

**EDINBURGH TRAM (LINE ONE) BILL
COMMITTEE AND EDINBURGH TRAM (LINE
TWO) BILL COMMITTEE
(JOINT MEETING)**

Tuesday 1 November 2005

Session 2

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**EDINBURGH TRAM (LINE ONE) BILL
COMMITTEE
18th 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)

*attended

**EDINBURGH TRAM (LINE TWO) BILL
COMMITTEE
14th Meeting 2005, Session 2**

CONVENER

Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Marilyn Livingstone (Kirkcaldy) (Lab)

*Kate Maclean (Dundee West) (Lab)

*Alasdair Morgan (South of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Stuart Reid

Malcolm Thomson QC (Counsel for the Promoter)

THE FOLLOWING GAVE EVIDENCE:

Archibald Rintoul (Scotland South East Valuation Office)

Stuart Turnbull (Jacobs Babbie)

Gary Turner (Mott MacDonald)

CLERK TO THE COMMITTEE

Jane Sutherland

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 2

Scottish Parliament

Edinburgh Tram (Line One) Bill Committee and Edinburgh Tram (Line Two) Bill Committee (Joint Meeting)

Tuesday 1 November 2005

[THE CONVENER *opened the meeting at 10:07*]

Edinburgh Tram (Line One) Bill and Edinburgh Tram (Line Two) Bill: Consideration Stage

The Convener (Jackie Baillie): Good morning. I welcome everybody to the second joint meeting this year of the Edinburgh Tram (Line One) Bill Committee and the Edinburgh Tram (Line Two) Bill Committee. I have apologies from Bill Aitken, who cannot be present because he is attending a funeral. I remind everyone to switch off their mobile phones and pagers.

Members will recall that at our first joint meeting, on 14 June, we were scheduled to take evidence on seven objections that relate to the Haymarket Yards area and that are identical to both bills. Unfortunately, in the time that was available, we could take evidence on only three objections: those in the names of the Institute of Chartered Accountants of Scotland, Haymarket Yards Ltd and CGM (Edinburgh) Ltd. We were unable to take evidence on four objections: those from Verity Trustees Ltd, Norwich Union Life & Pensions Ltd, Mr and Mrs Elliott and Versicolor. Verity Trustees and Mr and Mrs Elliott subsequently withdrew their objections to the bills.

A further development has occurred since our first joint meeting. Both committees discussed proposals from the promoter to amend in various places the tram routes that are set out in the bills. One proposed amendment is in the Haymarket Yards area. If it is agreed, it will be identical for both bills.

Both committees agreed separately that the promoter's proposals merited further examination and new objection periods were established. The committees subsequently received further identical objections to the proposed realignment in the Haymarket Yards area from Verity Trustees, Haymarket Yards Ltd and ICAS, all of which objected to the original route that is set out in the bills. However, all three objectors have now withdrawn their objections to the proposed realignment.

What all that means is that the committees will hear oral evidence on only two objections: those lodged in the names of NULAP—Norwich Union Life & Pensions—and of Versicolor. There are no longer any joint objections to the proposed route change in the Haymarket Yards area.

Having set out the background to the meeting, I welcome again everyone who will appear before the committees and thank them for all the written evidence that they have provided. I appreciate that everyone here is fairly familiar with the format of oral evidence taking, so I need not go into great detail. However, as would be expected, I remind all witnesses that there is absolutely no need to repeat evidence that has already been provided to the committees. Our focus will be on issues that remain in dispute and are in the rebuttal statements. I expect questioners to get to the point. If a witness would like to provide an update on the status of an objection, they should do so when first questioned by their questioner.

A minor point is that some of the written evidence that we have received refers solely to line 1. I point out to members that all the evidence that we will consider today relates to both lines.

We can now move on to evidence taking in the name of Norwich Union Life & Pensions Ltd. The first witnesses are Gary Turner, Scott McIntosh, Stuart Turnbull, Steve Mitchell, Aileen Grant and Archie Rintoul. Gary Turner is replacing Andrew Oldfield and will be bound by the terms of his witness statement and rebuttal. Is that correct, Mr Turner?

Gary Turner (Mott MacDonald): That is correct.

Malcolm Thomson QC (Counsel for the Promoter): I wonder whether I might make a preliminary point.

The Convener: You may.

