

# **EDINBURGH TRAM (LINE ONE) BILL COMMITTEE**

Monday 27 June 2005

Session 2

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## **EDINBURGH TRAM (LINE ONE) BILL COMMITTEE** **10<sup>th</sup> 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 ALSO ATTENDED:**

Ian Hutchison

Malcolm Thomson QC (Counsel for the Promoter)

### **THE FOLLOWING GAVE EVIDENCE:**

Patricia Alderson (Edinburgh and Lothian Badger Group)

Rahul Bijlani (Bircham Dyson Bell)

Andy Coates (Environmental Resources Management)

Scott McIntosh (Mott MacDonald)

Steve Mitchell (Environmental Resources Management)

Andrew Oldfield (Mott MacDonald)

Judith Pearson

Karen Raymond (Environmental Resources Management)

Gary Turner (Mott MacDonald)

### **CLERK TO THE COMMITTEE**

Jane Sutherland

### **LOCATION**

Committee Room 1



## Scottish Parliament

### Edinburgh Tram (Line One) Bill Committee

*Monday 27 June 2005*

[THE CONVENER *opened the meeting at 10:08*]

### Edinburgh Tram (Line One) Bill: Consideration Stage

**The Convener (Jackie Baillie):** Good morning everybody and welcome to the 10<sup>th</sup> meeting of the Edinburgh Tram (Line One) Bill Committee. I apologise for the slight delay in getting started, but I am sure that you will appreciate why when I tell you that we probably have a shortened programme today.

The committee will today consider the detail of the bill. Our job is to consider the arguments of the promoter and the objectors, and ultimately to decide between any competing claims. Once again, I record the committee's thanks to the objectors, the promoter and all the witnesses for their written evidence, which will be invaluable as we hear oral evidence. At today's meeting, the committee will hear evidence on three groups of objections, and I hope that we will complete the evidence by lunch time. All the groups attended a timetabling meeting in May, at which the procedure for oral evidence taking was explained, and the order of evidence taking was agreed.

For each objection, the committee will hear first from all the witnesses for the promoter, then from all the witnesses for the objector. The promoter and lead objectors have brought representatives, who will ask questions of their respective witnesses and cross-examine the other side. Following the completion of each group's oral evidence taking, the committee will give the promoter's representative a maximum of five minutes to make any closing comments he may have; the committee will then give the objector's representative five minutes to make any closing remarks he or she may have. Those closing statements should not introduce any new issues or evidence.

We have before us the written evidence, which includes witness statements and rebuttals, as well as a copy of the background documents that have been referred to in those documents. The committee will not tolerate the provision of written material at the committee meeting as that is discourteous both to the opposing side and to the committee. In addition, the committee may rule out discussions on documents that have been

published immediately prior to the committee meeting and which neither the committee nor the opposing side have had time to consider. As such, I remind all witnesses and representatives that there is no need to repeat points that have been made previously in written evidence unless that is required for directly answering questions that are asked. I expect the oral evidence today to focus on the areas of disagreement.

We have all the written evidence and it will all be taken into consideration when we reach a decision. I am sure that, like me, the committee would welcome clarity and brevity in both questions and answers. The committee will of course be fair to both promoter and objectors and expect all parties to act respectfully to one another and indeed to the committee.

The committee is very aware that negotiations will continue to progress after the submission dates for witness statements and rebuttals. I strongly recommend that, should either objectors or the promoter wish to update the committee during oral evidence taking on the current state of negotiations, that information is provided in response to questions as part of the evidence-in-chief of the appropriate witness. I understand that agreement has been reached between the promoter and Ocean Terminal Ltd, Forth Ports plc and the Royal Yacht Britannia Trust. We have written confirmation that those objections have been withdrawn.

I ask everyone to ensure that their mobile phones and pagers are switched off. That said, we move to consideration of evidence in respect of group 12, which is from the Edinburgh and Lothians badger group. There are three witnesses for the promoter: Andy Coates, Karen Raymond and Andrew Oldfield. As members will be aware, group 12 is the first group that has given evidence on the issue of route selection along the Roseburn corridor. A number of groups have raised that issue with the committee, and we have agreed to take evidence on that from all the relevant groups in September, October and November. Today's evidence from group 12 will address the other issues that are raised in their objection and questioning should be limited to those topics. I invite Andy Coates, Karen Raymond and Andrew Oldfield to take the oath or make an affirmation.

ANDY COATES and KAREN RAYMOND *made a solemn affirmation.*

ANDREW OLDFIELD *took the oath.*

**The Convener:** The first witness is Karen Raymond. In her witness statement, Ms Raymond has addressed two issues, only one of which will be examined today. Today, Ms Raymond will address the impact on green space and amenity value of the Roseburn corridor. The remaining

issues in her statement will be addressed by the committee in September and October when we take evidence on the route selection of the Roseburn corridor. Ms Raymond will be questioned first by the representative of the promoter, Malcolm Thomson QC—welcome again, Mr Thomson—and then cross-examined by Mr Hutchison, who represents the Edinburgh and Lothians badger group.

**Malcolm Thomson QC (Counsel for the Promoter):** Will you update the committee on any recent discussions that have taken place with the objectors?

10:15

**Karen Raymond (Environmental Resources Management):** We have been in almost continuous dialogue with the Edinburgh and Lothians badger group over the past few months. As part of that, we have provided the group with the results of a number of surveys that were undertaken earlier this year.

One of the issues that was raised by the group in its evidence was its concern about the location of a proposed artificial sett that was to be provided to replace a sett that would be affected by the scheme. The group suggested that the location that we had proposed was not the best location and put forward an alternative. Since then, we have investigated that alternative location and are happy that it is better than the original proposal. The intention is now to proceed with that location and we trust that that meets the group's objections in that respect.

The group sought a commitment from Transport Initiatives Edinburgh with regard to the implementation of mitigation measures for badgers in the corridor. On 22 May, TIE wrote to the group on behalf of the promoter to advise the group of its undertaking to prepare a badger mitigation plan and to implement the measures that are set out in the plan. At that time, we were also able to advise the group of the situation with regard to the application of the Protection of Badgers Act 1992, which we had previously understood would be disapplied. We understand that that is no longer the case and that there will be a requirement for the promoter to apply for and obtain a licence under that act from Scottish Natural Heritage, to which conditions will be attached. Those conditions will enable the badger mitigation plan to become an enforceable document. We have spoken to the group and understand that it is happy with that mechanism being in place. The group continues to maintain its objection in terms of the use of the corridor as such, but, if the corridor is used for the tram, I believe that it is content that the licensing powers will provide an

adequate mechanism for the protection of the interests of the badgers.

**Malcolm Thomson:** Is it your understanding that the promoter is quite content that the provisions in the 1992 act should continue to apply?

**Karen Raymond:** That is my understanding.

**Ian Hutchison:** Could you explain the purpose and importance of a wildlife corridor?

**Karen Raymond:** The designation of the urban wildlife site is undertaken by the City of Edinburgh Council. The corridor is seen as part of a network of green links around the city, which will provide paths to enable wildlife to move through the city.

**Ian Hutchison:** How will the development of the tramline affect the Roseburn corridor in terms of its role as a wildlife corridor?

**Karen Raymond:** Our latest best estimate is that it will reduce the amount of green space and unmade ground in the corridor by about 21 per cent. However, the corridor will retain its existence as a continuous green corridor throughout its full length.

**Ian Hutchison:** Your witness statement refers a number of times to the varied use that the current corridor is put to by a variety of people and states that it is a well-used amenity. Is it your opinion that the corridor will maintain its green-space appeal when it is narrowed to accommodate the trams?

**Karen Raymond:** It will continue to have that function. There is no question but that the corridor will be different and that its nature will be altered by the presence of trams within it. However, the footpath and cycle path will be maintained throughout the length of the corridor to the level that they are today. As we have stated, there will continue to be a green corridor along the length of the Roseburn corridor. Given the landscaping proposals that are outlined in the landscape and management plan, we are confident that the corridor will continue to be attractive, even though its nature will be different from its nature today.

**Ian Hutchison:** We understand that the corridor was always retained for use by public transport. However, do you accept that a number of strategic conservation plans have evolved over the years, in particular policy 1 of the Edinburgh urban nature conservation strategy, which protects urban wildlife sites from potentially damaging development?

**Karen Raymond:** That is the case, but the various policies that exist—for example, in the Edinburgh biodiversity action plan and the earlier north Edinburgh railways network plans—acknowledge that, although the corridor has become a footpath, a cycle path and a green

corridor, it has always been reserved for public transport purposes.

**Ian Hutchison:** Do you agree that the Roseburn corridor is just such an urban wildlife site and therefore needs protection from potentially damaging development?

**Karen Raymond:** Yes. The function of the urban wildlife corridor as a corridor and as part of the network of green links in the city is well worth protecting.

**Ian Hutchison:** I have no further questions.

**The Convener:** Do committee members have any questions?

**Members:** No.

**The Convener:** Mr Thomson, do you have any follow-up questions for Ms Raymond?

**Malcolm Thomson:** No, convener.

**The Convener:** I thank Ms Raymond for giving evidence.

The next witness is Andy Coates, who will address the impacts on the Roseburn wildlife corridor and badgers. I ask Mr Thomson to begin his examination.

**Malcolm Thomson:** As Ms Raymond has dealt with all the matters that I wished to raise with Mr Coates, I invite the committee to ask Mr Coates any questions that it might have or to make him available to Mr Hutchison for examination.

**Ian Hutchison:** The Edinburgh and Lothians badger group contends that, in other areas of Edinburgh where unused land has been developed, there have been significant recorded impacts on the local badger population including loss of social groups through disturbance; increased mortality through higher levels of road traffic accidents; or both. Do you contend that, for some reason, that will not be the case in the Roseburn corridor? If so, will you explain why?

**Andy Coates (Environmental Resources Management):** One of the aims of our mitigation plan is to maintain access for badgers along the Roseburn corridor, which includes trying to retain their movement within the corridor. The aim is not to push them out into wider areas where, for example, they would have to use roads because such an approach would increase the risk of road traffic accidents.

As far as the available habitat is concerned, there is evidence that the badgers already use quite a large area outside the corridor to find food or to go foraging. We do not see any problem with maintaining that situation.

**Ian Hutchison:** In your principal witness statement and your rebuttal to Patricia Alderson,

you indicate that there is little evidence of badgers foraging along the corridor. Through your various surveys and studies, have you been able to ascertain exactly where they are foraging?

