say that if it takes down one tree it will plant another elsewhere, but if there is an area in which all the trees are cut down, such as the area near Alison Bourne's house, there will be a gap in the corridor. That is not accounted for in the mitigation proposals. Also, as has been said, the promoter says that it will plant more trees but no one has said where. No account has been taken of the effect of relocating badgers: the promoter says that it will relocate the setts, but to where?

I am not saying that the final design of mitigation measures must be produced now. Obviously, the promoter cannot do that; however, it could come up with specific ideas about mitigation. It is not true that the promoter cannot make proposals because it does not know where the line will be—the line can go only within a limited corridor. I am told that the promoter wants the line to be straight for most of its route because curves are noisy or whatever, so I am sure that the promoter has a pretty good idea of where the line will go—it has said that it does. For the promoter to say that it cannot come up with mitigation because it does not know where the line will go is not an adequate response.

Rob Gibson: There is no doubt about that, given that limits of deviation are built into the proposals. You talked about the four example areas along the corridor. I presume that the promoter chose them as examples of areas that will require various sorts of mitigation.

Mrs Milne: Actually, as I said in one of my responses, there is absolutely no evidence on how or why those locations were selected. Perhaps the promoter can tell you, but there is nothing in the report that I have seen to tell us why they were selected.

Rob Gibson: We will ask the promoter about that.

Can you explain the importance of replanting with a mixture of native and non-native flora rather than only native flora, as the promoter suggests?

Mrs Milne: I am not an environmentalist. One of the reasons why I asked my brother to assist with my submission, and why he put some comments in, is that he is an environmentalist. I have to say that I cannot answer that question. I really do not know the answer.

Rob Gibson: I do not know whether any of the other panel members might be able to answer it.

Mrs Milne: I can come back to the committee with a response.

Rob Gibson: That would be valuable.

Helen Eadie (Dunfermline East) (Lab): I have another question for Mrs Milne. In your submission B11, you say that you have asked for stops to be relocated. Why?

Mrs Milne: The first reason is strictly personal. One of the proposed stop locations is right behind my house and I do not particularly want a stop right behind my house, within a few metres of my back-bedroom window. There will be people standing around there late at night and, because the stop would be quite near Murrayfield stadium, which is now used for both football and rugby matches, there will no doubt be a lot of people there late on Saturday nights if the proposal goes ahead. My reason is completely selfish, I have to say. I just do not want a stop behind my house.

Helen Eadie: Thank you for that answer. In your submission G12, you comment that the report "Development of Environmental Mitigation in the Roseburn Corridor" is no more than a statement of intent. Will you elaborate on that and explain what you would like to be included in it?

Mrs Milne: I would like the report to be more specific. The Roseburn corridor report says in effect that the promoter will, where room permits, plant some trees. Perhaps there will be no room, in which case no trees will be planted. The report is peppered with phrases such as, "provided it is feasible", or "where reasonably practicable". Basically, such phrases mean that the promoter can say that proposals are not reasonably practicable, that there is no room or that planting is not permitted for various other reasons.

I would like the promoter to acknowledge specifically that it will have to cut down all the trees between points A and B along the route and that it will therefore have to replant trees to make up for that and to ensure that the wildlife corridor is maintained, if possible. I am not sure whether that is economically feasible—the promoter might run out of money at the end of the day. The possible reason why the promoter has not done that is that there are serious gaps where such proposals are

not possible. In some of the early reports, the promoter acknowledged that, in some places, it will have to cut down all but a very thin strip of woodland. It is unfair for the promoter to say that it will, where it is reasonably practicable to do so, replant trees. The principle is fair enough, but it will not turn out to be reasonably practicable to accomplish. The statement of intent is fine, but will the replanting actually happen?

The Convener: I have a final question to ask before we let this panel go, and it is to Kristina Woolnough. It concerns paragraph 3.0 of your submission, which is headed "Consultees to the ES". Could you elaborate on your concerns? You mention Scottish Natural Heritage, the Scottish Environment Protection Agency and the Health and Safety Executive, and you ask whether their responses could be made public.

Kristina Woolnough: Is the question about the adequacy of the documents or the response to the mitigation? I have it now—"Consultees to the ES".

The Convener: Yes. It is dated 30 August 2004. I refer to paragraph 3.0.

Kristina Woolnough: I spoke to representatives of SNH and Historic Scotland. I know that there was considerable confusion about whether they were statutory consultees, which resulted in their making late submissions. At the back of the environmental statement there is a summary of who was consulted and their comments. Some seem to have been telephone comments. I asked that all the written evidence from all the consultees be put in the public domain so that we could at least see that our statutory bodies were representing similar concerns to ours.

The Convener: Under our process, any written evidence that we receive is made public. Does that address your concern?

Kristina Woolnough: I was really referring to the evidence on which the ES was based. Our understanding is that consultees were consulted by a quick phone call or during 10-minute meetings about cycle paths and so on. There was no proper and due consultation process that involved lots of paperwork and to-ing and fro-ing and so on. People complained to us that the timescales were very short—they said that things simply happened. The organisations that I mentioned had been expecting formal notification because they were used to being statutory consultees, but they did not receive any.

I know that we have been talking about what mitigation would be like and what is possible and so on, but my point is that there can be no mitigation for the loss that would be incurred. The ES makes it clear that we will have to deal with something that will not be remotely like what we are examining at the present time. For us, the only

possible mitigation would be wider-picture mitigation: if cars were removed, if the air was cleaner and if people could be transported to hospital and so on. We could live with the proposal if what was being done was for the greater good, but we have seen no evidence of that. I am sorry—I thought that I would slip that in.