Malcolm Thomson: You might have noticed that the identity of the objector—Norwich Union Linked Life Assurance Ltd—is not the same as that of the party that is appearing here today, which is Norwich Union Life & Pensions Ltd. That is not a mere cosmetic change but a change of identity. They are two distinct companies with differing company numbers. The objector is identified with objection 91 for line 1 and objection 25 for line 2, in respect of Rosebery House. The book of reference showed the objector—NULLA—as being the heritable proprietor of Rosebery House. That was the state of affairs when the objection was lodged in March 2004 by agents on behalf of NULLA.

Incidentally, at that time, different agents in respect of line 2 lodged an objection in the name of NULAP in respect of a different landholding of that entity, which was a car park at the airport.

However, in March 2005, NULAP recorded in the general register of sasines a notice of title recording the fact that NULAP was now the heritable proprietor of Rosebery House by virtue of an insurance business transfer scheme pursuant to part VII of the Financial Services and Markets Act 2000. The High Court in England sanctioned the transfer on 18 November 2004 and it took effect on 1 January 2005. I should perhaps explain that part VII of that act regulates the transfer of the whole or part of an insurance business and provides for the transfer of the assets on such a reconstruction exercise taking place. It also ensures—and this is part of the court supervision—that the transferee has adequate financial resources to be the recipient of insurance business, because of the contingent liabilities. That means that the objector that is identified with objection 91 for line 1 and objection 25 for line 2 is no longer the heritable proprietor of Rosebery House and has neither title nor interest to pursue that objection. Therefore, NULAP, which appears in this room today and which is the heritable proprietor of Rosebery House, is not an objector.

NULAP could have applied for leave to object late up to the end of the preliminary stage, which was 16 February 2005, the transfer having been made the previous November and the actual transfer having become effective on 1 January, but it failed to do so.

The promoter, of course, did not become aware of the existence of NULAP until the outline statements, the witness statement and, finally, the rebuttals were lodged, which all happened after 16 February. The promoter raised that difficulty with NULAP's solicitors, Maclay, Murray & Spens, and with the private bills unit before the date that was originally fixed for the beginning of this objection on 14 June this year.

In my submission, the result of all of this is that there is, effectively, no alternative at this stage but to reject this objection, which is what I invite you to do.

10:15

Stuart Reid: I am obliged to Mr Thomson. It would have been helpful if the promoter had given advance notice that the issue was going to be raised in such detail, in which case chapter and verse could have been given. The simple position is that what we have is a transfer of an asset between pension funds, all within the same Norwich Union Group. The asset, Rosebery House, was transferred between two pension funds. In my submission, the substance of the objection remains valid. It would be wholly inequitable for the committee to adopt a technical point of this nature to exclude a bona fide objection on the part of Norwich Union.

The Convener: Mr Reid, I wonder whether you could help me out a bit. Could you tell me specifically about the link between NULLA and NULAP? Could you also tell me in particular whether NULAP has acquired the rights and liabilities of NULLA?

Stuart Reid: They are two separate corporate entities, albeit that they are within the same corporate group—they form part of the Norwich Union Group. The asset, Rosebery House, was transferred from NULLA to NULAP with all of the attendant rights that are ancillary to the asset. One of the attendant rights is therefore the right to complain of any diminution in value or the right to object to any damage or diminution in value. In effect, the asset has simply transferred from one subsidiary to another with all the attendant rights that attach to the asset.

My respectful submission, convener, is that we do not have a difference of substance. We have a difference of technical ownership—absolutely—but there is no difference in substance. For months, Transport Initiatives Edinburgh has continued to discuss and correspond seamlessly with NULAP the merits of the objection. That is because, in substance, there was a seamless change from NULLA to NULAP. It is correct to say that there is a technical change of ownership, but I urge the committee not to be drawn into viewing this as a technicality; I ask the committee to look at the substance: the ownership of the asset has changed, but the substance of the complaint remains the same. The new owner has the same rights as the old owner.

The Convener: For the record, the committee wrote to you by e-mail on 8 August, asking you to set out the change that was made. If we had received your reply, perhaps we would not be in the position that we are in today of the promoter raising the matter as an issue. [*Interruption.*]

You are indicating that you did not receive the e-mail. We can produce it. We are clear that we wrote to you asking for the information to be set out clearly for the committee. It would seem that, if the rights have transferred, the right to pursue the objection has also transferred. Do you have anything to add, Mr Thomson?

Malcolm Thomson: Yes, I do. With the greatest of respect, what has transferred to NULAP is the right to compensation. That is a matter of law. It is for that reason that TIE has been discussing with NULAP matters relating to the compensation claim.

In my submission, the objection does not transfer as a matter of law; it is not some sort of ancillary right of property. The question is whether the objector has title and interest to pursue the objection and that is what, as a result of this, it no longer has.