**Andy Coates:** The corridor is surrounded by residential property and, as you will appreciate, it is often difficult to enter and look around people's gardens. Instead, we have used information from studies on urban badger populations elsewhere. For example, a study that was done in Bristol has shown that badgers use areas of up to 50 hectares.

We have looked at the amount of available habitat in the corridor and you are correct to say that, even in surveys that concentrated on peak periods of badger activity, we did not find many signs of such activity there. As a result, it is clear that a large proportion of the badgers' foraging activity lies outwith the corridor, although that is not to say that they do not forage within it as well.

**Ian Hutchison:** Do you agree that, being omnivorous, badgers will make use of different parts of their territory at different times of the year, depending, for example, on the availability of resources such as fruit in the autumn or other seasonally available fruits?

**Andy Coates:** Yes.

**Ian Hutchison:** Do you therefore agree that even a small part of the badger territory can have a significant importance to the social group at particular times of the year?

**Andy Coates:** The way in which badgers use their territory varies throughout the year. Their diet in an urban situation can also vary considerably; for example, they are known to scavenge and take fruit in the autumn. As a result, in the mitigation plan, we want to enhance the amount of fruit-bearing trees in the corridor.

**Ian Hutchison:** In your rebuttal statement to Patricia Alderson, you say:

"experience from elsewhere suggests that the main foraging habitat is likely to be outwith the confines of the Roseburn Corridor".

That implies that in this instance you do not know what the territory's resources consist of. How, then, are you able to say what effect the loss of foraging will have on the social group?

**Andy Coates:** A large proportion of the foraging territory appears to be outwith the corridor. As we are affecting areas within the confines of the corridor, we will not be removing large proportions of the badgers' foraging territory, which they are obviously using at the moment.

**Ian Hutchison:** Another significant factor in discussing the impact of lost foraging is the number of animals in each social group. Can you

tell us how many animals are involved in the Roseburn corridor?

**Andy Coates:** As a rough estimate, I believe that there may be about 10 individuals in some of the setts, but I do not have exact figures.

**Ian Hutchison:** In paragraphs 12 to 16 of your rebuttal statement to Patricia Alderson, you discuss the percentage of lost foraging in each of the social group territories and agree that you have been unable to identify the full extent of foraging resources. How then are you able to work out the percentage of lost foraging within the corridor as a percentage of the total available?

**Andy Coates:** We have taken a worst case and assumed that all the badgers forage in all the areas within the corridor outwith the grey tarmac strip. We assumed that all of that was lost and calculated how much it represented out of a typical badger territory of 50 hectares, which previous studies had identified as being reasonably typical. That is the sort of assumption on which we have based our figures, so they are likely to be an overestimate, because we will certainly not lose all the green space within the corridor and therefore all the foraging habitat.

**Ian Hutchison:** Badgers are known to use gardens as a source of foraging. Given that the badgers along the Roseburn corridor are already using gardens, are there sufficient resources in the gardens to replace any foraging that they might lose as a result of the development? Will additional gardens that are not already in use be exploited?

**Andy Coates:** Quite possibly. Sufficient habitat is available along the Roseburn corridor. As you mentioned, the population size in the corridor has increased over the past 10 or 20 years, and still appears to be increasing, which suggests that sufficient habitat is available in the area.

**Ian Hutchison:** From your experience, how will householders who have not previously had badgers visiting their garden react should they begin to do so?

**Andy Coates:** It depends what the badgers do when they are there.

**Ian Hutchison:** Badgers' increased use of gardens for foraging might lead to bad press when they start digging up lawns and so on.

**Andy Coates:** That is possible—it depends on the personal opinions of the people involved. Some people like having badgers in their gardens and would encourage it, whereas other people do not like it. It depends on how they see it.

**Ian Hutchison:** Indeed. So if the badgers start doing lots of damage, they are likely to get closed out.

**Andy Coates:** Some people might not like that.

**Ian Hutchison:** In your rebuttal statement, you discuss the reasons why the bait-marking study that was done in March 2005 could not have been the reason for disturbing the badgers and causing them to dig additional setts. As part of such studies, is it not normal to perform a pre-baiting survey immediately prior to commencing the bait study, to establish the presence of latrines and so on, and to find any additional setts that have been created since the original survey was carried out?

**Andy Coates:** We were keen to get on with the bait-marking study, so in effect we combined the two in looking for additional setts. We do not have further information on the period between when the surveys were undertaken in December/January and March. It is highly possible that the badgers could have created new setts in that time.

**Ian Hutchison:** Would you not have picked up the new setts when you did your pre-baiting survey?

**Andy Coates:** That is possible.

**Ian Hutchison:** Would the setts not have been found during the pre-baiting survey, rather than noted at a later date?

**Andy Coates:** Again, that is possible.

**Ian Hutchison:** But it was not the case.

**Andy Coates:** The survey to examine the setts was done when the latrines were being checked.

**Ian Hutchison:** You are aware that the Edinburgh and Lothians badger group has been monitoring the site for a number of years. Do you accept that in previous years, when the badgers remained undisturbed, the digging of new setts did not occur at the level recorded this year?

**Andy Coates:** Your evidence suggests that the number of setts has increased considerably. I do not have a figure in front of me of what the increase has been in any one year. There might be several influences that have caused badgers to move out and dig new setts; it is difficult to be precise about cause and effect.

10:30

**Ian Hutchison:** Yes, but the Edinburgh and Lothians badger group's monitoring suggests an exceptionally high level of digging this year compared with previous years.

**Andy Coates:** Possibly. That might also represent the number of badgers that are now present along the corridor.

**Ian Hutchison:** Paragraph 13 of your rebuttal statement refers to a landscape and habitat



management plan, which I believe is well advanced. We acknowledge your commitment to the badger mitigation plan, as explained by Karen Raymond, but why has the plan not reached even the draft stage at this late point in the parliamentary process?

**Andy Coates:** That is on-going. We have had several issues to address and we have had various meetings with you and with SNH to examine ways of implementing mitigation in various areas. Some of those issues will be more important at that stage, but you may rest assured that TIE, on behalf of the promoter, is committed to producing that plan.

**Ian Hutchison:** Yes; we have your commitment to that in your letter.

The landscape and habitat management plan—as you are aware, the plan has only recently been circulated—has raised concerns about the Craighleith platform, opposite the Holiday Inn. The current platform is less than a metre high and it is to be removed. The bank will be cut back so much that there will be walls between 1.4m and 1.6m high lining the cutting. How much more will it have to be cut back to secure the soil from slippage and from the collapse of the badger sett above it?

**Andy Coates:** I do not have that figure in front of me. I might have to consult one of my colleagues to get an answer for you.

**Ian Hutchison:** At Ravelston Dykes, the trees opposite the badger sett will be removed, a concrete ramp will be built and the level of the track will be raised. How will the badgers in the sett be affected during construction? How high will the track bed be and how many tonnes of infill will be required to achieve that?

**Andy Coates:** Again, I do not have such technical detail to hand.

**Ian Hutchison:** Will it be possible to mitigate for the sudden open aspect on the sett at Ravelston Dykes as well as the additional noise, presence of people and introduction of light after dark?

**Andy Coates:** A lot of evidence from studies elsewhere shows that badgers have shown considerable tolerance to construction works. There is evidence of badgers maintaining activity in a sett within 20m of on-going work during construction and operation. Even a major project such as the channel tunnel rail link has the same number of social groups now as it had before, despite all the construction work and everything that has gone on there since then. I feel confident that the combination of the badger mitigation plan and the badgers' ability to tolerate that level of intrusion will secure their future.

**Ian Hutchison:** Thank you for your time.

**The Convener:** Mr Thomson, do you have any follow-up questions for Mr Coates?

**Malcolm Thomson:** No.

**The Convener:** Mr Coates, before we let you go, could you—or whoever—respond in writing to Mr Hutchison's question about the dimensions of ground that will be required to create the cuttings that were referred to?

**Andy Coates:** Yes.

**The Convener:** I forgot to ask members of the committee whether they had any questions.

**Phil Gallie (South of Scotland) (Con):** I have a quick question. Did you say that the badgers would be quite happy within 20m of the construction works?

**Andy Coates:** Yes.

**Phil Gallie:** Within what range would they be unhappy?

**Andy Coates:** I am not sure that we can put an exact figure on that.

**Phil Gallie:** Would it be 10m?

**Andy Coates:** Normally, disturbance licensing would be given for hand digging at 10m; for lighter machinery at 20m; and for heavier machinery at 30m. It is evident that the badgers are quite tolerant. In several cases on the digging for the channel tunnel rail link, badgers were recorded in the embankments following the work that had been done. They had dug into the embankments and were living quite happily along the track. That suggests that the range could be much less.

**The Convener:** There are no further questions. Thank you very much, Mr Coates.

The final witness is Andrew Oldfield, who will address the issue of having a double track instead of a single track. Unfortunately, Mr Oldfield's witness statement was submitted after the deadline; however, the objector has agreed that it should be considered today. As a result, the objector has been able to indicate only recently the areas that it wishes to rebut. That rebuttal statement has been sent out to members, so we should all have a copy.

**Malcolm Thomson:** Mr Oldfield, do you have the rebuttal statement in front of you?

**Andrew Oldfield (Mott MacDonald):** Yes.

**Malcolm Thomson:** I ask you first to consider the rebuttal:

"This solution is successful elsewhere in Britain."

That is a reference to the proposal for single-track rather than twin-track running and raises two questions. The first relates to single and double-track running generally and the second concerns

whether that has been a response to a badger or wildlife issue. Are you aware of examples in Britain in which single track rather than twin track has been adopted for wildlife protection purposes?

**Andrew Oldfield:** No.

**Malcolm Thomson:** Are you aware of any examples in which single track rather than twin track has been adopted?

**Andrew Oldfield:** Yes.

**Malcolm Thomson:** What were the reasons for adopting single track in those examples?

**Andrew Oldfield:** In most cases, it was done purely because of spatial constraints—the availability of land to accommodate twin track as well as single track.

**Malcolm Thomson:** What was the reason in Croydon?

**Andrew Oldfield:** In Croydon, only a small, limited amount of space was available to accommodate a light rail or tram alignment adjacent to a heavy railway alignment.

**Malcolm Thomson:** Do you accept the next point in the rebuttal statement, which states:

“Capital costs would lower and there are technological solutions already available for ensuring safe running”?

Would the capital costs be lower with single-track running rather than twin-track running?