The Convener: I am sure that, when we consider the adequacy of the accompanying documents, we will bear those thoughts in mind. We can certainly pursue some of the issues surrounding consultation with the next panel.

I thank you very much for your evidence this morning and I invite the next panel to take their places. The panel comprises representatives of Historic Scotland, Scottish Natural Heritage and the Scottish Environment Protection Agency. I welcome the panel. Lily Linge and Amanda Chisholm are from Historic Scotland, Carolyn Clark is from Scottish Natural Heritage and David Campbell is from the Scottish Environment Protection Agency. We will be forgiven if we lapse into the use of acronyms, which are less of a mouthful than the full titles of the organisations.

The previous panel suggested that you were not adequately consulted. I would like to bottom out that issue with each of you, starting with the representatives of Historic Scotland. What was your experience of the consultation that produced the environmental statement?

11:00

Lily Linge (Historic Scotland): I do not have the file in front of me, but I recall that there was a general consultation in which we were asked to provide general information; that was it. I believe that there were site meetings with some of my colleagues at specific locations, but there was no formal scoping or further formal consultation. We did not see the environmental statement until the committee clerks brought it to our attention in July, when our comments were sought.

Carolyn Clark (Scottish Natural Heritage): We were consulted on the bill as part of the environmental impact assessment. However, we were consulted on the basis that to do so was good practice, rather than on a statutory basis, as would be the case through the planning system. Our comments were sought as a sign of good will. In our case, there were scoping studies, because the proposal would affect badgers and so on. The promoter came to us for advice on such issues. However, we were told that our comments might or might not be taken on board. I know that the Procedures Committee is working out how to tidy up the system for dealing with private bills in the future.

The Convener: That is indeed the case. We will consider the matter separately. I am interested to hear about your experience of the consultation.

Carolyn Clark: The consultation with SNH was fine, because some of my colleagues kicked up a fuss when they missed the boat during a previous consultation. The consultation process improves a little each time it is used.

David Campbell (Scottish Environment Protection Agency): The consultation was in a number of parts. Initially, we were invited to attend a presentation by TIE at which questions on the proposals for tramlines 1, 2 and 3 could be asked. There was then a request for impacts that should be considered in the scoping study for tramline 1. Finally, we received a copy of the environmental statement, on which we were able to comment. However, the consultation on the scoping study was by letter. There has been no face-to-face contact with the operators.

Rob Gibson: Historic Scotland seems to be content with the environmental statement as regards the development that will be specifically authorised by the bill. Its concerns appear to relate to the adequacy of the environmental statement as regards the works that are subject to the prior approval process. Is that correct?

Lily Linge: That is correct. We feel that we have enough information in the environmental statement to allow us to know precisely where the tram is going to go, and to be able to assess the impact of the route. However, we know very little about the works that will be done along the route, which is significant for our interests.

A question arises about the relationship between the issues that are covered by the prior approvals and the elements that are included in the bill. Obviously, to an extent, the bill will enable the works that require prior approvals; the prior approvals process works on the basis of the legislation. The two are linked, but the link is difficult to understand. It is difficult to understand the stage at which one would expect to see the appropriate level of environmental information that would enable one to appreciate the full impact of the tram.

Rob Gibson: You have expressed concern over the level of detail in the scheme and the level of detail that is needed to assess the impact on the new town of Edinburgh in particular. Should the promoter have the scheme designed in greater detail at this stage? If so, how far should the promoter go?

Lily Linge: For the purposes of the environmental impact assessment, we need to know what the impacts will be. There is an added onus on us, particularly when we are dealing with heritage that is covered by an international

designation—the new town is a world heritage site—and which is covered by the term “special area” in the regulations, to ensure that we are certain about what the impacts will be and about the mitigating measures. Decision makers should be making decisions with all such knowledge up front. Otherwise, any form of tram could be developed and the impacts could be different from those that have been assessed—to the extent that they have been assessed. I have to say that I find it difficult to get a picture from the environmental assessment of what the tram will be like and what those impacts will be.

Rob Gibson: Allied to that must be a concern about the legal status of the design manual, which should contain the kind of detail that you are concerned about. The committee’s understanding is that it is intended to have the status of supplementary planning guidance and, as such, will be a material consideration in the prior approval process. Is that your understanding? If so, can you expand on your concerns?

Lily Linge: That is our understanding from the information that has been made available by the promoter. In order to fulfil the status of supplementary planning guidance, the design manual will have to be subject to full consultation. Scottish planning policy makes it clear that if a document is to have any weight at all, there must be full prior consultation with the public. My understanding is that the council intends to rewrite the design manual. The draft that is before the committee is an early draft that is full of laudable phrases. We have no problem with the general principles that it sets out, but they are no more than that at the moment.

My understanding from papers that have been placed before the Edinburgh Tram (Line Two) Bill Committee is that the planning authority now fully intends to rewrite the design manual. Therefore, what is before us might change significantly. It would not be possible to plan a tramline with any certainty using the degree of information that is contained in the draft design manual. Leading from that, we fully expect a further version of the design manual to be produced. We have not been party to any process of further design, so I have no idea where that rests at present. Thereafter, the council is going to consult fully on whatever emerges.

Rob Gibson: Given the fact that this is a novel process, do you think that the bill should contain a specific provision on the design manual?

Lily Linge: Yes, we do. We have no problem with its status as supplementary planning guidance, provided that all the hoops are gone through. However, the design manual is going to provide something more than planning guidance. It will operate for things such as procurement and for

the development of the system prior to its even reaching the planning process. There is a stage that is outwith the planning process, and we do not think that supplementary planning guidance carries sufficient weight. A provision in the bill is required to give design sufficient weight for it to flow through the whole process following from the implementation.