I am reminded of the view that the committee took in respect of Kenmore Capital Edinburgh Ltd. A transfer was involved and Kenmore was not allowed to treat an objection as having transferred with ownership. Of course, Kenmore came back in—it was in relation to an objection to the amendment process—but it was refused leave to object. The circumstances were exactly the same as those that apply in this case.

Of course, the matter to which my learned friend has drawn attention this morning would have been extremely persuasive if it had been raised before 16 February. In an attempt to make NULAP the objector, he could have argued that there had been a cosmetic change only and that, although a transfer from one entity to another had taken place, the rights of the pension fund should not be prejudiced.

At that time, he could have invited the committee to take a realistic view of the matter. That would have been the time to make an attempt to allow the committee to allow NULAP to be the objector. In my submission, it is now too late for that. The objector lost the chance; the objection has effectively died because the objector no longer has title and interest to pursue it. Nothing that my learned friend has said today undermines that proposition in any way.

The Convener: Okay. I suggest that we suspend for about five minutes, during which time the committee will consider the arguments that have been put to us.

10:21

Meeting continued in private.

10:32

Meeting continued in public.

The Convener: I apologise for keeping you waiting, ladies and gentlemen. The committee has considered the points that the promoter and the objector have made and I advise that, under rule 9A.9.3(c) of standing orders we are unclear whether the objectors are indeed adversely affected. We intend to suspend oral evidence taking on this particular objection and we will give Mr Reid an opportunity to provide written information so that the committee can properly consider whether the objection is valid and should proceed. Thereafter, the committee will consider the arguments that have been made and arrive at a view.

It may be that we will see you all back here for oral evidence taking at some point in the future. I am sure that you will look forward to that. Mr Reid should provide the written information within two weeks. Mr Reid, does that provide you with

sufficient time to rebut the arguments that have been put?

Stuart Reid: Convener, I am obliged. Evidence taking had to be continued beyond the first day because there was insufficient time and all parties have had to reconvene, at considerable expense. Our witness had to be flown up from London. If today's proceedings are suspended, that will involve further expense and delay.

Given that everyone is present today, my suggestion—it is nothing more than that, and I put it as a respectful suggestion—is that the evidence should be heard under reservation of the technical point. We are in a position to provide the clarification in writing within 48 hours. It will explain that NULAP and NULLA are part of the same group, that there has been only a cosmetic change and that there is a clear link between the two parties.

I suggest the practical solution of hearing the evidence under reservation simply to prevent a waste of time for committee members, TIE representatives and our witness. I will provide my written response within 48 hours, but if it fails to satisfy the committee I suggest that the evidence is not admitted thereafter. I respectfully suggest that the committee reconsiders the proposed procedure and hears the evidence today, while everyone is here, under reservation. That seems to me to be a practical solution, but I mention it simply as a suggestion. I am in your hands, convener.

TIE has been discussing matters with us week after week. If we had known at the outset that it intended to make this technical point, we could have provided the written confirmation—that is the galling feature of the situation. I concede that the request in the e-mail of 8 August is news to me and I can only apologise for that on behalf of NULAP. I was not aware of that request, but the situation can be readily remedied.

The Convener: Thank you for your suggestion. Perhaps it was remiss of me not to mention that the committee considered the option that you suggest but decided to reject it. I understand the inconvenience to witnesses. However, one could look at the matter in reverse. If we are subsequently not satisfied that the objection is valid, we will have wasted an extraordinary amount of time on taking evidence, be it in reservation or otherwise. I note that you can provide the written information within 48 hours but I am happy to let the timescale rest at two weeks so that you have ample time to prepare your submission. The committee will then decide whether to proceed with the objection. I thank those who are here for that particular objector.

I intend, after a short break of two minutes, to move on to consider Versicolor.

10:38

Meeting suspended.

10:40

On resuming—

The Convener: Versicolor is resting on its original objection. The promoter's witnesses—Gary Turner, Stuart Turnbull, and Archie Rintoul—are at the witness table. Gary Turner is replacing Andrew Oldfield and will be bound by the terms of his witness statement. As all three witnesses have taken the oath or affirmation, we will move directly to questioning.

The first witness will be Gary Turner, who will address route alignment and parking configurations.

Malcolm Thomson: Good morning, Mr Turner. May I invite you to explain to the committee the impact of the tram proposal on this objector's property?