**Andrew Oldfield:** In this application, that is unlikely.

**Malcolm Thomson:** The saving on rails is fairly obvious. What is the countervailing increase in cost?

**Andrew Oldfield:** A number of different cost issues are associated with capital cost and operating cost. It is likely that, because of the increased run time, the operator would wish to deploy an additional tram, which would give rise to a capital cost and an operating cost. Additional turnouts and special types of track would be required to provide the passing loops. There would be more complex signalling and control of the trams in a single-track operation, and the need for additional tram crew would impose an additional operating cost. There would also be more stopping and starting of the vehicle generally, which would give rise to additional power demand and power consumption costs.

**Malcolm Thomson:** Can you explain the technical term “turnout”, please?

**Andrew Oldfield:** A turnout is the section of curved alignment that connects the straight to the passing loop.

**Malcolm Thomson:** The next rebuttal point is:

“Occasional delays of a few minutes are unlikely to have a serious adverse effect on tram operation.”

Do you agree with that proposition?

**Andrew Oldfield:** I do not agree with it. It is imperative that we optimise or reduce the run time as much as we can. As I have said, run time has a potential impact on operating cost as well as on capital cost. It also has a significant impact on the attractiveness of the scheme. There are four major criteria that have an impact on the attractiveness of the scheme, two of which are the ride quality and where the tram goes. How quickly the tram gets there is very important to people, and there would be a significant risk of unreliable operation because of the probability that trams would meet one another at the wrong time, especially if a tram was delayed on on-street parts of the route and missed its window as it arrived at the Roseburn corridor, as a result of which it would then suffer further delay. I have spoken to the proposed operator of the trams scheme—Transdev Edinburgh Tram Ltd—and it is extremely concerned about that aspect of run time and reliability.

The other aspect that is linked to run time is tram frequency. If a tram were delayed, the time space between trams would extend. People want to be able to arrive at a tram stop and have a tram turn up within a few minutes. If that does not happen, the scheme becomes less attractive to them. Tram frequency is important; the operator would consider adding another tram to ensure that he keeps his tram frequency up.

**Malcolm Thomson:** Could a delay of a couple of minutes caused by the single-running stretch have a knock-on effect on other trams on the loop?

**Andrew Oldfield:** Certainly. My evidence indicates that if there were a delay of two and a half minutes at Crewe Toll as a tram approaches the Roseburn corridor from the south, the knock-on effect could be up to seven and a half minutes on a southbound tram and two and a half minutes on a northbound tram.

**Malcolm Thomson:** Is the significance of having a single-track section rather than a twin-track section related in any way to the amount of on-road running for the tram?

**Andrew Oldfield:** Yes.

**Malcolm Thomson:** Could you explain that?

**Andrew Oldfield:** The on-road running element has a degree of variability in terms of journey times. A tram could arrive slightly outside its normal timetabled window for running on to the single-track section in the Roseburn corridor.

Missing its window could mean that either a northbound or a southbound tram would have to be delayed in order to accommodate that.

**Malcolm Thomson:** Are there other examples in the United Kingdom that you have considered where a single track has been used instead of a twin track and where on-street running has been an issue?

**Andrew Oldfield:** Not really.

**Malcolm Thomson:** Are you aware of examples where twin-track running has been used elsewhere in the UK on former transport corridors—former heavy rail corridors?

**Andrew Oldfield:** Yes. There are at least six cities in the UK and Ireland where former railway corridors have been used for twin-track operation.

**Malcolm Thomson:** Thank you.

**Ian Hutchison:** Mr Oldfield, in your written statement you say that the Roseburn corridor could accommodate single track with limited impact on existing earthworks. If option 2 were adopted, with the three passing loops at Craighleith, north Ravelston Dykes and north Telford Road, would the embankments stay as they are at present and would major bridge works be avoided?

**Andrew Oldfield:** There would be an impact on the amount of excavation and removal of habitat, but not to the same extent. There is the potential to avoid bridge works at the Coltbridge viaduct.

**Ian Hutchison:** Would that avoid the massive amounts of work that would be required for double-track running at Ravelston Dykes and negate the need for high retaining walls, except at the loops on the Roseburn corridor?

**Andrew Oldfield:** I believe that it is important that a tram stop is located at Ravelston. As a result, we would want to incorporate the passing loops at that location as well, which would mean that there would be twin track with the stop. The impact would be fairly similar.

**Ian Hutchison:** The majority of people who responded to the question about the route alternatives preferred the alternative route along Telford Road, passing the Western general hospital. That would approximately halve the length of single-track running. Would it halve the problems and costs of single-track running through the Roseburn corridor?

**The Convener:** Having taken advice on that question, I think that it is more properly for our discussions in September and October rather than for just now.

**Ian Hutchison:** Thank you, convener.

I have a couple of other questions for Mr Oldfield. In the conclusion to your written statement, you state:

“the development of the Landscape and Habitat Management Plan sets out good mitigation measure that protects the welfare of the badgers as well as minimising the impacts on the corridor as a whole.”

Will you clarify what you mean by that?

10:45

**Andrew Oldfield:** I have not been preparing the environmental mitigation factors but I am aware that they are positive. We have mentioned the system in Croydon, where there is a single-track section. The New Addington branch of that system was formerly a railway corridor but it is now used for twin-track tram operation. It was heavily badgered—if that is the right word—before that. The mitigation measures there were accepted by English Nature, the Department for Environment, Food and Rural Affairs and the objectors, and they seem to be working well.

**Ian Hutchison:** At present there is—as you are aware—no draft badger mitigation plan. I ask you to clarify the comment in your written statement that

“mitigation has been developed for the badgers using a double track layout”.

**Andrew Oldfield:** That is the basis on which the landscape and habitat management plan and badger mitigation measures have been developed.

**Ian Hutchison:** You refer to the development of badger mitigation measures. Are they in place for the double track?

**Andrew Oldfield:** I do not believe so, but they are in preparation.

**Ian Hutchison:** Thank you.

**Phil Gallie:** Mr Oldfield, you mentioned the single tracking in Croydon. How much additional capital expenditure was incurred due to the scheme being forced into single tracking?

**Andrew Oldfield:** I am afraid that I do not have that information to hand.

**Phil Gallie:** Would it be worth while to follow that up, given the excessive capital costs that you suggest would go along with single tracking?

**Andrew Oldfield:** I do not believe that there would be a significant additional cost associated with single tracking. The costs are comparable. If we can source that information from Croydon, that would be useful.

**Phil Gallie:** I think you suggested that there would be additional capital costs with single tracking, such as the provision of another tram.

**Andrew Oldfield:** Single tracking involves stripping out one of the two tracks, so one would naturally assume that the costs would be reduced. However, when we add back in all the things that I mentioned, we reach the conclusion that the capital costs will be similar.

**Phil Gallie:** Yes, but you also suggested that you are not aware of any additional capital costs in Croydon. If no additional costs were incurred, perhaps savings were made on the construction costs. On that basis, perhaps single tracking could have a cost advantage.

**Andrew Oldfield:** I believe that, on balance, the costs are likely to be similar.

**Phil Gallie:** You say that you believe that the costs are likely to be similar. Obviously, this is a major issue for the objectors. Can you respond to the committee at a later date and be more positive one way or the other?

**Andrew Oldfield:** Yes.

**Phil Gallie:** Thank you.

Although we are talking about badgers today, there are many other issues around the Roseburn corridor that could give the promoter some difficulty. Do you think that it would be appropriate for the promoter to take the principles of single tracking on board as an option, if not as an approach that should definitely be accepted?

**Andrew Oldfield:** It can be examined as an option. Yes.

**Phil Gallie:** I am happy with its being examined as an option.

**The Convener:** I have a couple of questions for Mr Oldfield. Would all your previous comments still apply if the single tracking was not for the entire length of the Roseburn corridor but only for key parts of it?

**Andrew Oldfield:** They would all still apply, but perhaps to a lesser extent.

**The Convener:** That is helpful.

Secondly, are you aware of examples of tram systems outwith the UK in which single tracking has been used to lessen the impact on wildlife?

**Andrew Oldfield:** No.

**Phil Gallie:** To my mind, single tracking need not necessarily expand along huge lengths of the route, but it might be an option at key spots. What would the frequency of trams be, under normal circumstances and as planned by the operator, both northwards and southwards?

**Andrew Oldfield:** The frequency for line 1 is seven and a half minutes.

**Phil Gallie:** In each direction?

**Andrew Oldfield:** Yes.

**Phil Gallie:** In the light of your earlier comments about timings, perhaps that is another issue that could be re-examined, given that the frequency is seven and a half minutes either way. Perhaps single tracking, particularly in tight spots, would not be as much of a restriction as you have suggested.

**Andrew Oldfield:** I am not sure that I understand your point.

**Phil Gallie:** I am saying that, as there are seven minutes between trams going north and south—that could come down to three and a half minutes with trams passing at any one point—perhaps the time restrictions that are liable to arise with single tracking might not be as great as you have suggested.

**Andrew Oldfield:** One of the points that you must remember is that the section of potential single tracking that we are discussing is well over 2km long. There could be more than one tram on that section of single track at any time in each direction.

**Phil Gallie:** That is what I was trying to get at. Particularly in relation to badgers—it is the badgers that we are considering today—would it be necessary for the single tracking to be 2km long? Could not there be short sections where the single tracking would run back into double tracking, particularly in the tight areas where, from what we have seen, the badgers would be forced into close proximity to the tramlines?

**Andrew Oldfield:** I see what you mean. That issue could be examined, but I refer back to my earlier comment that at least two stops on the Roseburn corridor and those at Queensferry Road and at Ravelston Dykes are at locations that are of concern to the Edinburgh and Lothian badger group, as there are major setts there. There is only one other location—I think that it is an outlying sett, although I stand to be corrected—that would benefit from that approach.

**Phil Gallie:** At this point, I will leave it to the badger group to pursue that matter with you outside the committee.

**The Convener:** As there are no further questions from the committee, does Mr Thomson have any follow-up questions for Mr Oldfield?

**Malcolm Thomson:** Yes.

Mr Oldfield, you have explained that there would be an offsetting process if single track instead of twin track were used, in that less money would be spent on the rails but additional costs would arise, which you have set out in some detail. If there were only a short stretch of single track, instead of

a longer stretch, what effect would that have on your cost equation?

**Andrew Oldfield:** It depends a little on the circumstances of that short section of single track, but the effect may well be disproportionately significant, once single track has been established. It is very difficult to answer that question definitively.

**Malcolm Thomson:** Is the theory that the additional costs would stay at about the same level, but that the savings in saved track would be proportionately less?

**Andrew Oldfield:** Probably.

**Malcolm Thomson:** If there were two or three sections of single track, instead of one long one, what effect would that have on the disadvantages that you outlined?