Rob Gibson: We are going to spend some time on the detail of the design manual. I thank you for your point. That takes us forward.

The Convener: The witness has probably already answered a lot of what Phil Gallie has to ask, but it may be useful to put some of it on the record.

Phil Gallie: Lily Linge sat in on the committee's previous evidence session, when queries were raised about some of the things over which she has expressed concerns, to do with the validity of the environmental impact assessment and whether it has any real meaning for the way in which the tramline will eventually be designed and built. What is Historic Scotland's position on that?

Lily Linge: As I said in my previous answer, we feel that there is enough information in the environmental statement to tell us about the routes issues for the purposes of assessing impact on the historic environment. We simply do not think that enough information is given to assess anything beyond that. The issues on which information is missing are crucial, if the line is to fit into the world heritage site and the important parts of what constitutes the heritage of Edinburgh. Historic Scotland's view is that the environmental impact assessment is not sufficient. If the project was in the planning domain, we would be asking for further information.

Phil Gallie: In effect, the ES is only a statement of good intent with nothing to back it up.

Lily Linge: Yes. The only mitigation that we are being offered is the design manual, which puts us in a circular situation because we do not know what is in the design manual. The two are dependent on each other and are lacking in detail.

Phil Gallie: To a degree, it is understandable that the design manual is not available at present. The committee's remit is to consider broadly the proposals that are before us and to look at the detail of them at a later stage. Some of the detail regarding design will be available only after contracts are sought for the carrying out of work on the tramline. Is that not the case?

Lily Linge: We want some reassurances that that information will be available. I find it difficult to understand the window of opportunity in which the design manual will be finalised. It will go out for public consultation and will be available for the

procurement process, but I simply do not know when that will happen. If the bill is passed and the tram is approved, the design manual must be in place before anything is done to move forward on procurement and the tendering process.

Phil Gallie: Is there any guarantee that Historic Scotland will be involved in the production of the design manual? Has the City of Edinburgh Council given any indication of that? Have there been any negotiations between you on those issues to ensure your involvement at that stage?

Lily Linge: We are at the very start of discussions with TIE on a number of issues, including that one. However, as yet we have no answers to the question.

11:15

Phil Gallie: In that case, let me be blunt. Can the committee endorse the continuation of the tramline process on the basis of TIE's documents?

Lily Linge: Yes, provided that there is a guarantee that further information will be forthcoming.

Our supplementary comments on the environmental statement raise the issue of prior approvals. As I have already pointed out, if this matter were in the planning domain, we would seek more information before we took a view on the adequacy or otherwise of the environmental statement and, if we were a consultee on the project, on the question whether we approved it. As a result, my difficulty lies in the fact that we do not know when we can expect the further information that is missing.

Phil Gallie: I want to return to your responses to Rob Gibson's questions. It has been suggested that the City of Edinburgh Council has approved a protocol for handling prior approval applications. I presume that Historic Scotland was involved in formulating that protocol.

Lily Linge: Yes, we were consulted. As far as the technical aspects of the matter are concerned, we have no problem with the consultation protocol and are content with the way in which it identifies Historic Scotland as a consultee. However, although the assumption is that we will be consulted on all these matters, our involvement comes right at the end of the process.

The more crucial issue is our ability to influence the outcome of a consultation. We would like to become involved as early as the procurement stage to ensure that there is a flow right through to the planning process and that we are not having to object at the end of the day, as it were.

The Convener: We will now turn to SNH. In some of its earlier submissions, SNH expressed a

number of concerns about the environmental statement. To what extent does the additional information, particularly the Roseburn corridor report and the Starbank bird-monitoring report, address those concerns?

Carolyn Clark: On the bird-monitoring report, we will need to wait until we receive the full year's counts. However, the six-monthly counts have indicated a relatively low use of that stretch by birds. When the counts for the next six months are received, a report will be produced, and we will have the chance then to examine and comment on the results.

As for the Roseburn rail corridor, although the mitigation report identifies the various issues, it does not address them adequately. It goes further than the initial EIA by highlighting the different elements that will be affected and giving an indication of mitigation. However, we are waiting for a lot of other detail. I have met the promoter to discuss the corridor and, specifically, the work on badgers that has still to be done to inform the mitigation elements. I hope that that will feed into the landscape and habitat management plan that will be produced.

The Convener: I know that we have requested a copy of that plan.

Do you think that the environmental statement as it stands is adequate?

Carolyn Clark: We felt that although the initial environmental statement indicated the various elements that would be affected and what would be done to mitigate those effects, it did not address the issues adequately enough to allow us to evaluate potential impacts fully. As a result, we lodged an objection until we received the further information that was forthcoming.

The Convener: I suppose that I am trying to get a feel for your current views on the matter.

Carolyn Clark: We are getting there. The reports that were produced a couple of months ago go some way towards addressing our concerns. However, they simply identify the various issues. Further details will be provided only later on. A lot of badger survey work must be done to inform badger mitigation. However, we have been involved in the process and I hope that issues will be further identified and addressed in order to produce a plan later.

Phil Gallie: Once again, my question has been covered. However, what is the point of the environmental assessment in any case if the bill does not ensure that commitments and undertakings that have been given hold water and are enforceable?

Carolyn Clark: That is something that we wondered about under the private bills system.

Under the planning system, we can ask for conditions that relate to things that are mentioned—such as mitigation and EIAs—to ensure that they occur. Under the private bills process, I understand that there is no such system for conditions and such things. However, we are currently progressing with the promoter as we normally would, going through mitigation and discussing matters further. Much is down to good practice and what naturally happens, but we are aware that there is no system under the private bills procedure to ensure that conditions are in place to ensure that such things happen.