Gary Turner: The configuration of the highway adjacent to Versicolor's property is such that the traffic lane arrangements and the tram alignment will require a small section of boundary wall to be moved back into Versicolor's forecourt. It tapers from no dimension at all to 1m or 1.3m at the centre before tapering down again.

The impact of the proposal would be a reconfiguration of the forecourt and car park. At present, there are two parking spaces in tandem in front of the building. The proposal would leave insufficient space for two vehicles there. The two spaces to the west of the forecourt could still be used for parking, but access into the forecourt might have to be reconfigured.

In discussions with the objector, consideration was given to removing the garage adjacent to the property, which would allow five spaces to be reconfigured in the forecourt. That was our last submission to the committee. Since then, the objector has said that it would like to retain the garage. A link through the garage to create additional parking at the rear of the property is not possible because the gap between the boundary and the building is not wide enough. However, I believe that the objector is pursuing the opportunity to have parking to the rear of the building by having discussions with a third party about access to the rear of the building through an alternative route.

The proposals are that Versicolor's boundary be moved back by about 1.3m to enable the tram and road configuration to be undertaken. The boundary wall would be reconstructed in consultation with Versicolor. That would allow enough room to manoeuvre the two vehicles that

are parked to the west of the forecourt into position. That is the position at present.

Malcolm Thomson: In the witness summary, the objector complains that it had no written assurance on accommodation works. Have you any comment to make on that?

Gary Turner: Primarily, the works in front of the objector's property would be adjustments to the road and would be fairly small compared with the overall tram scheme, so they could be undertaken quickly. The promoter is able to give an undertaking that the objector will continue to have access to his car park.

Malcolm Thomson: Am I right in remembering that the tram is going on the other side of the road?

Gary Turner: That is correct. The proposal for that section is that the tram should be on the southern side of the road alignment. Versicolor's property is on the northern side.

Malcolm Thomson: Is this a slight compensatory widening of the road?

Gary Turner: That is correct.

Malcolm Thomson: Would the objector derive any benefit from the code of construction practice that we have heard about?

Gary Turner: The code of construction practice will lay out all the procedures that the contractor is required to follow during construction. Part of the code of construction practice is that access should be maintained at all times.

Malcolm Thomson: Is there continuing discussion between TIE and this objector?

Gary Turner: I understand that TIE has written to the objector. Because TIE believes that the wish to have car parking spaces to the rear will be pursued, TIE will continue to work with Versicolor to ensure that the boundary is configured so that Versicolor retains access to the remaining car parking spaces.

Malcolm Thomson: Thank you, Mr Turner.

10:45

The Convener: Do committee members have any questions?

I see that they do not.

I assume that Mr Thomson has no follow-up questions, so I thank Mr Turner for his evidence.

The next witness is Mr Turnbull, who will address the issue of highway and traffic requirements.

Malcolm Thomson: I have no opening questions.

The Convener: Members?

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I want to consider paragraphs 4.3 and 4.4 of Mr Turnbull's witness statement. You talk about 13 different configurations that have been tested. Was a weighting given to each of those configurations? Were configurations suggested that would not impinge on the company's land?

Stuart Turnbull (Jacobs Babbie): Once the principal alignment of the tram on this part of the route was agreed, my team worked with the roads department of the City of Edinburgh Council to develop an appropriate layout. We held a number of workshops at each of which we presented two or three options that were discussed in detail with the planning authority and the roads authority. We were seeking a solution that addressed all the issues—including vehicular traffic, the trams, pedestrians, cyclists and access to Haymarket station.

A key issue that arose was the need to maintain two lanes for traffic heading east, to allow a right-turn lane for traffic going up to Morrison Street and a straight-through lane for traffic going on to West Maitland Street and Shandwick Place. Testing was done to ascertain the consequences of having only one lane—if there could be only one lane, we would not have to impinge on the land in question. However, the consequences for traffic flow were such that we considered a one-lane solution unsatisfactory from a technical point of view. The City of Edinburgh Council, as roads authority, concurred with that view.

We had continuing dialogue to try to find a solution. In paragraph 4.3, I set out the key physical aspects that were required. The need to take those aspects into account led to the solution that we have arrived at. A number of discussions were held to try to avoid the present situation, but to configure the junction so that it operated satisfactorily the present solution was deemed necessary.

The Convener: Are there any other questions from members? No.

From Mr Thomson?

Malcolm Thomson: No, thank you.

The Convener: I therefore thank Mr Turnbull for his evidence.

The final witness on group 38 is Mr Rintoul, who will address the issue of compensation.