**Andrew Oldfield:** It would probably increase them.

**Malcolm Thomson:** In relation both to costs and timings?

**Andrew Oldfield:** Yes.

**Malcolm Thomson:** Thank you very much.

**The Convener:** There being no further questions to Mr Oldfield, I thank him for giving evidence.

We move to evidence from the objector's witness. Before I commence evidence taking, I welcome Patricia Alderson to the committee.

*PATRICIA ALDERSON made a solemn affirmation.*

**The Convener:** Ms Alderson will address the issue of adverse impact on badgers.

**Ian Hutchison:** Ms Alderson, you have been monitoring and studying badgers in the Edinburgh area for some time now. During that time, have you noticed anything significant that you feel can be attributed to the development of formerly unused land or to increases in traffic at night?

**Patricia Alderson (Edinburgh and Lothian Badger Group):** Yes. It is obvious in many places that there has been an increase in the number of road traffic accidents—road-kills—involving badgers. I have also noticed that a lot of people find that badgers are entering their gardens, although they have not experienced such visits before.

**Ian Hutchison:** Can you explain the significance of the Roseburn wildlife corridor to badgers and other wildlife as a safe route for travelling from their setts to other foraging areas?

**Patricia Alderson:** For badgers, the important time is at night, and they find that the corridor

gives them a quiet, peaceful way of communicating with the rest of their territory.

**Ian Hutchison:** I hope that the convener will allow this question. Although you will have an opportunity to give evidence to the committee about route options at a later date, is it your contention that the route along the Roseburn corridor is untenable simply because the badger population would not survive?

**The Convener:** I will accept the question, because it is about the impact on badgers.

**Patricia Alderson:** There would be such a massive amount of disruption and noise during construction that I do not think that there would be many badgers—if any—left by the time that the operation started.

**Ian Hutchison:** Could you explain to the committee why badgers have taken up residence at the site, given that it is in such a busy urban location?

**Patricia Alderson:** The main point is that it is a quiet area at night. The badgers are at a good height above the general level of disturbance during the day and at night—should there be disturbance at night—and above the street lighting that is presently in the corridor. They are not affected by any of those things at the moment.

**Ian Hutchison:** How important are foraging resources to a badger clan? Why, given their territorial behaviour, cannot they simply move to another location, build new setts and find foraging resources elsewhere?

**Patricia Alderson:** When a badger is born, it starts learning about where it is and where it can feed. Its mother takes it round and afterwards it continues to feed in that area. It cannot just move, because it has an intimate relationship with its territory. If it tried to move, there would be conflict with adjoining clans—badgers will fight an intruder to the death.

**Ian Hutchison:** Do foraging resources have any seasonal significance for badgers?

**Patricia Alderson:** Yes. They depend on different areas and different foods at different times.

**Ian Hutchison:** It is the promoter's contention that little evidence of foraging along the corridor was found during surveys. Do you agree that, just because badgers are not using a specific area at one time of year, that does not preclude their using it as a resource at another time of year?

**Patricia Alderson:** That is correct. Also, there are not always obvious signs that badgers are feeding in an area. That is quite normal. Badgers are not big animals and do not necessarily make any impact on the land that they are feeding in.

**Ian Hutchison:** We know that the badgers use gardens as a source of foraging. Given that the badgers along the Roseburn corridor are already using gardens, do you agree that there are sufficient resources in those gardens to replace any loss of foraging resources that occurs as a result of the development, or that there are additional gardens that are not already in use that the badgers might exploit.

**Patricia Alderson:** Frankly, I cannot answer that. We do not have sufficient information about where badgers go at the moment.

**Ian Hutchison:** From your experience, what is the likely reaction of householders who have not previously had badgers visiting their garden if badgers begin to visit them?

**Patricia Alderson:** I have had every kind of reaction. Some people are horrified when they see their lawn being rolled up, especially if it is new turf. Others are happy and put food out. Anything is possible.

**Ian Hutchison:** So you are saying that that is an unknown factor and that we cannot rely on gardens as a replacement for existing foraging resources.

**Patricia Alderson:** That would be bad practice that SNH has said in writing is unacceptable. Badgers cannot be forced into people's gardens; that creates conflict.

11:00

**Ian Hutchison:** Under the heading "Issues in Dispute" in Mr Coates's rebuttal statement, paragraph 14 refers to the badgers' "likely total foraging areas". Paragraph 23 of that statement says that the

"proposals will have minimal effect on the foraging territory of the social groups along the corridor, much of which appears to lie outwith the confines of the corridor."

If the total foraging resources have not been identified, is it possible to estimate what percentage of the badgers' foraging territory would be lost?

**Patricia Alderson:** I do not think so.

**Ian Hutchison:** So you would say that, without undertaking further fieldwork, we cannot say definitively what the effect of the loss of foraging resources would be on the badgers in the Roseburn corridor and that to make assumptions without that knowledge could be detrimental to the badgers' welfare.

**Patricia Alderson:** Yes. Much more information than the promoter has furnished us with is needed.

**Ian Hutchison:** It is significant that, unless we know the number of animals in each social group,

we cannot estimate the amount of foraging resources that they require. Is it safe to say that loss of foraging resources will lead to loss of animals?

**Patricia Alderson:** Yes. If the animals do not have enough to eat, they will probably go away.

**Ian Hutchison:** If there is somewhere for them to go.

**Patricia Alderson:** That is right.

**Ian Hutchison:** You are aware that, earlier this year, several surveys, including a bait-marking study, were undertaken in the Roseburn corridor.

**Patricia Alderson:** Yes.

**Ian Hutchison:** Did you notice anything significant while the bait-marking study was being undertaken?

**Patricia Alderson:** Yes. I noticed that many more minor setts were being dug along the corridor and elsewhere.

**Ian Hutchison:** Do you contend that the bait-marking study made sufficient disturbance to cause the badgers to dig new setts as refuges away from the baiting sites?

**Patricia Alderson:** Yes. It was important that the bait-marking survey proceeded. It causes no long-term damage or disturbance to badgers for them to be subject to a bait-marking study. However, it is well accepted that bait-marking is disturbing. That is not just my opinion; it is normal for environmental consultants to accept that some disturbance occurs. It is thought that studies should perhaps be licensed by SNH before they begin.

**Ian Hutchison:** The landscape and habitat management plan is at a fairly advanced stage. How difficult has it been for you to respond to the parliamentary process without the availability of a badger mitigation plan?

**Patricia Alderson:** That has been very difficult. We need more information before we can say whether the plan will work. We can work with it, but some questions are so important that without answers to them I do not know whether the badger mitigation plan can work. I cannot provide the answers, because I do not know the solutions.

**Ian Hutchison:** Do you have opinions about why the badger mitigation plan is unavailable?

**Patricia Alderson:** I wonder whether some overwhelming problems cannot be resolved.

**Ian Hutchison:** You also have concerns about the loss of the corridor as a green space not only for wildlife, but for people who walk there and who use the cycle routes recreationally and as a route to and from their places of employment. Will you

outline those concerns briefly for the committee's benefit?

**Patricia Alderson:** Reducing the width of the wildlife corridor so much will make it lose its value. Wildlife needs at least a metre or two, which it will not have when the corridor is used for trams. People will also lose much of the value of the corridor and the pleasure to be had from going along it.

**Ian Hutchison:** You have seen the principal statement that was provided by Karen Raymond for the promoter and the references in that statement to the number of people who use the resource.

**Patricia Alderson:** Yes.

**Ian Hutchison:** Do the results of surveys that have been undertaken in the past 15 years or more confirm your belief that the Roseburn corridor is an important and integral part of people's lives?

**Patricia Alderson:** Yes. When I do surveys, I am sometimes amazed by how many people pass. I do not live near the corridor—I live in Leith—but my children learned to cycle there and we took the dog there. It is a wonderful place to be.

**Ian Hutchison:** That illustrates the importance of the corridor to you personally.

**Patricia Alderson:** It is important to me and other people. I see loads of them passing.

**Ian Hutchison:** How important is the wildlife corridor along Roseburn as a link to similar areas?

**Patricia Alderson:** It is crucial. The wildlife corridor links the Water of Leith to areas in the north of Edinburgh, which has quite a lot of wild space and parks. It also links other disused railway cycle routes and walkways. It is a crucial part of that network.

**Ian Hutchison:** Thank you very much. I have no further questions for the witness.

**Malcolm Thomson:** Ms Alderson, I wonder whether you could help me with your evidence on increases in badger kills and badgers coming into gardens. To what geographical area were you referring? Were you referring to Edinburgh as a whole?

**Patricia Alderson:** Yes. I was referring to Edinburgh and particularly to when the Craighleith quarry was developed for Sainsbury's and to developments around Corstorphine hill, which is well known for having many badgers. I received reports from places where people said badgers had never been before. Developments caused badgers to move on from their normal feeding grounds and people said, "Look at my lawn!" What happened was significant. There have been many

more road-kills to the west of Corstorphine hill, as badgers have been forced in that direction as a result of development on the east of Corstorphine hill.

**Malcolm Thomson:** Over what period has that happened?

**Patricia Alderson:** Since the development of Sainsbury's—I am not sure when that was. There is on-going work at Corstorphine and I think that there have been three or four road-kills this year.

**Malcolm Thomson:** Has there been a general increase in the badger population during that period?

**Patricia Alderson:** I do not think so. I have been watching badgers recently and there has been a population decrease at one sett, as far as I can tell. Counting badgers is difficult—cameras on the sett are needed to do so—but there seems to be a decrease in the number of badgers at the sett that has been most affected by the Craigcrook development.

**Malcolm Thomson:** Has there been a general increase in the badger population throughout the country?

**Patricia Alderson:** Do you mean in Scotland?

**Malcolm Thomson:** Yes.

**Patricia Alderson:** I do not know.

**Malcolm Thomson:** Thank you.

**The Convener:** As neither Mr Hutchison nor members have further questions for Ms Alderson on the adverse impact on badgers, I thank her very much for giving evidence. Mr Thomson now has up to five minutes to make closing remarks on the impact on badgers and green space, and on double track versus single track.

**Malcolm Thomson:** First, I want to deal with the Roseburn green corridor. In my submission, the Roseburn corridor has been a reserved transport corridor for far longer than it has been referred to as a green amenity corridor, which is a comparatively recent development that has not overwritten the underlying reservation in favour of transport purposes. As Ms Raymond candidly accepted, the appearance of the Roseburn corridor would change with trams in it, but it would still have an important amenity function. One can clearly see that by looking at the landscape and habitat management plan, which has sample sections that show the changes and exactly what the corridor would be like.