Mr Stone: As Carolyn Clark and SNH know, the Parliament has a role in undertaking an appropriate assessment of the special protection area at the Firth of Forth under the habitats directive and habitats regulations, and SNH has advised—and will advise—the Parliament. Is SNH satisfied that enough information has been gathered or submitted to make that assessment? Is SNH getting all that it needs? If it is not getting all the information that it needs, what would it be appropriate to do?

Carolyn Clark: The bird data that we are gathering for the year will inform us of the level of bird use of the area. When we first got the consultation, we were not sure how many birds used the area and therefore could not assess whether there would be a significant effect on the bird interest. It is standard for us to ask for a year's worth of bird data to be counted, and we have so far received the six-month report, which is quite a full report. That report has all the bird data, and it analyses that data and indicates the level of usage by birds of different areas along the shoreline. We are relatively satisfied that the full report that we will receive for the next six months will give us the information that we need to know the level of bird use of the area. As a result, we will be able to advise whether there are likely to be any significant effects in the area.

Mr Stone: So you are saying so far, so good.

Carolyn Clark: The six-month bird survey indicated a relatively low level of bird use of the particular stretch. The winter bird counts are more important, and we will wait and see what they hold, but the indications are that the level of use of the stretch is quite low.

Mr Stone: I have a tiny and straightforward supplementary question. Are there any other aspects of the bill that you would expect the promoter to consult SNH about? Have you raised them with the promoter? What response have you received?

Carolyn Clark: From an early stage, we have been consulted on issues such as the Firth of Forth site of special scientific interest and special

protection area, badgers and environmental mitigation matters that would be of concern to us. We have been involved and are continuing to be involved.

On a side issue, there is the issue of the whole consultation procedure, whether we should be statutory consultees and how our comments are taken on board. I know that another committee is discussing the procedure side separately. We are happy that the consultation procedure is being developed through time and that we are being consulted on what we need to be consulted on.

Mr Stone: So you are saying that there is working in both directions and that there is nothing that you need to nudge the promoter to consult you about.

Carolyn Clark: The tram consultations have been okay.

Mr Stone: In the previous evidence session, we heard from our friends who are now sitting at the back of the room about the number of bird species and fungi in the corridor. That is detail, compared to what we have just talked about, but given that SNH is responsible for the animal and vegetable kingdoms, should you be involved? Maybe you have been involved.

Carolyn Clark: We have been. We objected partly because of the lack of detail about mitigation and the effect in the Roseburn corridor, not just on badgers but on trees and the habitats in general, because it is a green wildlife corridor. A related part of our objection was why the corridor was chosen over the main-road option. The ES states that there will be significant environmental damage, but does not relay any positive benefits. The promoter does not discuss the pros and cons of the other approaches, such as the road option. We have concerns, but we hope to be involved in the development of the landscape and habitat mitigation strategy, to realise the full impacts of mitigation, so that we can evaluate what is happening.

Mr Stone: I am really bending the rules in asking another question. In earlier evidence, we heard that although the bill's intentions are laudable, the design could be such that there is no room for trees and room only for ivy-covered fences. Does that mean that despite your willingness to be involved, there might be nothing for you to be involved in, or rather less than you hoped?

Carolyn Clark: We are working with the promoter to discuss the problem areas. I am sure that we will be involved as time goes on. We want to retain as much vegetation as possible, but until we see the finalised habitats and landscape management plan, it is difficult to know what the impact on the corridor will be.

The Convener: I invite Rob Gibson to lead our questioning of SEPA.

Rob Gibson: Mr Campbell, your submission refers to your letter of 12 March 2004. In that submission, you indicate that the air quality study did not consider the impact of congestion at junctions or where baseline air quality is close to the air quality objectives. Could you expand on that?

David Campbell: It is worth making the point that SEPA has no control over local air quality—local authorities control it. Our comments highlight what the operator should be discussing with the local authority. We made them because, although the ES goes into a fair amount of detail in considering the routes and roadways that will be involved in the air quality management area, and the routes that the tram will take, it is light on considering where traffic will be displaced to from routes on which trams run in conjunction with other traffic, which might cause congestion at other junctions. There should be more detailed study of those particular junctions, particularly to ensure that they do not exceed air quality standards.

Helen Eadie: The promoter has suggested that although no modelling tools are capable of predicting the effect of slow and stop-start traffic at junctions, air quality predictions were made at locations that were closest to air quality objectives and where the largest change in air quality was predicted. How would you respond to that comment?

David Campbell: It should be discussed in more detail with the environmental health department of the local authority, which has more detailed knowledge of the modelling systems that have been used within the city to arrive at the set levels. In other words, it should be discussed in more detail with the people who will be able to advise.

Helen Eadie: Could the apparently contradictory results for lines 1 and 2 be due to each scheme giving rise to different changes in traffic flow?

David Campbell: I was intrigued by the difference between the two models, which I thought initially might be due to using different modelling methods. However, the other day I was looking at the Casella Stanger review, which highlighted that for the tramline 1 model the Mott MacDonald results for the Haymarket area indicated that there would be a reduction in traffic. With a reduction in traffic we would expect a reduction in pollution load. However, the results showed an increase in pollution load. Casella Stanger suggested that that should be investigated further. It may be that it results from an error in the modelling, and that in fact there

would be a reduction in pollution load, which would tie in with the model for tramline 2. That may be the answer to the question raised by the Casella Stanger review, but it should be addressed, as should our question.

Helen Eadie: That is helpful. Thank you.