Malcolm Thomson: Mr Rintoul, if the car parking spaces cannot be reprovided for this objector, will the objector be entitled to compensation?

Archibald Rintoul (Scotland South East Valuation Office): Yes. Land for the scheme is being acquired from the objector and compensation will be available for the reduction in value of the claimant's remaining property.

Malcolm Thomson: Will that compensation be in respect both of the direct loss of a sliver of land and of any adverse effect on the remaining parking spaces?

Archibald Rintoul: There will be compensation for the loss of a small sliver of land. The main loss to the company will be the loss of two parking spaces. Compensation will be given for the value of that.

The Convener: Are there any questions from committee members?

Rob Gibson (Highlands and Islands) (SNP): Could the loss of car parking spaces caused by manoeuvrability issues be compensated for under the compensation provisions in the bill?

Archibald Rintoul: At the moment, the company can achieve five car parking spaces, including the garage; subsequently, it will be able to have only three parking spaces, including the garage. There is a reduction of two car parking spaces and there is a reduction in value because of that. The company will be entitled to compensation for that loss.

Rob Gibson: Thank you.

Jeremy Purvis: If costs were incurred procuring alternative access to those spaces, or in ascertaining whether alternative access is possible, would they be covered in a potential claim?

Archibald Rintoul: The solution that Mr Turner suggested would not need additional access routes; access from the rear would not be required. If the scheme goes ahead as proposed, it will be possible to have three car parking spaces, including the garage. I understand that the objector is in discussions about obtaining access from the rear because that may be easier. In the proposed scheme, it would be possible to have one car parking space in the garage and two adjacent spaces.

Jeremy Purvis: Notwithstanding the proposed scheme, which may change, if an objector put forward a claim because alternative access was required, would the bill cover that?

Archibald Rintoul: I think it would. If the alternative means were cheaper, the objector would be compensated.

Jeremy Purvis: Thank you.

The Convener: There are no other questions from committee members. Do you have any follow-up questions, Mr Thomson?

Malcolm Thomson: I have only one. Is the loss of two car parking spaces the worst-case scenario for the objector?

Archibald Rintoul: I understand that it is. It may be possible to improve that position.

Malcolm Thomson: But you see no reason why the objector should not be compensated in full for the loss of the two car parking spaces.

Archibald Rintoul: There is no reason at all why they should not be compensated in full for the loss of those two spaces.

Malcolm Thomson: Thank you.

The Convener: Thank you, Mr Thomson, and thank you, Mr Rintoul, for giving evidence this morning. That concludes the questioning of witnesses. Mr Thomson, you have up to five minutes to make any closing remarks that you might have.

Malcolm Thomson: The issue here is the loss of two car parking spaces. Various solutions have been explored with the objector to try to mitigate that loss, including the possible demolition of the garage to make a wider, flat, open area for parking. We heard today from Mr Turner of the possibility of access from the rear of the building to the area behind the garage, but none of the solutions has yet come to pass. The result is that the worst case for the objector is that they will lose two car parking spaces. We have heard the reasons for that and have read them in the written evidence.

The roadway in question is busy because it is the approach to the busy Haymarket junction. It is necessary to preserve the existing lanes of traffic while trying to accommodate the tramlines on the other side of the road. The sliver of land that is proposed to be taken is the smallest that can be used to achieve the desired result. In my submission, the issue becomes purely one of compensation for the loss of the two car parking spaces.

So far as the works are concerned, there are on-going discussions with the objector about mitigation during the construction period. The works involve only the reconfiguring of the road and not the digging up of the road to put in tramlines. There will be protection from the code of construction practice and on-going dialogue will enable advance warning of any occasions when access cannot take place, which will all be in terms of the code.

Similarly, the dwarf wall can be configured in consultation with the objector to ensure the most

convenient access for the objector to the remaining spaces. Compensation will ultimately be payable under the Land Compensation (Scotland) Act 1963 and the Land Compensation (Scotland) Act 1973, as Mr Rintoul explained.

For all those reasons, I invite the committee simply to reject the objection.

The Convener: Thank you, Mr Thomson, and thank you all. That concludes oral evidence taking for Versicolor Ltd and for today.

I thank all the witnesses, whether they spoke or not, and the promoter's and the objector's representatives for their attendance and contribution.

We will now move into private session for agenda item 2, to discuss key points that have arisen from the meeting. As members will recall, each committee agreed to meet in private at the end of each oral evidence-taking meeting to consider the evidence. That will obviously greatly assist us in drafting our report at the end of phase one of the consideration stage.

10:54

Meeting continued in private until 10:59.

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