On badger mitigation measures, I submit that there is adequate protection, as it is clear that the protection that is afforded by the Protection of Badgers Act 1992 and licensing will apply. I take exception to the suggestion that Ms Alderson

made late in the day that there might be some sinister reason for the badger mitigation plan not seeing the light of day. The question of there being some impediment to the production of the plan was not put to any of the promoter's witnesses and was not raised in any of the written statements. The issue was raised at a time when it could not be dealt with by any of the promoter's witnesses. In my submission, that suggestion is entirely without foundation, especially when one bears in mind the evidence that was led on the reasons for the delay in the production of the plan. It was simply that there were other, more pressing issues that had to be dealt with.

Finally, I turn to the issue of single track versus double track. I invite the committee to consider carefully the comprehensive evidence that Mr Oldfield gave. Although, at first blush, one might think that there was a saving to be made in having one track rather than two, the consequences of that would include signalling and points changes and a need for additional passing places, not to mention the possible need for additional trams, which would offset the apparent saving. A saving is even less likely to be made where there is just one short stretch—or where there are only a few short stretches—of single track, because the additional costs remain comparatively constant and the saving reduces.

Mr Oldfield also mentioned the importance of run time. It may seem to the objectors that a few minutes here or there in the running of a tram—as they put it—is unlikely to have a serious adverse effect but, for the reasons that Mr Oldfield explained, the effect would be significant. Trams would experience delay not just at the single-track section; there would be a knock-on effect. Most important, there would be an adverse effect on the reliability and the perceived reliability of the tram. The whole point of the scheme is that someone will be able to turn up at a certain number of minutes past the hour and know that there will be a tram at that time. If a tram does not turn up on time because of a delay resulting from the single-track section, that is likely to have an adverse effect.

In my submission, both cost neutrality and potential loss of time are important considerations. I invite the committee to accept Mr Oldfield's evidence and to weigh it heavily in the scales when it considers whether to permit the promoter to have a twin-track section in the Roseburn corridor, as proposed.

**The Convener:** Mr Hutchison, too, has five minutes to make his closing remarks.

**Ian Hutchison:** First, I thank the committee for giving us the opportunity to voice our significant concerns about the running of trams through the Roseburn corridor.

There are many factors to be weighed up—the monetary cost is not the only consideration. The destruction of a tranquil, urban, wooded green space would have a social cost and the fracturing of a pivotal wildlife corridor would have a cost for wildlife, for biodiversity of species and for badgers, which are a protected species.

Although TIE does not deny that accommodating the parallel running of two tramlines and a cycleway and walkway will result in considerable loss of wildlife habitat—in some sections, the width of that habitat will be reduced to that of a fence—it still prefers that land-consuming combination on grounds of finance and speed of service. Mitigation can put climbers on the fence and increase the number of tree species, but it cannot retain the canopy of overhanging trees or the amount of land for badgers to forage on.

It is most disappointing that the badger mitigation plan is not yet available, but it is reassuring that TIE is committed to it and that the work will be subject to the Protection of Badgers Act 1992 and Scottish Natural Heritage licensing procedures. However, the proposed double-track running can only make the best—as would single-track running—of a route that was selected without sufficient consideration being given to wildlife value.

Badgers are a strand of the same web of life as microbes and insects, fungi and forest trees. Their survival depends not only on that web of life but on human beings. When the reduction in the amount of open-space land on the railway banking forces badgers to feed more intensively in gardens, there is the prospect that badgers will dig in lawns and borders, where at the moment there is little evidence of their visits. That could result in a serious fall in the popularity of badgers. Bad press coverage could lead to fewer householders putting out food for badgers and to badgers being fenced out of gardens. In other words, TIE's reliance on increasing badgers' dependence on gardens may well have the opposite result.

Badgers are fiercely territorial and cannot simply move house or extend their territory without there being a serious risk of conflict with other badger clans. They emerge well before dark in summer and during our rush hour in winter, so trams could cause them considerable disturbance at their setts. They need peace and quiet after dark, but that is not found opposite access to tram stops. They need a variety of habitats, so that they can forage in all seasons, and they need safe routes to reach those areas. Such requirements will be relevant only to any Roseburn corridor badgers that survive the months of disruption caused by excavation, tree felling, track-bed laying and the trundling of lorries. Many will leave seeking a



quieter place, but will risk being killed on the roads or starving in unfamiliar surroundings. That has happened elsewhere. It need not happen here. The Scottish Executive is committed to safeguarding Scotland's unique natural heritage and to integrating the principles of sustainable development into all Government policies. We believe that by creating compromise the committee can protect this highly valuable green space for both people and badgers.

**The Convener:** I thank all those who have given evidence. Evidence on group 12 is now concluded. Before we take evidence on group 13, which relates to Scottish Natural Heritage, I declare a two-minute comfort break. I ask Gary Turner and Scott McIntosh to join Andy Coates and Karen Raymond at the table during that time.

11:16

*Meeting suspended.*

11:19

*On resuming—*

**The Convener:** I propose to restart the meeting. By doing so, I will probably give the clerk a heart attack, because she is not in the room, but that is fun, is it not?

Scottish Natural Heritage recently decided to rest on its original objection. Members will note the correspondence from it to that effect. That means that there will be no cross-examination from the objector, which has also not put forward any witnesses. However, committee members may put questions to any of the witnesses. In the absence of the objector, I encourage them to do so.

Like the objector in the previous group, Scottish Natural Heritage raised the issue of route selection along the Roseburn corridor, oral evidence on which will be given later in the year. Before we commence evidence taking, Scott McIntosh and Gary Turner will either take the oath or make a solemn affirmation. Andy Coates and Karen Raymond have already done so.

SCOTT MCINTOSH *made a solemn affirmation.*

GARY TURNER *took the oath.*

**The Convener:** The first witness will be Andy Coates, who will address the issue of Starbank Road and the Firth of Forth, as well as the impacts on the Roseburn wildlife corridor.

**Malcolm Thomson:** I will ask you the usual question. Can you give us an update on discussions that have taken place with SNH since the date of the statements?

**Andy Coates:** As the convener mentioned, we have reached agreement on the Firth of Forth

special protection area in relation to birds. SNH has withdrawn its objection on that matter.

We have had on-going discussions with SNH about the geological interests in the Wardie shore area of the Firth of Forth. Our design team is confident that its approach to constructing the walkway will not require access to the areas of crucial geological interest that are of concern to SNH. SNH has indicated that, although it accepts the spirit of the undertaking, it cannot agree to the option of enforcing it through an agreement. We have investigated other options, including having the Crown Estate, which leases the shore, consult SNH, which would give SNH an opportunity to input its concerns. However, SNH has indicated that it is not comfortable with that approach, partly because some of the area about which it is concerned lies outwith the land that is owned by the Crown Estate.

Most recently, we have had discussions about SNH's powers under the Nature Conservation (Scotland) Act 2004. In our view, under section 13 of the act, the promoter, as a public body, is prevented from undertaking any activity that is liable to damage a natural feature of a site of special scientific interest without prior written consent from SNH. We understand that if the promoter needed to do any such work, it would have to apply to SNH for consent, which could be refused or granted at the time. At the end of last week, SNH indicated that it regarded the issue as complex and was not sure how applicable the provision is. I understand that a meeting has been arranged for next week to take the matter further, hopefully towards a successful resolution.

**Rob Gibson (Highlands and Islands) (SNP):** We have heard that SNH has expressed concerns about the impact of the construction and operation of the tramline on badgers and their setts in the Roseburn corridor. What steps is the promoter proposing to take to mitigate adverse impacts on the badgers? Have those steps been discussed and agreed with SNH?

**Andy Coates:** We have had considerable consultation on these matters with SNH. Most recently, confirmation that the Protection of Badgers Act 1992 will be applied and that licences will be required satisfied SNH that its concerns in respect of badgers along the Roseburn corridor are being addressed. In a letter, SNH said that it was

"happy to confirm that if the full provisions of the Protection of Badgers Act 1992 will continue to apply in the way you describe, we will be able to withdraw our objection in this respect. We will be able to do so once we receive written confirmation from the Parliament that the 1992 Act will not be disapplied."

**Rob Gibson:** That is good news. We have heard about the badger mitigation plan, which will

be developed to meet the requirements of the 1992 act. When the plan is developed, will we know the detail of the mitigation programme?

**Andy Coates:** Yes. SNH is aware of the elements that we propose to include in the plan and we have discussed some of the detail.

**Rob Gibson:** I hope that the timescale will allow time for discussion with the public about the mitigation plan.

**Andy Coates:** It will do. The badger group will be included, too.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** SNH is concerned about the impact of works at Starbank Road on the areas of geological interest in the Firth of Forth site of special scientific interest. Can you confirm that all access to and construction and maintenance of the walkway at Starbank will take place outwith the SSSI?

**Andy Coates:** The construction and maintenance of the structure might require access to the foreshore. Such access would be minimised to an appropriate level and would be arranged in full consultation with SNH.

**Mr Stone:** From time to time, you will stray into the SSSI, but you will consult SNH on the matter. Has SNH discussed amendments that it would like to be made to the bill to address its concerns?

**Andy Coates:** Not that I am aware of.

**Mr Stone:** Is that your answer?

**Andy Coates:** I apologise; I overlooked a very recent letter from SNH—I received it last week—in which SNH suggested that the bill could be amended to provide for an exclusion area around the areas of geological interest in the SSSI.

**Mr Stone:** Will dialogue with SNH continue?

**Andy Coates:** Yes, very much so.

**Phil Gallie:** The removal of trees and vegetation is a major issue for SNH. In its objection, SNH said:

“considerable mitigation will be required in order to reduce the impacts on habitats, species and public amenity”.

I presume that the development of the landscape and habitat management plan is directed at such issues. You said that the plan is under way; how far have you got with it?

**Andy Coates:** The landscape and habitat management plan is available. It covers all sections of the route.

**Phil Gallie:** Is that the plan to which we should refer, rather than the mitigation plan? Is the mitigation plan separate?

**Andy Coates:** The badger mitigation plan is a separate plan.

**Phil Gallie:** Does that plan take account of matters other than badger mitigation?

**Andy Coates:** The badger mitigation plan is focused solely on badgers. The landscape and habitat management plan considers access and planting along the corridor.

**Phil Gallie:** It was recently confirmed that the Protection of Badgers Act 1992 will be applied. If that is the case, will it slow up the preparation of your badger mitigation plan?