The Convener: I thank all the panel 2 witnesses from Historic Scotland, SNH and SEPA. I invite the members of panel 3 to come forward. They are Karen Raymond, Steve Mitchell and Andy Coates, who are all from Environmental Resources Management Ltd, and Stuart Turnbull from Jacobs Babbie. They all represent the promoter. We will have a two-minute break.

11:31

Meeting suspended.

11:35

On resuming—

The Convener: I restart the meeting after that short comfort break. I welcome again Karen Raymond, Steve Mitchell and Andy Coates from ERM, and Stuart Turnbull from Jacobs Babbie, all representing the promoter. There are no opening statements, so we will move straight to questions.

In addition to the written evidence that you have submitted, can the committee expect to receive in due course further items of information such as a noise policy, a landscape and habitats management plan and further bird surveys? I may be wrong, but I think that we have requested that information. Can you outline what is still work in progress and when it should become available?

Karen Raymond (Environmental Resources Management Ltd): There are additional items to be submitted. We have a draft document on noise policy, the details of which we have discussed with the City of Edinburgh Council. Steve Mitchell may be able to confirm that the document is at final draft stage and that we are waiting for the council to indicate that it is acceptable. I imagine that at that point it can be made available to the committee.

Steve Mitchell (Environmental Resources Management Ltd): I confirm that. The document is quite polished and we are close to having the final wording. We will get the document to the committee shortly.

The Convener: It would be enormously helpful if the committee could have the noise policy and the other pieces of information to which I have referred before we start to produce our draft report.

Karen Raymond: When might that be?

The Convener: We will consider the first draft of the report on 25 January, so it would be unhelpful if we received the information on 24 January.

Karen Raymond: But earlier than that would be helpful.

The Convener: Indeed. When will the landscape and habitats management plan be available?

Karen Raymond: The plan is in preparation. We are working on it stage by stage. We have already examined four exemplar locations in the Roseburn corridor. We are in the process of working up further details on those and hope to make that information available to the committee prior to consideration stage. It is unlikely to be available by 25 January, because badger and tree survey work is currently under way and we are doing more vegetation survey work. That work will take place during January and into February. We have agreed the methodology for the badger survey work with SNH and the local badger group. Our surveyor has been out once and needs to go out again. There is also a two-week period of daily work that must be undertaken until February.

Andy Coates (Environmental Resources Management Ltd): Some of the bait-marking study will take place in February and perhaps into March.

Karen Raymond: We hope to be able to provide information progressively as it becomes available. We have examined four locations along the route and have targeted a couple of others that exemplify slightly different circumstances from those that have already been addressed.

The bird survey work is now almost complete.

Andy Coates: The last bird survey along Starbank will take place at the end of January.

Karen Raymond: Can you advise the committee when we expect the report on the bird survey to be available?

Andy Coates: As Carolyn Clark suggested earlier, the survey has produced a lot of data. It may take a month or two to analyse those and to produce a report.

Karen Raymond: We ought to be able to provide the final report on the survey to the committee and to SNH towards the end of March.

Phil Gallie: Having sat through the previous evidence-taking sessions, you will have noted that a number of objectors believe that, although the mitigations that have been offered—the design manual and the fact that you are producing a noise policy—are all very well, it appears that these are promises rather than total commitments that can be enforced. How would you reassure the objectors from whom we have heard today?

Karen Raymond: I cannot provide any absolute reassurance, because, as a number of people have said, there is a difficulty with the bill process in relation to imposing conditions that one would not impose in normal planning consent. There is no mechanism for doing that. What I can do is express the commitment that our clients in TIE and the council have given us to undertake the measures that we have described in the environmental statement and subsequent documents. All those documents went to both TIE and the council for approval before they were released. Both the environmental statement and subsequent documents express the commitments on the part of the promoter. I am afraid that how they can be enforced subsequently is not a matter for us.

Phil Gallie: Do you think that there could be amendments to the bill that would give validity to the documents to which we have referred? If so, are you equipped to give us a guide to those amendments?

Karen Raymond: I am not sure what mechanism is available; I am not a lawyer, so I cannot really comment on that. However, I know that south of the border, where similar schemes are developed through a Transport and Works Act 1992 order-making procedure, the ministers making such orders have issued directions containing what are, in effect, conditions. However, I am not sure whether there is a mechanism to do anything similar in the bill and I do not know whether it would be possible to write in sufficiently precise sections to cover what one would normally put in planning conditions. I imagine that that is not something that it would be convenient to put in a bill.

Phil Gallie: So, practically speaking, the noise report that you are undertaking is merely about objectives.

Steve Mitchell: I will talk in a little more detail about noise. Light rail schemes are considered at a similar level of detail to that in this procedure. My experience in England on the London docklands light railway and the extensions in the Birmingham scheme is similar to my experience of the tram scheme in relation to the level of work done and the commitments given at, in those cases, the public inquiry stage. This is a familiar situation for me. The operators of both those schemes in England have noise policies and the policy that we have developed—which you will see soon—is consistent with them and follows the same pattern. All the noise policy does is crystallise the commitments that were made in the environmental statement. There is nothing brand new in there; it is a distillation of the commitments that have already been given in a succinct document that makes them more transparent and easier to

enforce, if you like. It is always the case that work has to be done later. The London city airport extension of the docklands light railway is nearing completion now. My company undertook a further study on noise barriers and the detailed design of them about a year ago—way after the project was approved. Those barriers are pretty much the same as those detailed in the environmental statement and have been delivered through the process. I have no reason to believe that that will not be the case here.

Phil Gallie: You talked about other schemes complying with noise policies, but obviously we are talking about an objective. You are saying that other schemes have met the limitations set out in the noise reports that you have produced.

Steve Mitchell: I am not sure that I understand what you mean by limitations. Do you mean that the reports include phrases such as “best practicable means” as limitations?

Phil Gallie: Yes.

Steve Mitchell: Perhaps I can deal with that. Unfortunately, the phrase “best practicable means” is just an essential ingredient. We do not know for sure whether things can be built in given places. I am sure that you understand that with limits of deviation there has to be flexibility in how the project is constructed. Otherwise, it might be impossible to construct it. However, the phrase is a perfectly normal element of the noise policy or of a statement of mitigation intent. Best practicable means, as defined in section 72 of the Control of Pollution Act 1974, has been well tested—it is the test that is always applied. There is nothing different in this case.

11:45

Karen Raymond: If I may, I will add to that. The noise policy can be thought of as more than just an objective. It is a statement of commitment on the part of the promoter to deliver a certain level of noise mitigation along the tramway corridor.

Steve Mitchell: As I said, there is nothing new in the policy. Furthermore, it is consistent with the policies of other developers such as Centro in Birmingham, whose Wednesbury to Brierley Hill extension scheme, which also involves a disused rail corridor, was approved in December. The noise policy for that scheme is similar to that which we are advocating; indeed, it involves the same controls, wording and methodology of enforcement. Although the policy is nothing new and will not surprise anyone, I hope that it will clarify the intention of the promoter so that people—particularly those who do not read all the words or the subtleties of the environmental statement—are clear that the mitigation will happen.

Phil Gallie: I have a final question on the subject. As I have not seen a noise report, I am not sure whether your report shows the maximum noise levels that may be experienced at any point along the route of the tramline.

Steve Mitchell: It does. It uses the same assessment criteria that were used in the environmental statement, which, in numerical terms, have been referred to as the 45dB and 55dB values. They are repeated exactly in the policy statement, as are the options for mitigation.

There is a hierarchy of options and, as there was some misunderstanding earlier this morning about whether we would build noise barriers, this might be the opportunity for me to explain how they will work. Although it is true to say that we might not build noise barriers, the noise standards that we set ourselves have not changed from those that are to be found in the environmental statement. There are reasons for that.

First, we may be able to procure a tram that is quieter than the one that was assumed in the noise modelling work that my team undertook. We based our modelling on the worst-case assumption, which we always do when there is uncertainty. However, there is a very good chance that the tram will be fundamentally quieter.

Secondly, the policy includes a commitment to look carefully at track form, which has not been done on other schemes. We have investigated that option and it will happen. In simple terms, the tram will be designed to fit the tracks. A commitment has been made to investigate whether the track form itself can be used to reduce noise. The Roseburn mitigation report refers to the acoustic plenum concept and to the hurdle over which we have to jump in respect of the use of that concept. Although we have not jumped the hurdle yet, we have had a meeting with Her Majesty's railway inspectorate, which is positive about the acoustic plenum system. If we can use that system, we will be able to reduce the height of the noise barriers from 2m plus and put them much closer to the tracks—effectively, they will be a narrow platform that is no higher than 400mm off the track height. We will be able to tuck them in close to the wheels where they are most effective. We might not need the noise barriers—the 2.5km that are referenced in the ES—because we might be able to provide the same level of mitigation in a much less obtrusive form.

Finally, the policy includes a commitment to install noise insulation at pinch points, if all else fails. I do not expect that to happen, however.

Phil Gallie: Thank you. That was helpful. I want to pick up on one final point. Does your report cover vibration?

Steve Mitchell: Do you mean the noise policy?

Phil Gallie: Yes.

Steve Mitchell: Yes, it does. It refers to the British standard that tells us what levels are problematic and makes a commitment to achieve the BS levels.

Mr Stone: What you have said equates to what we heard from the first panel. Those of us who were councillors appreciate that this committee is a very different beast from a planning committee. We are stuck with the situation, however. When panel members hear my question, they might think that I am mad—essentially, I will be repeating a lot of what Phil Gallie said—but I feel that I have to ask it for the sake of the record. What commitment can the promoter give that it will be bound by the landscape and habitat measures that it has indicated for the route, particularly in respect of the Roseburn corridor?

Karen Raymond: The promoter can give a written commitment. However, I am unable to say what legal force such a commitment would have. I know that we have had instructions to produce the plan and to make it available for your consideration during consideration stage of the bill. From the legal point of view, I am unclear as to whether there is any form of written document that TIE or the City of Edinburgh Council could produce that commits or binds them. I cannot answer that question more specifically. Steve Mitchell might have some additional thoughts.

The Convener: I will try to be helpful. I was going to come in at the end, but I am sure that Jamie Stone will not mind if I interrupt now. Notwithstanding the work of the Procedures Committee on the wider issue of private bills, it is possible for us to consider amendments. I wonder whether the promoter might like to reflect on those points and return to the committee if it feels that that would be appropriate. Your comments have been helpful with regard to some of the issues on which the committee is, through its questions, seeking reassurances.

Karen Raymond: Thank you. We will certainly discuss that matter with our own legal advisers and the promoter's team.

Mr Stone: On that point, having established that the mitigation measures are indicative, we and the objectors might be concerned about what would happen if you ran short of money and had to cut costs. That might put mitigation measures out the window. You might wish to reflect on that.

Steve Mitchell: I can answer that point in relation to the noise issue. If the mitigation that is provided is inadequate for some reason—which I personally cannot envisage—people would be able to say that they were experiencing a noise nuisance at their property and to follow the normal process. The only defence against an allegation of

creating noise nuisance is that of employing the best practicable means. It all ties together. It is in the promoter's interests to include measures at the outset, when the noise mitigation features can be designed, engineered and constructed as part of the whole scheme, which avoids the need to play some sort of catch-up, dealing with complaints and bolting on noise barriers and other bits and bobs left, right and centre. I have had this discussion with TIE, and that is why there has been a clear buy-in to including noise and vibration mitigation measures at the outset.