11:30

**Andy Coates:** It will not slow up the plan at all. We will proceed to finalise the badger mitigation plan in discussion with SNH. The 1992 act simply gives a mechanism for enforcement of that.

**Phil Gallie:** SNH has rejected suggestions that gardens should be considered as foraging areas for badgers. Will the mitigation plan take account of that?

**Andy Coates:** Yes. One aim of the badger mitigation plan is to enhance remaining areas in the corridor to try to encourage badgers. The aim is not to force them out further than they already go.

**The Convener:** Mr Thomson, do you have any follow-up questions for Mr Coates?

**Malcolm Thomson:** Yes. Mr Coates, on SNH's concerns about the SSSI, is it your understanding that the part of the SSSI that will be affected by the walkway is or is not the jewel in the crown of the SSSI? Is SNH most concerned about that part, or is it not particularly concerned about it?

**Andy Coates:** SNH is not particularly concerned about that area. The area of crucial geological interest lies further west.

**Malcolm Thomson:** Is that why, thus far, SNH seems to have been content with a construction programme that involves the temporary construction of a roadway across part of the foreshore to enable a walkway to be built?

**Andy Coates:** As far as I know, yes.

**Malcolm Thomson:** In fact, the promoter hopes that it may be possible to construct the walkway by means of a less intrusive method.

**Andy Coates:** Indeed.

**Malcolm Thomson:** Convener, when I asked my first questions of the witnesses, I did not appreciate that we were going to deal with the Roseburn corridor as well as the Starbank area. May I ask a question about Roseburn?

**The Convener:** Absolutely—carry on.

**Malcolm Thomson:** It was suggested earlier that a technical impediment may exist to the preparation of the badger mitigation plan. Is there any such impediment?

**Andy Coates:** No. There is no impediment, only a time issue.

**The Convener:** As there are no further questions for Mr Coates, I thank him for his evidence.

The next witness is Gary Turner, who will also address the issue of Starbank Road and the Firth of Forth. Mr Thomson, will you begin?

**Malcolm Thomson:** I have no questions at this stage.

**Helen Eadie (Dunfermline East) (Lab):** When does the promoter envisage that the method statements for the construction of the walkway at Starbank Road will be developed?

**Gary Turner (Mott MacDonald):** The promoter is currently engaging a design team to undertake the detailed design of the tram project, should the bill be passed and receive royal assent. As part of that process, the team will develop the detailed design of the alignment and the various structures. As part of those works, the design team will develop the method statement. The promoter proposes that the development of the method statement will be undertaken with SNH. Through discussions that have taken place over a period of time, but particularly more recently, the general principles of how the walkway at Starbank will be constructed have been developed at a high level on the basis of what we know the design concept to be. In principle, SNH is happy with our present proposals on the form of the structure and how the construction works will be undertaken.

I draw the committee's attention to Carolyn Clark's witness statement which, at paragraph 7, states:

"The current proposals for the walkway at Starbank occur immediately to the east of Wardie Shore's geological interest. The proposed footprint of the walkway therefore lies outwith, but very close to, the SSSI."

As my colleague Mr Coates mentioned, through discussions with SNH, we have produced a plan to contain the construction works that the promoter is prepared to promote in an area that is outwith the SSSI. The principle of how the structure will be constructed and maintained has been agreed in general with SNH. That organisation's main concern at the moment is how that principle and the exclusion zone that we have promoted will be enforced between the two parties so that we have the agreement and matters are brought to fruition. Discussions are on-going about that.

**Helen Eadie:** That takes care of my second question, which was to ask how confident you are that that part of the project was deliverable without any detailed design. However, you have answered that largely.

**The Convener:** As there are no further questions from the committee, and Mr Thomson has no follow-up questions for Mr Turner, I thank Mr Turner for his evidence.

The next witness is Scott McIntosh, who will also address the issue of Starbank Road, the Firth of Forth and the impacts on the Roseburn wildlife corridor.

**Malcolm Thomson:** I think that Mr McIntosh has been applying his mind to less intrusive methods of constructing the walkway. Will you give the committee a thumbnail sketch of how that might be possible?

**Scott McIntosh (Mott MacDonald):** Certainly. Instead of building the walkway bottom up from the foreshore, we have looked at ways of building it from the top down. We would do that by mounting mobile equipment on Starbank Road and going over the top of the wall, with a cofferdam around the site of the boring for each of the columns by an augering machine. That is a pompous way of saying that we would use a large power drill on an arm that could go over the wall and drill holes into the foreshore. We would then lower columns into the holes and so minimise the amount of work that would have to be done from the haul road, which would be constructed along the foreshore.

**Malcolm Thomson:** Would that do away with the need for the construction of even a temporary road along the foreshore?

**Scott McIntosh:** Yes. If we can devise a reliable method all along the foreshore, we would not need a haul road; we could construct the columns top down from Starbank Road and then lower in the running beams that would support the structure from the road using cranes. Everything would be done top down rather than bottom up.

**Malcolm Thomson:** Could on-going maintenance also be done on a top-down basis as far as practicable?

**Scott McIntosh:** Yes. The only work that might need to be done from the foreshore would be the inspection of the grouting around the columns as they enter into the foreshore. If there were a disaster—someone sailing an oil tanker into the structure, for example—we might have to do more. However, it would be possible to do routine maintenance from the top down.

**Malcolm Thomson:** As Mr Turner explained, is the ultimate design a matter for the design team that is yet to be appointed?

**Scott McIntosh:** Indeed it is.

**Rob Gibson:** We understand that any adverse impact of construction on the SSSI/SPA site might not be recoverable. How will the construction be monitored and enforced at that sensitive location?

**Scott McIntosh:** I refer you again to the code of construction practice, which I should explain for the avoidance of doubt will be a contractual document. The biggest potential risk during the construction phase relates to pollution. The obvious example is that, as we are drilling holes for the columns, there will be arisings of rock and grit. We will produce a cofferdam around each of the boreholes and then use a vacuum suction method to suck the slurry and rock away before taking it away for safe disposal. That is in line with section 10 of the code of construction practice, which sets out rules for minimising the risk of pollution into waterways.

**Rob Gibson:** Would a higher level of monitoring be applied in that area than in other areas along the route?

**Scott McIntosh:** The level of monitoring will not be higher, but it will be different. The contractor would be required to operate not only under the terms of the code of construction practice, but according to the control of pollution legislation. That would be open to monitoring not only by the promoter, but by independent pollution inspectors if they wished to do that.

**Rob Gibson:** Are you happy to give the committee an assurance that there will be no adverse impact on the SSSI?

**Scott McIntosh:** That would be a heroic thing to say. I am happy to say that the risk of such an impact will be very small. Of course, there are always risks of disastrous accidents, but contractors spend most of their lives trying to avoid disastrous accidents. If the methodology is followed, the risk will be minimal, if not completely eliminated.

**Phil Gallie:** May I badger you a little further, please? Having heard all your evidence, I am not sure that there will ever come a time when you feel badgered. My question is about the unique legislation concerning badgers. Is the promoter's code of construction practice to undertake any reasonably practicable measures to minimise harm sufficient? What will those measures cost? If the cost is seen to be disproportionate—or even just a little bit more—does that knock out that requirement?

**Scott McIntosh:** The phrases “reasonably practicable” and “all reasonable means”, which are used frequently in the code of construction practice, are well precedented. If a little more money is needed, the contractor cannot say, “No, I

am going to do it the cheaper way.” The code means that someone cannot be required to do something that is completely unreasonable, such as work for only half an hour a day.

I do not believe that the risk of slightly more expensive working methods would be a reason for the contractor not to undertake the works in that way. He will have priced for that. The code of construction practice is an available document and anybody who is bidding for the scheme will be doing so in full knowledge of the code and—in relation to badgers—in full knowledge of the mitigation works that were undertaken in Croydon, where, as we have heard, part of the system was constructed through an area that is particularly popular with badgers. Works to mitigate the impact during construction and to provide suitable fencing and underpasses to allow badgers to pass under the tracks were all priced within the contract because the contractor had full knowledge of the potential problems before he bid for the scheme.

**Mr Stone:** We have heard that a lot of people who use the Roseburn corridor do not live in communities near Roseburn. How will you inform those people, who live in other parts of Edinburgh and elsewhere, about the diversions?

**Scott McIntosh:** The code of construction practice requires the setting up of a public information system very early on. That is well precedented and is based on experience from Dublin, Nottingham and Croydon. As part of that process, an information centre will be made available during normal working hours to enable people to inspect the plans and proposals. We will also require the contractor to publish a newsletter every week, outlining the works for the forthcoming week, which will include all the diversions. That will be made freely available for people to take away from the information centre. It will be distributed by electronic means to those who have registered for it and it will be notified to the newspapers and so on. Notices will also be placed along the site of the works beforehand, to give people adequate warning. That is a well-precedented procedure that has worked extremely well in other places.

**Mr Stone:** You say that information will be distributed electronically to those who have registered for it. In addition, do you intend to set up a website that anyone can access, via Google or whatever?

**Scott McIntosh:** Yes. It will be a requirement for the contractor to feed those data into the tramtime website, which will continue to be a live site during the whole of the construction phase of the project.

**The Convener:** As there are no other questions from committee members, I will ask Mr Thomson

whether he has any follow-up questions for Mr McIntosh.

**Malcolm Thomson:** I do not, thank you.

11:45

**The Convener:** There being no further questions, Mr McIntosh, I thank you very much for your evidence this morning.

The final witness for the promoter is Karen Raymond, who will address the impact on the Roseburn wildlife corridor.

**Malcolm Thomson:** Ms Raymond, can you give an update on any discussions that you have had with SNH on matters that have not already been covered?

**Karen Raymond:** I believe that my colleague, Andy Coates, has already spoken about the discussions with SNH on the badger interests along the Roseburn corridor. I can confirm the quotation that he gave from the letter that we received from SNH on Friday of last week indicating that it feels comfortable withdrawing its objection in relation to the badger interest in the corridor.

**Malcolm Thomson:** Do we know where SNH stands on the badger mitigation plan?

**Karen Raymond:** Yes. We have had discussions with SNH on the details of the mitigation plan and it has indicated that it is happy with the way in which the proposals are developing. It is also happy to work with us to refine those proposals as the design progresses. We have discussed several possible ways in which badger mitigation can be provided through tunnels, fencing and other measures. SNH has said that it is happy with the way in which those measures are being developed.