Rob Gibson: Some objectors have expressed concerns—in submission B16, for example—that indirect environmental impacts might arise from the tram because of the alteration of some bridges, which would allow heavy goods vehicles to use roads that previously would have not been accessible to them. I am not sure how many examples of such bridges there are—perhaps you could tell us. How would you respond to those concerns? Would the promoter consider employing road use restrictions to avoid any such difficulties?

Karen Raymond: My understanding is that those concerns relate to the bridge at Groathill. At one point, there was a suggestion that the level of that bridge could be adjusted, which would allow larger vehicles to pass. I understand that a commitment has been given by the promoter that no adjustment to the vertical height beneath the bridge will be made as a consequence of the tram project. As I understand it, that is the only bridge for which that is a concern.

Rob Gibson: But the issue is about vehicles using the bridge.

Karen Raymond: Given that the space beneath the bridge will not be altered as a consequence of the project, no larger vehicles will be able to use the bridge than is currently the case.

Phil Gallie: How would you respond to the concerns of Historic Scotland and, indeed, the objectors, over the status of the design manual? Should the bill not contain a requirement for design, procurement, construction and maintenance to accord with the design manual, rather than those being a material consideration, objective or aspiration? In asking that, I remind you of the comments that the convener has just made with regard to the possibility of lodging amendments to the bill.

Karen Raymond: I do not feel able to comment on whether it is appropriate to include additional provisions in the bill as such. I do not have a sufficient legal understanding of the possibilities of drafting to speak about that.

I understand the concerns about the status of the design manual and its enforceability.

Comments have already been made this morning about the role of the City of Edinburgh Council in future and with regard to further development of the manual and its application as supplementary planning guidance for the prior approvals process.

The commitment has been made by TIE and the City of Edinburgh Council in the environmental statement and in subsequent documents to use the design manual also as a mechanism to influence the procurement process. The firm intention is that the design manual will be one of the documents according to which contractors are invited to tender for the development of the scheme. It is through that mechanism that that document will have some force in the contractual process and the procurement process. I am afraid that I am unable to comment on whether it would be appropriate to include it directly in the bill.

Phil Gallie: Given what you and your colleagues have said, it seems that the programmes that have been prepared are pretty basic programmes that have been followed for similar developments elsewhere. It seems that nothing will be contained in your reports that would be excessive. On that basis, do you feel that it would be fair for the committee to produce, somewhere down the line, amendments to the bill that would guarantee that your reports and all the work that you have done are taken into account when the project is commenced?

Karen Raymond: Whatever mechanism is found for delivering enforceability of those commitments will be useful and important. It would be perfectly normal, in a conventional planning system, for planning conditions to require delivery of the mitigation commitments that are made. It will be important to find a way of doing that.

Phil Gallie: That is helpful. I am not going to ask the next question that I was going to ask, in case you give a less helpful response. I will quit while I am ahead.

Helen Eadie: The level of detail of the scheme is of concern to Historic Scotland in the context of the scheme's possible effect on listed buildings and the world heritage site. Will you please elaborate on how far the impact can be assessed, having regard to the level of detail that has already been reached?

Karen Raymond: As Steve Mitchell has said, the development consent process to which the environmental impact assessment procedure is attached for schemes of this nature is undertaken at a relatively early stage, when only a certain level of information about the scheme is available. We have undertaken an assessment of the information on the scheme and have reported that in the environmental statement. In our view, that is an adequate assessment of the impacts. By taking

a worst-case approach to the assessment, we have made it quite clear that the scheme is likely to have significant environmental effects on the historic centre of Edinburgh, on the world heritage site, on listed buildings and on other historic features around the city.

I was pleased to note that Ms Linge, from Historic Scotland, accepted that the assessment was adequate at the environmental statement stage and that Historic Scotland would be content for further detail to be produced thereafter. It is looking for some sort of guarantee about when that information will be available, and that is something about which we are in discussion with Historic Scotland at present. The intention is that the detail will come forward through the development of the design manual. That is now in the hands of the City of Edinburgh Council rather than TIE, and I am not able to say what the time frame for its production is. However, I believe that it is perfectly reasonable to expect a degree of development of the design manual to have taken place in parallel with the committee's consideration of the bill, so that the reassurance that the design manual will, ultimately, provide will be there.

Helen Eadie: You heard the evidence that we took this morning from Historic Scotland. Its key concern was that it should not simply be an objector at the end of the process but should be involved and able to influence the decisions that are made throughout the process. How do you envisage that happening?

12:00

Karen Raymond: Through two mechanisms. First, it will happen through Historic Scotland's role during the preparation of the design manual. It is already fairly heavily involved in the drafting work and its representatives have sat on a working group that is considering the work that has been done to date. From discussions with the City of Edinburgh Council, I understand that the intention is that as the manual is further developed, the council will consult Historic Scotland and other parties extensively. Therefore, it will have an opportunity to influence the design manual through that process.

The second mechanism will be through the procurement process and the on-going design. We will be looking for a situation similar to that for the procurement of roads, for example, in a design and build scheme. There are points during the procurement process and the subsequent design process when tenderers and the appointed contractor are required to consult Historic Scotland on aspects of the scheme and to demonstrate that they have undertaken that consultation by providing consultation certificates to their client. I

imagine that a similar process could be proposed as part of the procurement of this scheme.