**Malcolm Thomson:** Have any other matters been discussed?

**Karen Raymond:** Yes. As Andy Coates mentioned, we have continued to develop our ideas on the landscape and habitat management plan for the Roseburn corridor in the form of the document that he showed you. The final sections of that plan have now been completed and provided to SNH and other interested parties. There is now a draft plan for the whole corridor.

We have had on-going discussions with SNH about the plan. In its most recent letter to us, dated 24 June, SNH says:

"As we have indicated in previous correspondence, we are pleased with the way in which the Management Plan is being developed and your commitment to consult with us."

However, it has a continuing concern

"to ensure that there is a mechanism in place to ensure that the Plan is implemented."

In response to the discussions that we have had with SNH, SNH says that we have been exploring several options with it for ways in which the plan might be made mandatory over and above its current status, in the same way as the COCP will be as part of the contract documents. SNH is obviously keen to ensure that the plan can be enforced externally. We have made several suggestions to SNH, which I will be happy to explain to the committee, if that would be of assistance. We are continuing our discussions but, generally, SNH is comfortable with the way in which the plan is developing, despite that outstanding concern.

**Malcolm Thomson:** Thank you, Ms Raymond.

**The Convener:** The committee has no questions, but will you outline the options with which you tantalised us?

**Karen Raymond:** We have explored four options. First, we suggested a couple of months ago that there should be a bilateral undertaking with SNH—or even a unilateral undertaking from the promoter—to develop and implement the landscape and habitat management plan and that the LHMP should be subject to SNH's approval before it is finalised. SNH said that, for policy reasons, it would not be happy to enter into agreements on such matters.

We suggested two alternatives. The first is that a condition should be attached to the bill that the LHMP must be implemented. We have some difficulty with that, because the plan is envisaged as an evolving document that develops as the design develops—it will continue to develop once the design team has been appointed, as Mr Turner indicated, and beyond royal assent. As far as we can see, putting the plan into the bill probably means that it has to be signed and sealed before royal assent could be granted. We believe that that would be premature in terms of arriving at the best possible solution for the corridor. If the plan is to provide mitigation in the best way, it has to respond to the final design.

The other option, which is the one that I have recommended be considered by the promoter, is that the prior approval powers that are available to the Edinburgh planning authority should be extended by an amendment to the bill to include the LHMP for the Roseburn corridor and that the grounds for prior approval should be extended—in the same way as has been done with regard to overhead line equipment for reasons relating to the historic nature of the city centre—to include protection of wildlife and access along the corridor, as well as the amenity of the corridor. That could be done relatively simply in the bill.

**The Convener:** Mr Thomson, do you have any follow-up questions for Ms Raymond?

**Malcolm Thomson:** No.

**The Convener:** I should point out that SNH's objection remains live until SNH confirms in writing that it is withdrawing it.

I thank Ms Raymond for giving evidence. Mr Thomson, you have up to five minutes to make any closing remarks that you might have.

**Malcolm Thomson:** I would like to mention a couple of points of law. The first concerns the Protection of Badgers Act 1992 and SNH's position with regard to it. My understanding, which is based on the letter that was read out by Mr Coates, is that SNH has no continuing objection provided that it obtains a written assurance from the committee that it is not the committee's intention to recommend the removal of the inclusion of the 1992 act's provisions in relation to the present proposals. SNH was concerned that, if the 1992 act's provisions were to be disapplied, it would lose what it regards as a valuable type of control on the mitigation measures. The promoter is happy that the 1992 act's provisions should apply. Therefore, unless the committee is minded to suggest that they be disapplied, there is no reason why SNH should not be able to withdraw its objection on that issue.

The other legal issue concerns the Nature Conservation (Scotland) Act 2004, which Mr Coates also mentioned. Section 13 of that act relates to operations that are carried out by a public body. The act includes in the definition of a statutory undertaker a person who is authorised by any enactment to build a tramway. In my submission, it is abundantly clear that section 13 of the act would apply to the promoter. If there is likely to be damage to a natural feature specified in an SSSI, consent must be obtained from SNH—an application would have to be made to SNH and would have to be considered by SNH. It is perhaps interesting to note that section 13(6) states that SNH

"must, in giving or refusing consent, provide the public body or office-holder—

in this case, the promoter—

"with written advice in relation to the operation, including advice on minimising such damage as is referred to in subsection (1)",

which means damage to the SSSI.

In my submission, ample safeguards are provided because, on the face of it, section 13 of the 2004 act will apply. The only potential difficulty is that section 14 of the act states that section 13 does not apply in certain circumstances. However, it is clear that none of the circumstances that are set out in section 14 will apply to the promoter and

the tram project, so SNH will be adequately protected.

I understand that the purpose of the meeting later this week, to which Mr Coates referred, is to enable the concerns of SNH and its lawyers about the detailed provisions of the 2004 act—which is a fairly new act—to be considered and satisfied. In my submission, there is no reason to suspect that such satisfaction will not be possible, given the terms of the legislation.

Madam, the only other matter concerns the apparent satisfaction of SNH about the undertakings that the promoter gave on the construction methods that will be used for the walkway at Starbank Road. In my submission, there is no reason to fear that SNH will not be perfectly happy with even the bottom-up construction method that was proposed, far less the top-down possibility that was described, as eloquently as usual, by Mr McIntosh.

**The Convener:** Thank you, Mr Thomson. For the record, I point out that the committee will report on its determination of all objections in its report at the end of phase 1 consideration. SNH will then be able to determine its position on Mr Thomson's first point. That concludes oral evidence taking on group 13.

We will now move swiftly to group 19, for which Judith Pearson will give evidence. I will allow a couple of minutes for Rahul Bijlani, Andrew Oldfield and Steve Mitchell to take their places at the table. Ms Pearson will act as the questioner for her objection and then appear as a witness.

STEVE MITCHELL *took the oath.*

RAHUL BIJLANI *made a solemn affirmation.*

**The Convener:** The first witness is Rahul Bijlani, who will address whether the bill's provisions are too wide.

12:00

**Malcolm Thomson:** I wonder whether, before Mr Bijlani does that, I may say something on behalf of the promoter.

This objection is not entirely unrelated to the objection submitted by Forth Ports. As set out in the written statements, the primary issue is whether the promoter's use of compulsory powers would extinguish certain private law rights that the objector has over a stretch of roadway that is necessary to provide access to her property. The question was perceived to be whether the promoter and Forth Ports could reach an agreement that would enable the land rights to be transferred voluntarily, in which case it was believed that there would be no adverse impact on the private law rights that the objector enjoys. In

the agreement that has been reached with Forth Ports, that is indeed the case.

However, at the eleventh and a bit hour, an alarming possibility has emerged that, because of recent legislation, the same destruction of private law rights might take place even as a consequence of a voluntary transfer as opposed to the exercising of compulsory powers. In the time available, it has not been possible for either party to reach a definitive view on the matter.

Given such circumstances, I have been instructed by the promoter to give an undertaking on its behalf that, if the road over which the objector enjoys servitude rights is not taken over to become a public road, the promoter will grant afresh the private servitude rights that the objector's property currently enjoys. I put it that way because, if the Roads Authority takes over the road, it will become a public highway, which means that everyone will have access rights over it. As a result, the issue will evaporate.

If the road is not taken over—and I can give no assurances on that point one way or the other—and if, for whatever reason, the private servitude rights are extinguished, I undertake that the promoter will reinstate them. That means that the objector should be in no worse a position than she is now as a result of the promoter's activities.

I want to make that absolutely clear before we go any further. The matter is not covered in any witness statement, because it has been evolving. I simply want Ms Pearson to hear my undertaking before she decides exactly what she is going to do next.

**The Convener:** Ms Pearson, have you had sufficient opportunity to reflect on that undertaking or would you like the committee to suspend for a couple of minutes to let you think things through?

**Judith Pearson:** I am happy to address the issue. I would like to make a brief statement, but I do not know whether I need to take the oath.

**The Convener:** Is your statement in response to that point?

**Judith Pearson:** Yes.

**The Convener:** If you simply confine yourself to responding to that point, you may take the oath later.

**Judith Pearson:** My position on this objection largely depended on the outcome of the negotiations between TIE and Forth Ports. If a satisfactory agreement has been reached that covers the preservation of access rights, I might withdraw my objection, although I would still be concerned if compulsory purchase powers remain in the bill. I know that the initial submission from Forth Ports set out some protective provisions in

the event of its reaching an agreement voluntarily with TIE. I am not sure about the consequences of that agreement for the remaining compulsory purchase powers in the bill, if there are any. I have not had time to reflect on the matter.

I would have concerns about potential residual possibilities if I withdrew my objection immediately, and I would like time to reflect on that. I am not sure procedurally what is the most correct thing to do. Although I am reassured by what Mr Thomson has said and am happy to take his word that TIE is in a position to come to an agreement, it would go against everything that I have said to people over the past 20-odd years if I did not wait to see something in writing. I would like a chance to consider the implications before I withdraw my objection; therefore, procedurally, I would like to pursue the objection, with the understanding that I accept what Mr Thomson has said. This all happened literally as we came in the door this morning.

**The Convener:** Sure. We are finding that these things happen at the 59<sup>th</sup> minute of the 11<sup>th</sup> hour. While they are helpful, people have not had a chance to reflect on them. We should proceed as if that helpful statement had not been made, but we can all bear it in mind.

The first witness is Rahul Bijlani, who will address whether the bill's provisions are too wide.

**Malcolm Thomson:** Mr Bijlani, there is one minor matter in your rebuttal statement that you want to correct. Will you tell us what it is?

**Rahul Bijlani (Bircham Dyson Bell):** There is. I must apologise to the committee and the objector that this error has crept in and has not been noticed until now. My rebuttal statement dealt with whether the bill gave the promoter power to stop up access to the objector's property. I stated that the bill did not give power to permanently or temporarily stop up that access. In fact, there is a general power under the bill to temporarily stop up roads, so that was incorrect. However, there is no power in the bill to stop up the road permanently. That is what my rebuttal ought to say.

**Malcolm Thomson:** Have you had an opportunity to consider Judith Pearson's rebuttal to your statement dated 6 June?

**Rahul Bijlani:** I have.

**Malcolm Thomson:** Do you wish to comment on any paragraphs of that rebuttal?

**Rahul Bijlani:** Excuse me, but I seem to have mislaid the statement. I do not have many specific comments but I have some general ones.

Broadly speaking, I agree with the points that are made. The disputed issues between us are matters of degree and interpretation of where the

balance lies between the public interest and the rights of affected individuals, in relation to article 8 of the European convention on human rights for example. The promoter's position is that the bill and the powers therein represent a proportional response and so do not constitute an interference with article 8 or, to the extent that they do, constitute an interference that is justified. There is a difference of opinion on the extent of the public interest in building the tramway.

**Malcolm Thomson:** I believe that it is fairly rare for private roads to be involved in such a scheme.

**Rahul Bijlani:** Yes. I was leaving aside the issue of access, as the statement you made covers the position. In general, the bill must give specific powers to stop up a road; if it does not do so, the general public can rely on their public rights to use the road. We are in an unusual position in that we are dealing with a private road. Therefore, while there is no intention to stop it up, and indeed no power to do so, in exercising the compulsory purchase powers, the private rights enjoyed by the objector will be extinguished. There is something of a lacuna there because, while the promoter does not have the power to stop up the road, the objector is also left without enforceable legal rights to use the road. The position is unusual—I do not think that it arises in many other places. That is why the promoter is content to make the rights available again.

**Malcolm Thomson:** Would it be your view that the undertaking that I gave earlier on behalf of the promoter adequately protects the objector's private law rights?

**Rahul Bijlani:** Yes.

**Judith Pearson:** What Mr Thomson has put to Mr Bijlani is what I was going to put to Mr Bijlani, so I am happy to have those assurances from him and to note that he has appreciated the distinction between practical access to the property and the underlying legal right of access that is what is really in dispute here. I have no other question except to ask whether that issue was considered when the bill was being drafted or whether it was overlooked given that it is an unusual episode.

**Rahul Bijlani:** Access generally was considered, but what was not considered were individual servitude rights in any given case. The land referencing required to discover those rights was carried out only at a late stage, by which time the bill had already been drafted. In general, the approach that has been taken is to say that where it is clear from the bill that there is no intention and no need to stop up a road, individual legal rights, to the extent that they exist, can be dealt with later in the process.

**The Convener:** There being no further questions for Mr Bijlani, I thank him for giving evidence.

The next witness is Andrew Oldfield, who will also address the issue of loss of access.

**Malcolm Thomson:** I have no questions for Mr Oldfield.

**Judith Pearson:** I have one brief point of clarification in relation to the code of construction practice. I understand that the code will be incorporated into the contracts between the promoter and the contractor so that there will be an ultimate means of enforcement through that route. However, how will enforcement and monitoring happen on a day-to-day basis? Will that be the role of the client representative who is mentioned in the code of construction practice or of a supervising engineer who wanders around the site?

**Andrew Oldfield:** I am not party to the development of the contract that would be let with the contractor, but I understand that there are a number of different ways in which it would be monitored. For example, different people will monitor noise levels on an on-going basis throughout the contract. Typically on such projects, there are inspection staff on the promoter's side to ensure that the contractor is operating in accordance with the contract. As you say, the code of construction practice forms a part of that contract. If a contractor breaches his contract, he is usually made liable for any third party impacts that are associated with that breach.

**The Convener:** There being no further questions for Mr Oldfield, I thank him for giving evidence.

The final promoter's witness is Steve Mitchell, who will address issues of noise, vibration, landscape and visual impact.

12:15

**Malcolm Thomson:** Mr Mitchell, do you have a copy of the rebuttal to your statement?

**Steve Mitchell (Environmental Resources Management):** Yes.

**Malcolm Thomson:** I ask you to comment on the second paragraph, which relates to paragraphs 4.1 to 4.2 of your statement, and concerns the varying noise levels at different times of day and night.

**Steve Mitchell:** We have done several noise surveys in the area around the objector's property—in particular towards the corner of Constitution Street and Ocean Drive where the depot will turn off—because we are aware that that site will operate at night. It is true to say that



we have a good understanding of the general noise environment in the area 24 hours a day. I will not go into the statistical way in which we describe noise but, at night, the situation becomes dynamic: there are brief periods of quiet and, between them, traffic coming in and vehicles on the road. I am able to say that there are relatively high ambient noise levels, because the road remains trafficked to some extent right through the night, and that those are sufficient during the hours when the tram will run to be noisier than the tram, such that the additional effect of the tram will be small—the term that I use in my statement is “insignificant”.

**Malcolm Thomson:** That is for establishments such as the Stanley casino, for example.

**Steve Mitchell:** Yes. I did not do the survey and we do not know where the vehicles come from and everything else, but I can interpret the site notes done by the people who did the survey and the noise levels to say that traffic comes and goes in that area right through the night.

**Malcolm Thomson:** Thank you very much.

**Judith Pearson:** Do you know when the survey was done and whether there was a particular reason why the traffic might have been heavy at that time? It is not my experience that there is much traffic during the night.

**Steve Mitchell:** The survey was done in July 2003. Surveyors are always instructed to avoid something atypical such as a road closure. To my knowledge there was nothing unusual about the situation.

It is a question of degree. To increase the noise unit that I am interested in, which is what we call the  $L_{Aeq}$  noise level, the flows can be quite intermittent—I am sure that the tram would be even less frequent than the vehicles. There only needs to be a few vehicles every few minutes for the levels to bubble up and down. That is the case in this area.

**Judith Pearson:** I will turn back to paragraphs 3.1 to 3.4 of your witness statement, in which you deal with the issue of noise. In assessing the possible noise disturbance, would any account have been taken of the cumulative effect of other projects in the area on an on-going basis?

**Steve Mitchell:** We try to account for what we call cumulative impacts. I notice from your rebuttal of my statement that you refer to a number of construction projects in the area, so you have clearly experienced construction noise and you have a view on that. I can understand that.

It is particularly difficult to do a cumulative noise impact assessment for construction noise because two things must coincide at the same time. Furthermore, they need to be coming from broadly

the same direction. I will clarify what I mean when I say “at the same time”. We know that the project could take more than two years to construct, but the noisiest part of the project in your vicinity will be much briefer than that. We were not able to identify the overlap at the time of doing the studies—I am afraid that we were not able to deal with that specifically.

**Judith Pearson:** Thank you. I have no more questions.

**The Convener:** Do committee members have any questions?

**Members:** No.

**The Convener:** Does Mr Thomson have any follow-up questions for Mr Mitchell?

**Malcolm Thomson:** No.

**The Convener:** There being no further questions for Mr Mitchell, I thank him for his evidence.

We will now take evidence from the objector’s witness. As Ms Pearson does not have a questioner for her evidence, she will make a brief opening statement that addresses any issues that arise from the promoter’s rebuttal of her statement or from her rebuttal of the promoter’s witness statements. Mr Thomson will then be able to cross-examine Ms Pearson before she makes a closing statement. Before we commence oral evidence taking, Ms Pearson will need to take the oath or make a solemn affirmation.

JUDITH PEARSON *took the oath.*

**Judith Pearson:** In the light of what I said before, I feel that I have almost made my opening statement, or that I have changed my opening statement to reflect what Mr Thomson said earlier. To put the committee in the picture, I explain that when I received the initial proposed agreement from the promoter, I felt that it needed substantial revision and that it might be appropriate to approach Forth Ports to see how it was progressing with its negotiations. I did that with the blessing of TIE, which was encouraging that this might be rolled into one solution.

My approach was that my interests and Forth Ports’ interests coincided. Forth Ports granted the servitude rights in the first place, and as it would be transacting with adjacent land, it was appropriate to roll that up together. That solution seemed to be a good one as far as I was concerned. It would not only be binding on me, as an agreement with TIE would be, but it would have the added advantage of safeguarding the interests of the other residents in Rennie’s Isle. Although I am making my objection as an individual, I feel a moral obligation to encompass the rights of the other property owners as well. TIE and Forth Ports

were accommodating and both said that they would take the issue on board. We have had good negotiations, although they have not progressed as quickly as we would have liked.

I do not want to put much emphasis on my submissions with regard to noise and visual impact. My main concern is the servitude rights of access. If that is solvable by agreement, I would be happy subsequently to withdraw my objection. I have nothing else to say at the moment.

**The Convener:** Mr Thomson?

**Malcolm Thomson:** I have no questions for Judith Pearson, madam.

**The Convener:** Do members of the committee have any questions?

**Members:** No.

**The Convener:** Ms Pearson, do you have any closing remarks to make?

**Judith Pearson:** I think I have already made them. Thank you.

**The Convener:** Thank you for giving evidence today. Technically, Mr Thomson has up to five minutes to make his closing remarks and then you have another five minutes to make your closing remarks. I invite you both—Mr Thomson first—to do so.

**Malcolm Thomson:** I am most grateful to Ms Pearson for the way in which she presented her position in evidence. She candidly explained that her principal concern relates to access and that, although she has passing concerns about visual impact and noise, they are not at the heart of her objection. In any event, in my submission those concerns have been adequately covered, as far as possible, in the promoter's evidence.

I turn to the key issue of access. In my submission, Ms Pearson's position is protected—and will be protected—by the undertaking that I gave at the outset of her evidence. No doubt, if anything untoward were to happen, the fact that the evidence has been led today would be helpful. However, as far as the promoter is concerned, her position is fully protected by the undertaking that I gave earlier, as is that of the other residents to whom she feels her moral obligation.

In the light of the undertaking that I have given, I invite the committee not to consider amending the bill in any way.

**Judith Pearson:** As I said, I am reassured by what Mr Thomson said, but I remain concerned about the bill if there is still a possibility that the land around the Rennie's Isle development could be compulsorily purchased, albeit that the compulsory purchase powers will not be exercised. If that is the case, I will pursue my original suggestion that the bill should contain a saving provision in relation to servitudes and other rights of access for residents at Rennie's Isle.

**The Convener:** I thank all the parties who attended the meeting. That concludes oral evidence taking.

Agenda item 2 is consideration of proposed amendments to the bill. Members will recall that we agreed at our most recent meeting that there is merit in a further examination of the promoter's proposed realignments at Haymarket and Ocean Terminal. The committee agreed that the objection period in relation to the realignments would commence on Friday 24 June. We understood that the date was agreeable to the promoter, who was ready to proceed, but it appears that the referencing took longer than the promoter expected, so the objection period did not start last Friday. I think that the committee will agree that that is unsatisfactory and deeply regrettable. It is essential that there should be clarity for any potential objector about when they can object and that objectors should have access to all the appropriate information. I see no option but for the committee to agree to start the objection period on Friday 1 July, which means that the objection period will end on 30 August. Do members agree?

**Members indicated agreement.**

**The Convener:** Thank you. We move into private session for agenda item 3. Members will recall that the committee agreed to meet in private at the end of each oral evidence-taking meeting to enable us to consider the evidence that we have heard, which will assist us greatly when we draft our report. I ask the public to leave the room.

12:27

*Meeting continued in private until 12:36.*

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