Mr Stone: My final question turns to the concerns expressed by SNH. I would like to hear your views on SNH's concerns about mitigation proposals and bird monitoring.

Karen Raymond: Does your question relate to the Starbank location or the Roseburn wildlife corridor?

Mr Stone: Either or both; whichever you feel able to talk about.

Karen Raymond: Andy Coates is able to talk about the Starbank site.

Andy Coates: As Karen mentioned, the initial findings in the interim Starbank report suggested that bird usage along that stretch of the coastline was very low. The surveys are continuing, but initial findings suggest that although numbers have increased, as would be expected over the winter period, the interest in the area near to the area that will be affected is relatively low. We might not have to consider some of the issues that we thought might need mitigation, such as roosting areas. Obviously, we will have to have the full data before we can confirm that.

Karen Raymond: The same level of survey work has not been undertaken on the Roseburn corridor. Survey work has been done at Starbank because it is a European protected area that is subject to a requirement for an additional assessment over and above the EIA under the habitats regulations.

The same level of survey was not considered to be necessary for the Roseburn railway corridor. It is an urban wildlife corridor; it has acknowledged use by a wide variety of bird species, some of which are relatively uncommon and some of which are protected. The measures that are available under existing legislation will apply irrespective of any other powers, duties and rights that the bill provides and all statutory requirements in relation to those species will have to be met. For example, there is legislation protecting nesting birds during the nesting season and protecting the habitats used by certain specific species that are subject to a higher level of protection.

We are confident that we have made an adequate assessment of the impact on birds in the Roseburn corridor. We have acknowledged that there will be an impact through loss of habitat and we have described the measures that will be taken to mitigate that impact through replacement of the trees that will be lost and enhancement of the vegetation that will be retained.

This is an opportunity to talk briefly about the level of retention of vegetation in the Roseburn corridor. We have heard comments about how

there could be a total loss of vegetation along the corridor. From the work that we have been doing with the engineering team to date, I am confident that that will not be necessary. It is the intention that a corridor of vegetation will be retained throughout the Roseburn corridor so that its corridor function will remain. In substantial areas of the corridor, whether on wide slopes or the cuttings and embankments, there will be the opportunity to retain a significant proportion of the existing vegetation—perhaps a half, two thirds or three quarters in some locations. The construction works will be limited to a narrow corridor, for example in the base of the cuttings.

The retention of that habitat and the opportunities that are available to improve it through landscaping will go a long way towards mitigating any loss of habitat or vegetation that is caused. The corridor operates as part of a much wider corridor that is made up of the gardens on either side and other areas of open space. We do not expect the overall function of the wildlife corridor to be adversely affected in the long term as a consequence of the proposals.

Andy Coates: Further, I point out that we will need licences if we do any work that causes disturbance to badgers and there will be conditions attached to those licences. That is another mechanism for retaining the habitat along the corridor.

Karen Raymond: Those conditions would be set by Scottish Natural Heritage in consultation with the Scottish Executive. If, for example, they require certain areas of habitat to be maintained or protective measures to be put in place, those would become part of the conditions on those licences.

Mr Stone: Can I ask a stupid question? I see what you are saying about the possibility that the badgers might help the birds, so to speak, but I do not know how far badgers range from their setts. Will they help the birds in the whole of the corridor?

Andy Coates: The surveys have shown that the badgers range along the length of the corridor.

Karen Raymond: And a lot further afield. They link up to setts on Corstorphine hill and so on.

Andy Coates: One of the reasons for doing the bait-marking surveys was to discover how the various clans—if we can call them that—fit together and move around. There is a lot of evidence that they move along the upper banks of the corridor over much of its length.

Karen Raymond: They also travel along some of the more constrained areas. You can see badger footprints in the mud on either side of the roads that go under the bridges at Queensferry

and Ravelston. The fact that the corridor is narrow does not seem to constrain them.

Mr Stone: I do not think that I have ever talked about badgers so much in my life.

The Convener: I am sure that the *Official Report* will reflect that fact.

Rob Gibson: You learn something new every day.

Would the witnesses care to comment on any of the points raised by SEPA, particularly in relation to air quality and the modelling issue?

Karen Raymond: Mr Campbell made two points that I would like to comment on.

On the difference between the results at Haymarket on the impact of line 1 and line 2, it is the case that different models were used and that different models produce different findings. However, the fundamental reason for the difference between the findings for the two lines is that they had different effects on the traffic at Haymarket. The reason why we predict an increase in the concentration of air pollutants at Haymarket as a result of line 1, even though it will create a decrease in traffic, is to do with the complexities of the relationship between traffic and air quality. Although there is a decrease in traffic, the traffic slows down and the percentage of the total traffic that is made up of heavy goods vehicles increases slightly. Those factors—principally the slowing down of the traffic—cause the decrease in air quality.

The point about the impact of displacement and congestion being created elsewhere amply demonstrates that the modelling that we undertook took that issue into account. We did not specifically examine junctions in the air quality modelling but we examined road links and the speed of traffic through road links. The detailed modelling that we undertook on certain streets—those on which we predicted that we would get closest to achieving the air quality objectives or on which there would be the largest changes in air quality—took into account the impact of congestion and we were able to demonstrate that there would be no significant impact on air quality in those locations as a consequence of displacement caused by the tram.

The Convener: As members have no further questions, I thank our witnesses for coming along this morning, which has now turned into the afternoon.

Item in Private**Members** *indicated agreement.**Meeting closed at 12:09.*

12:09

The Convener: Under item 2, I invite members to agree to consider our draft preliminary stage 1 report in private at future meetings, as is the custom when discussing draft reports prior to publication. Is that agreed?

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